



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Final Analysis

Nick Thomas

### **Sub. S.B. 169**

132nd General Assembly  
(As Passed by the General Assembly)

**Sens.** Wilson, Eklund, Hackett, Hottinger, Bacon, Burke, Coley, Hoagland, Huffman, Manning, O'Brien, Oelslager, Terhar, Thomas

**Reps.** Anielski, Ashford, Boyd, Craig, Green, Holmes, Kent, Lepore-Hagan, Rogers, Schaffer, Scherer, Schuring, Seitz, Sprague

**Effective date:** Travel insurance and internationally active insurance group provisions effective June 21, 2018; provisions addressing insurer-members of home loan banks effective March 23, 2018

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## ACT SUMMARY

### Travel insurance

- Defines travel insurance and distinguishes travel insurance from longer-term medical insurance coverage for persons spending six months or more overseas, such as expatriates or deployed military personnel.
- Establishes travel insurance as a limited line in the Revised Code and authorizes the Superintendent of Insurance to issue a limited lines travel insurance license to qualified individuals or business entities.
- Requires the licensee to designate one employee as the agent responsible for ensuring compliance with the travel insurance law and makes the licensee and responsible agent responsible for the acts of any associated travel retailer.
- Permits a travel retailer to offer and sell travel insurance in conjunction with making, arranging, or offering travel services under the direction of a licensed limited lines travel insurance agent, and prohibits the travel retailer from providing technical insurance-related services.

- Requires travel insurance agents and travel retailers to disclose to customers specified information, including material terms, the claim filing process, the cancellation process, and contact information.
- Authorizes the Superintendent to take action as provided in current law for any violation of the act's travel insurance provisions.

### **Supervision of internationally active insurance groups**

- Authorizes the Superintendent to act as, or appoint another regulatory official to act as, the group-wide supervisor for any internationally active insurance group, and provides standards for when such an appointment may be made.
- Requires the Superintendent to cooperate with other state, federal, and international regulatory agencies in appointing a group-wide supervisor.
- Allows the Superintendent to collect from a registered member of an insurance holding company system all information necessary to determine who may act as the group-wide supervisor.
- Permits the Superintendent, when acting as the group-wide supervisor, to assess the enterprise risks within the group to ensure that the material financial condition and liquidity risks to group members are identified and that reasonable and effective mitigation measures are in place.
- Allows the Superintendent to obtain information from insurers necessary and appropriate to assess that enterprise risk.
- Authorizes the Superintendent to coordinate with officials in other jurisdictions to mitigate any enterprise risk to members of the group for which the Superintendent is the group-wide supervisor when those members are domiciled in those other jurisdictions.
- Allows the Superintendent to (1) work and share information with other regulatory agencies regarding group members, (2) enter into agreements with or obtain documentation from insurers and other regulatory agencies regarding the supervisor's role, and (3) undertake any other necessary supervision activities.
- Requires registered members of insurance holding company systems to pay reasonable expenses of the Superintendent's participation in the administration of the act's internationally active insurance group provisions.



- Allows the Superintendent to adopt rules in accordance with the Administrative Procedure Act to implement the act's internationally active insurance group provisions.

### **Delinquency proceedings involving insurer-members of federal home loan banks**

- Limits the time a federal home loan bank can be stayed from acting on an insurer-member's collateral in a delinquency proceeding to ten days following the issuance of an injunction or other order.
- Requires a federal home loan bank to repurchase an insurer-member's excess capital stock within seven days of a redemption request.
- Requires a federal home loan bank to provide a court-appointed receiver, conservator, rehabilitator, or liquidator (collectively, an appointee) a process and timeline for dealing with the release of collateral by the bank, payment of fees by the insurer-member, and redemption of the insurer-member's stock by the bank.
- Requires a federal home loan bank to provide any available options for renewing or restructuring a loan upon request of the appointee.
- Exempts from an existing fraudulent transaction presumption relating to insurers in delinquency a transfer of money or property from an insurer-member to its federal home loan bank if certain criteria apply.

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## CONTENT AND OPERATION

### Travel insurance

#### Limited lines travel insurance

Currently, the Superintendent of Insurance is authorized to issue a resident insurance agent license to an individual who meets specified criteria. The license must specify the line for which the licensee is qualified. Continuing law specifies certain lines of authority for licenses but permits the Superintendent to designate more lines.

