



OHIO LEGISLATIVE SERVICE COMMISSION

Final Analysis

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

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Reps. Blessing, Leland, Sweeney

Effective date: April 6, 2017

ACT SUMMARY

- Requires insurers to make an annual disclosure to the Superintendent of Insurance on the company's corporate governance policies and practices (CGAD).
- Specifies that a CGAD and all related information is confidential, but authorizes the Superintendent to share confidential information as needed to fulfill the Superintendent's regulatory and legal responsibilities.
- Authorizes the Superintendent to hire consultants as necessary to review a CGAD.
- Authorizes the Superintendent to assess a civil penalty to an insurer that does not submit its CGAD by June 1 of each year.
- Makes the first corporate disclosure report for insurers with a total premium of more than \$5 billion due June 1, 2017, and June 1, 2018, for all other insurers.

CONTENT AND OPERATION

Overview

The act requires insurance companies domiciled in Ohio to make a corporate governance annual disclosure (CGAD) to the Superintendent of Insurance on an annual basis. This report must include all information necessary for the Superintendent to gain

* This version updates the effective date.

an understanding of an insurer's corporate governance structure, policies, and practices, and must be filed by June 1 each year.¹ The report must include a signature of the insurer's chief executive officer or corporate secretary attesting that the insurer has implemented the corporate governance practices and that a copy of the CGAD has been provided to the insurer's board of directors or appropriate governing body.² The act applies to individual, distinct insurers as well as groups of insurers bound together under a holding company.

Holding companies

For multiple companies associated under a holding company, the company is supposed to determine a "lead state," which is the dominant state in which the company does business according to criteria prescribed by the National Association of Insurance Companies (NAIC). The company's CGAD is supposed to be submitted and reviewed by the insurance commissioner in its lead state, even if one or more of the insurance companies of which the holding company is composed is domiciled in Ohio. Note, however, that the company is required to provide its CGAD to the Superintendent upon request.³

Relevant level of governance

The act authorizes an insurer or holding company to provide information at one or all of the following levels, as is most relevant:

- The ultimate controlling parent level;
- An intermediate holding company level;
- The individual legal entity level.

The insurer or holding company is also encouraged to make the CGAD at one of the following levels:

- The level at which the insurer's risk appetite is determined;
- The level at which the insurer's earnings, capital, liquidity, operations, and reputation are overseen collectively and at which the supervision of those factors is coordinated and exercised;

¹ R.C. 3901.072(A), 3901.073(A)(1), and 3901.074(A)(2).

² R.C. 3901.073(C).

³ R.C. 3901.073(A)(2) and (B).



- The level at which legal liability for failure of general corporate governance duties would be placed.

If a company uses any of these criteria in compiling its CGAD, it must indicate which of the criteria it used and the reasoning for any subsequent changes in the level of reporting.⁴

If an insurer already provides the information that it would provide in its CGAD in another document provided to the Superintendent, it may reference those documents in its CGAD and is not required to provide them again. This includes proxy statements filed in conjunction with an insurance holding company registration or other state or federal filings provided to the Department of Insurance.⁵

An insurer or holding company has discretion under the act regarding the form of the GCAD it provides. Note, however, that the CGAD must be consistent with any relevant rules adopted by the Superintendent. All CGAD documentation and supporting information must be maintained and made available for examination at the Superintendent's request. Additionally, the Superintendent may request other information as necessary to provide a clear understanding of the insurer's corporate governance policies and the reporting or information system or controls implementing those policies.⁶

Confidential documents

Documents, materials, or other information related to the CGAD in the possession of the Superintendent are confidential. As such, they are not admissible into evidence in any private civil action or subject to a public records request, subpoena, or discovery. However, the act authorizes the Superintendent to use the documents in association with any regulatory or legal action brought as part of the Superintendent's official duties. The Superintendent must obtain the insurer's written authorization before distributing CGAD information for any other purpose. The Superintendent, and a person who receives such confidential information from the Superintendent, cannot be permitted or compelled to testify in any private civil action concerning any such confidential information.⁷

⁴ R.C. 3901.073(D).

⁵ R.C. 3901.073(E).

⁶ R.C. 3901.074.

⁷ R.C. 3901.075(A) to (D).

Sharing confidential documents

The act enables the Superintendent to share and receive confidential CGAD information in the course of performing the Superintendent's regulatory duties. The Superintendent may share or receive such confidential information from any of the following:

- Other financial regulatory bodies;
- Members of any supervisory college;
- The NAIC;
- A third-party consultant providing services in relation to the CGAD.