The Superintendent has by rule authorized the issuance of travel insurance coverage. The administratively created travel insurance limited line licensee is not required to complete any pre-licensing education, examination, or continuing education. The license is valid for two years.<sup>1</sup>

The act establishes travel insurance as a limited line in the Revised Code and regulates the licensure of individuals and business entities selling travel insurance. Under the act, "travel insurance" means individual or group insurance coverage for personal risks incident to planned travel, including interruption or cancellation of a trip or event, loss of baggage or personal effects, damages to accommodations or rental vehicles, and sickness, accident, disability, or death occurring during travel. "Travel insurance" does not include major medical plans that provide comprehensive medical protection for a traveler with a trip lasting six months or longer, including a person working overseas as an expatriate or deployed military personnel.<sup>2</sup>

Under the act, the Superintendent is permitted to issue a limited lines travel insurance agent license to an individual or a business entity. The license authorizes the

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<sup>1</sup> R.C. 3905.041(C), 3905.05(A), and 3906.06(B)(12); Ohio Administrative Code 3901-5-09(F) and (J); Ohio Department of Insurance, *Limited Lines Licenses for Individuals*, <http://insurance.ohio.gov/agent/pages/indivltdauth.aspx>.

<sup>2</sup> R.C. 3905.064(A)(2), (B), and (H).



individual or business entity to sell, solicit, or negotiate travel insurance through a licensed insurer if the individual or business entity has filed an application with the Superintendent in a form and manner required by the Superintendent and pays all associated fees, including an application fee set by the Superintendent of up to \$50.<sup>3</sup> It must be renewed every two years in accordance with continuing Insurance Law for insurance agents; the renewal fee is set by the Superintendent and cannot exceed \$50.<sup>4</sup>

Under the act, "limited lines travel insurance agent" means an individual or entity licensed to sell, solicit, or negotiate travel insurance. A "travel retailer" is a business entity that makes, arranges, or offers travel services. A travel retailer, as a service to its customers and on behalf of, and under the direction of, a limited lines travel insurance agent that is a business entity may offer and sell travel insurance. But, the sale of travel insurance must be only in conjunction with the making, arranging, or offering of travel services.<sup>5</sup>

The limited lines travel insurance agent, and those travel retailers registered under the agent's license, are exempt from any examination and education requirements required under continuing Insurance Law for insurance agents for the purpose of selling travel insurance under the act.<sup>6</sup>

## **Requirements**

### **Registration of travel retailers**

A limited lines travel insurance agent must establish and maintain a register of each travel retailer that offers travel insurance on the agent's behalf on a form prescribed by the Superintendent. Upon reasonable request of the Department of Insurance, the agent must submit the register and certify that the registered travel retailers comply with federal law pertaining to insurance affecting interstate commerce.<sup>7</sup>

### **Designated responsible agent**

A limited lines travel insurance agent must designate one of the agent's employees as the designated responsible agent, responsible for the agent's and travel

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<sup>3</sup> R.C. 3905.064(C) and 3905.40, with conforming changes in R.C. 3905.01(K) and 3905.06(B).

<sup>4</sup> R.C. 3905.064(J) and 3905.40(E)(6) and (G).

<sup>5</sup> R.C. 3905.064(A)(1) and (3), (E), and (G)(2)(d).

<sup>6</sup> R.C. 3905.064(F).

<sup>7</sup> R.C. 3905.064(D).



retailer's compliance with Ohio's travel insurance laws and rules. The designated responsible agent must (1) be a licensed insurance agent, (2) be qualified in travel, property, or personal lines of insurance, and (3) comply with the criminal records check fingerprinting requirements under continuing law or the fingerprinting requirements of the agent's home state.<sup>8</sup> The act specifies that the limited lines travel insurance agent business entity and its responsible agent are responsible for the acts of any associated travel retailer selling travel insurance and are to use reasonable means to ensure compliance with the travel insurance requirements.<sup>9</sup>

### **Disclosures**

A limited lines travel insurance agent, or the travel retailer, must provide purchasers of travel insurance with all of the following at the time of sale or in the sale fulfillment materials:

- A description of the material terms, or the actual terms, of the insurance coverage;
- A description of the process for filing a claim;
- A description of the review or cancellation process for the travel insurance policy;
- The identity and contact information of the insurer and limited lines travel insurance agent.<sup>10</sup>

The act also imposes disclosure requirements exclusively on travel retailers. Travel retailers that offer or sell travel insurance must provide brochures or other written materials to prospective customers that include all of the following information:

- The identity and contact information of the insurer and the limited lines travel insurance agent;
- An explanation that the purchase of travel insurance is not required in order to purchase any other product or service from the travel retailer;

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<sup>8</sup> R.C. 3905.064(E)(2).

<sup>9</sup> R.C. 3905.064(E)(3).

<sup>10</sup> R.C. 3905.064(E)(1).

- An explanation that an unlicensed travel retailer is permitted to provide general information about the insurance it offers, including a description of the coverage and price, but is not qualified or authorized to answer technical questions about the terms and conditions of the insurance it offers or to evaluate the adequacy of the customer's existing insurance coverage.<sup>11</sup>

### **Instruction and training**

A limited lines travel insurance agent must require each employee and authorized representative of the travel retailer whose duties include offering and selling travel insurance to receive instruction or training that includes instructions on the types of insurance offered, ethical sales practices, and required disclosures to prospective customers. The Superintendent is authorized to review all training programs or materials, at the Superintendent's discretion.<sup>12</sup>

### **Prohibited actions**

The act prohibits a travel retailer's employee or authorized representative who is not licensed as an insurance agent from doing any of the following:

- Evaluating or interpreting the technical terms, benefits, and conditions of the offered travel insurance coverage;
- Evaluating or providing advice concerning a prospective purchaser's existing insurance coverage;
- Holding itself out as a licensed insurer, licensed agent, or insurance expert;
- Offering or selling travel insurance that is not offered or sold in conjunction with and incidental to the sale of travel services.<sup>13</sup>

### **Compensation**

Under the act, if a travel retailer's insurance-related activities are limited to offering or selling travel insurance on behalf of and under the direction of a limited lines travel insurance agent meeting the act's requirements, the travel retailer may offer

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<sup>11</sup> R.C. 3905.064(G)(1).

<sup>12</sup> R.C. 3905.064(E)(4).

<sup>13</sup> R.C. 3905.064(G)(2).

and disseminate travel insurance and receive compensation for those services if the travel retailer is registered by the agent as required under the act. However, the act stipulates that compensation for a travel retailer employee or authorized representative must not be primarily tied to the number of customers who purchase travel insurance from that employee or authorized representative.

Nothing in the act's provisions are to be construed as prohibiting payment of compensation to a travel retailer, its employees, or its authorized representatives for activities under the limited lines travel insurance agent's license that are incidental to the overall compensation of the retailer, employees, or representatives of the travel retailer.

In addition, all costs to a customer for the purchase of travel insurance or related services are to be separately itemized on the customer's bill.<sup>14</sup>

### **Enforcement**

Any limited lines travel insurance agent or any travel retailer offering or selling travel insurance under a limited lines travel insurance agent that is found to have violated the act's provisions has committed an unfair and deceptive act or practice in the business of insurance. If the Superintendent finds that an agent or retailer has committed such an act or practice, the Superintendent may take a variety of actions, including issuing a cease and desist order, imposing a civil penalty of up to \$25,000, suspending or revoking an insurance license, and ordering corrective actions.<sup>15</sup>

### **Supervision of internationally active insurance groups**

#### **Overview**

The act authorizes the Superintendent to act as the group-wide supervisor for any internationally active insurance group.<sup>16</sup> An "internationally active insurance group" is an insurance holding company system that includes an insurer that is registered in Ohio as a member of a holding company system and that meets all of the following criteria:

- Insurers that are part of the holding company system write premiums in at least three countries.

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<sup>14</sup> R.C. 3905.064(G)(3).

<sup>15</sup> R.C. 3905.064(I); R.C. 3901.21 and 3905.14, not in the act.

<sup>16</sup> R.C. 3901.352.





- The percentage of gross premiums written outside the U.S. by the holding company system is at least 10% of the holding company system's total gross written premiums.
- Based on a three-year rolling average, either the total assets of the holding company system are at least \$50 billion, or the total gross written premiums of the holding company system are at least \$10 billion.<sup>17</sup>

A "group-wide supervisor" is the regulatory official authorized by the Superintendent to supervise an international group and who is determined by the Superintendent to have sufficient contacts with the international group.

The Superintendent may authorize a regulatory official from another jurisdiction as the supervisor if the international group meets any of the following conditions:

- It lacks substantial operations in the U.S.
- It has substantial operations in the U.S., but not in Ohio.
- It has substantial operations in both the U.S. and Ohio, but the Superintendent has determined pursuant to the factors set forth below under "**Appointment of group-wide supervisor**" and "**Unaccredited group-wide supervisors**" that the other regulatory official is the appropriate supervisor.

Under the act, an insurance holding company system that does not otherwise qualify as an internationally active insurance group may request that the Superintendent appoint a supervisor for the insurance holding company system.<sup>18</sup>

### **Appointment of group-wide supervisor**

The act requires the Superintendent to cooperate with other regulatory agencies to appoint a supervisor for each international group. The Superintendent may determine that the Superintendent is the appropriate supervisor for an international group with substantial operations in Ohio. Or, the Superintendent may acknowledge a regulatory official from another jurisdiction as the appropriate supervisor. In making this determination, the Superintendent must consider the following factors:

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<sup>17</sup> R.C. 3901.32(G) and 3901.352(A)(1).