The recipient of any such information provided by the Superintendent must agree in writing to maintain the confidential status of the information and verify the recipient's authority to maintain the confidentiality. If the Superintendent receives such confidential information from another party, the Superintendent must maintain its confidentiality, but is not required to provide any statement in writing to this effect. The act specifies that any sharing of confidential information on the part of the Superintendent is not a delegation of regulatory or rule-making authority and that the Superintendent is the sole entity responsible for enforcing the act's provisions. The act also specifies that the confidential status of CGAD documents and information is not waived or undone as a result of the Superintendent sharing such information.⁸

Third-party consultants

The act authorizes the Superintendent to retain third parties as necessary to review a CGAD, at the expense of the applicable insurer. A third-party consultant is to serve under the Superintendent's direction in an advisory capacity and must comply with the act's confidentiality requirements. The consultant must also verify that the consultant is free of any conflict of interest in relation to the insurer. Finally, the consultant must verify that the consultant has procedures in place to ensure that the consultant remains free of conflict and that the consultant complies with the confidentiality requirements.⁹

⁸ R.C. 3901.075(C)(3), (E), (F), and (G).

⁹ R.C. 3901.076(A) and (B).



If the Superintendent enters into a written agreement with the NAIC or a third-party consultant regarding sharing of information found in a CGAD, the agreement must do all of the following:

- Specify procedures and protocols for maintaining the confidentiality of CGAD information shared between parties, including those procedures or protocols for the NAIC's sharing of such information related to a holding company operating in multiple states with only other state regulators;
- Provide that the recipient of information agrees in writing to maintain the confidential status of the CGAD information and that the recipient has the authority to maintain this status;
- Specify that ownership of the information remains with the Superintendent and that the NAIC's or third-party consultant's use of the information is subject to the Superintendent's direction;
- Prohibit the NAIC or third-party consultant from storing the information in a permanent database after the underlying analysis is complete;
- Require the NAIC or third-party consultant to provide prompt notice to the Superintendent and to the insurer regarding any request or subpoena for disclosure of the insurer's CGAD information;
- Require the NAIC or third-party consultant to consent to intervention by an insurer in any judicial or administrative action in which the NAIC or third-party consultant may be required to disclose confidential information about the insurer that was obtained;
- Require the insurer's written consent prior to making any CGAD information public.¹⁰

Rules

The act requires the Superintendent to adopt rules as necessary to carry out the act.¹¹

¹⁰ R.C. 3901.076(C).

¹¹ R.C. 3901.077.



Penalty for failure to timely file a CGAD

The Superintendent may assess a civil penalty to insurers that do not timely submit the CGAD. The civil penalty may not be assessed until the Superintendent has provided written notice and given the insurer the option of holding a public hearing on the matter. If, subsequent to the hearing, the Superintendent finds that the insurer has not submitted the CGAD in a timely manner, the Superintendent may assess a civil penalty of \$100 for each day that the CGAD is past due, with a maximum penalty of \$10,000. The Superintendent may reduce the penalty if the insurer is able to demonstrate that paying it would constitute a financial hardship. The penalties must be deposited into the General Revenue Fund.¹²

First CGADs due

For insurers with a direct written and unaffiliated assumed premium totaling more than \$5 billion as of December 31, 2015, the first CGAD is due June 1, 2017. For all other insurers, the first CGAD is due June 1, 2018.¹³

Intent clause

The act contains language declaring the General Assembly's intent that it is intended to accomplish all of the following:

- Provide the Superintendent with a summary of an insurer's corporate governance structure, policies, and practices so that the Superintendent can gain an understanding of the insurer's corporate governance framework;
- Outline the requirements for completing a CGAD;
- Provide for confidential treatment of CGAD information.¹⁴

Definitions

The act makes the following definitions:

- "Insurance group" means those insurers and affiliates included within an insurance holding company system. This analysis uses the term "holding company" instead.

¹² R.C. 3901.078.

¹³ R.C. 3901.073(A)(1).

¹⁴ Section 3.



- "Insurer" means any person engaged in the business of insurance, guaranty, or membership, an inter-insurance exchange, a mutual or fraternal benefit society, or a health insuring corporation. "Insurer" does not include any agency, authority, or instrumentality of the U.S., its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of Ohio.

HISTORY

ACTION	DATE
Introduced	02-08-16
Reported, S. Insurance	05-17-16
Passed Senate (30-0)	05-18-16
Reported, H. Government Accountability & Oversight	12-07-16
Passed House (88-8)	12-07-16
Senate concurred in House amendments (32-0)	12-07-16

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