<sup>18</sup> R.C. 3901.32(D) and 3901.352(A).



- The place of domicile of the insurers within the international group that hold the largest share of the group's premiums, assets, or liabilities;
- The place of domicile of the top-tiered insurer in the international group's insurance holding company system;
- The location of the executive offices or largest operational offices of the international group;
- Whether another regulatory official is acting or seeking to act as the group-wide supervisor under another regulatory system that the Superintendent determines is either substantially similar to Ohio's regulatory system or is otherwise sufficient in terms of providing for group-wide supervision, enterprise risk analysis, and cooperation with other regulatory officials;
- Whether another regulatory official acting or seeking to act as group-wide supervisor provides the Superintendent with reasonably reciprocal recognition and cooperation.

If the Superintendent is identified as the supervisor, the act allows the Superintendent to acknowledge someone else as the supervisor. This acknowledgment must be made in accordance with all of the following:

- After consideration of the factors above;
- In cooperation with and subject to the acknowledgment of other regulatory officials involved with supervision of members of the international group;
- In consultation with the international group.<sup>19</sup>

### **Change of group-wide supervisor**

The act requires the Superintendent to make a determination as to the appropriate supervisor if a material change in the international group results in either:

- Ohio being the domicile of the group's insurers holding the largest share of the group's premiums, assets, or liabilities; or

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<sup>19</sup> R.C. 3901.352(B) and (C)(1).

- Ohio being the domicile of the top-tiered insurer in the group's holding company system.<sup>20</sup>

### **Information required to determine group-wide supervisor**

The Superintendent may collect from a registered member of an insurance holding company system all information necessary to determine who may act as the supervisor. Prior to determining that an international group is subject to supervision by the Superintendent, the Superintendent must notify the registered member and the ultimate control person within the international group. The Superintendent must give the international group at least 30 days to provide any additional information pertinent to the determination. The Superintendent must publish online the identity of international groups that the Superintendent has determined are subject to supervision by the Superintendent.<sup>21</sup>

### **Supervision activities**

#### **Risk assessment**

If the Superintendent is the supervisor for an international group, the Superintendent may assess the enterprise risks within the group to ensure that the material financial condition and liquidity risks to group members are identified by management and that reasonable and effective mitigation measures are in place.<sup>22</sup>

The Superintendent may request from any member of an international group subject to the Superintendent's supervision information necessary and appropriate to assess enterprise risk, including information about group members regarding governance, risk assessment, management, capital adequacy, and material intercompany transactions.<sup>23</sup>

The Superintendent may coordinate and, through the authority of the regulatory officials of the jurisdictions in which members of the international group are domiciled, compel development and implementation of reasonable measures designed to ensure

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<sup>20</sup> R.C. 3901.352(C)(2).

<sup>21</sup> R.C. 3901.352(D).

<sup>22</sup> R.C. 3901.352(E)(1).

<sup>23</sup> R.C. 3901.352(E)(2).

that the group is able to timely recognize and mitigate enterprise risks to group members.<sup>24</sup>

### **Working with insurers and other agencies**

The act authorizes the Superintendent to communicate with other regulatory agencies for members of the international group and share relevant information through a supervisory college, subject to confidentiality. (A supervisory college is a forum of supervisors established to facilitate the effectiveness of supervision of entities belonging to an insurance group and the group as a whole.<sup>25</sup>) It also allows the Superintendent to enter into agreements with or obtain documentation from any registered insurer, any member of the international group, and any other regulatory agency, that provides the basis for or otherwise clarifies the supervisor's role. The agreements or documentation may include provisions for resolving disputes with other regulatory officials.<sup>26</sup>

### **Other supervision activities**

The Superintendent may undertake any other group-wide supervision activities consistent with the act that the Superintendent considers necessary.<sup>27</sup>

### **Unaccredited group-wide supervisors**

If the Superintendent acknowledges that another regulatory official from a jurisdiction that is not accredited by the National Association of Insurance Commissioners is the supervisor of an international group, the Superintendent may reasonably cooperate, through a supervisory college, with that official if both:

- The Superintendent's cooperation is in compliance with the Revised Code; and
- The regulatory official also recognizes and cooperates with the Superintendent's activities as a supervisor for other international groups,

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<sup>24</sup> R.C. 3901.352(E)(3).

<sup>25</sup> R.C. 3901.351, not in the act.

<sup>26</sup> R.C. 3901.352(E)(4) and (5) and (G).

<sup>27</sup> R.C. 3901.352(E)(6).



as applicable. If recognition and cooperation is not reasonably reciprocal, the Superintendent may refuse to recognize the regulatory official.<sup>28</sup>

### **Administrative expenses and rules**

Under the act, registered members of insurance holding company systems are liable for reasonable expenses of the Superintendent's participation in administering the act's internationally active insurance group provisions, including engaging attorneys, actuaries, and any other professionals and all reasonable travel expenses.

The Superintendent may adopt rules in accordance with the Administrative Procedure Act as necessary to implement the act's internationally active insurance group provisions.<sup>29</sup>

### **Delinquency proceedings, insurer-members of federal home loan banks**

Continuing law states that during a delinquency proceeding against an insurer under the Insurers Supervision, Rehabilitation, and Liquidation Law, upon complaint of the court-appointed receiver, conservator, rehabilitator, or liquidator (collectively, the appointee), any court of general jurisdiction may issue an injunction or other order the court considers necessary and proper to prevent the continuation of business, actions against the insurer or its assets, or interference with the appointee's duties.<sup>30</sup> The act amends the Law to address a situation in which the delinquent insurer is a member of a federal home loan bank. A federal home loan bank is any institution chartered under the Federal Home Loan Bank Act of 1932.<sup>31</sup>

### **Rights regarding collateral**

The act limits the maximum time a federal home loan bank can be prevented from acting on collateral pledged by an insurer-member to ten days following the date an injunction or other order described above is issued.<sup>32</sup>

A bank exercising its rights to collateral must, within seven days of receiving an insurer-member's redemption request, repurchase any of the insurer-member's

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<sup>28</sup> R.C. 3901.352(F).

<sup>29</sup> R.C. 3901.352(H) and (I).

<sup>30</sup> R.C. 3903.05.

<sup>31</sup> R.C. 3903.01(K) and 3903.05(E).

<sup>32</sup> R.C. 3903.05(C)(1).

outstanding capital stock in excess of the amount the insurer-member must hold as a minimum investment. The bank must repurchase the excess stock only to the extent that it determines in good faith that the repurchase is both of the following:

- Permissible under federal laws and regulations and the bank's capital plan;
- Consistent with the capital stock practices currently applicable to the bank's entire membership.<sup>33</sup>

### **Process, timeline, and options**

Within ten days following the designation of an appointee in a delinquency proceeding, the bank must provide the appointee a process and timeline for all of the following:

- The release of any collateral held by the bank exceeding the amount required to support the secured obligations of the insurer-member and remaining after repayment of loans;
- The release of any collateral held by the bank following full repayment of the insurer-member's outstanding secured obligations;
- The payment of fees owed by the insurer-member and the operation, maintenance, closure, or disposition of deposits and other accounts of the insurer-member, as mutually agreed upon by the appointee and the bank;
- Any redemption or repurchase of bank stock or excess stock of any class that the insurer-member must own under its agreements with the bank.

Upon the appointee's request, the bank must provide any available options for the insurer-member to renew or restructure a loan. In determining which options are available, the bank may consider market conditions, the terms of any loans outstanding to the insurer-member, the bank's policies, and federal laws and regulations applicable to federal home loan banks.<sup>34</sup>

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<sup>33</sup> R.C. 3903.05(C)(2).

<sup>34</sup> R.C. 3903.05(D).

## Fraudulent transactions

Continuing law provides that any transaction made by an insurer within a year prior to a successful filing for rehabilitation or liquidation is fraudulent if made without fair consideration or with the intent to hinder, delay, or defraud existing or future creditors. Such fraudulent transactions may be avoided by the appointee, except as to a good faith purchaser, lienor, or obligee.<sup>35</sup> The act provides an exception if the transaction is a transfer of money or property from an insurer-member to its federal home loan bank in accordance with a credit agreement. In that case, the transfer is not deemed fraudulent if all of the following apply:

- The transfer was not made with the intent to hinder, delay, or defraud an insurer-member, the appointee, or existing or future creditors of the insurer-member.
- The transfer was made in the ordinary course of business.
- The transfer was made in compliance with the applicable agreement.<sup>36</sup>

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## HISTORY

ACTION	DATE
Introduced	06-27-17
Reported, S. Insurance and Financial Institutions	10-17-17
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Reported, H. Insurance	11-29-17
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Senate concurred in House amendments (31-0)	12-13-17

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<sup>35</sup> R.C. 3903.26(A).

<sup>36</sup> R.C. 3903.26(D).

