



OHIO LEGISLATIVE SERVICE COMMISSION

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Fiscal Note & Local Impact Statement

Bill: S.B. 273 of the 132nd G.A.

Status: As Reported by House Rules and Reference

Sponsor: Sen. Hackett

Local Impact Statement Procedure Required: No

Subject: Defines "insurance rating agency" as applied throughout the Revised Code, establishes standards for data security and for the investigation of and notification to the Superintendent of Insurance of a cybersecurity event, and makes other changes to insurance laws

State & Local Fiscal Highlights

- The bill may increase the Department of Insurance's administrative costs related to regulating cybersecurity requirements and domestic surplus lines insurers. A Department official estimates one-time costs of \$25,000 for training and ongoing personnel costs of about \$200,000 annually. Any increase in the Department's administrative costs would be paid from the Department of Insurance Operating Fund (Fund 5540).
- The bill may also increase the Department's costs to conduct financial examination of insurance companies' cybersecurity programs. Funding for such examinations comes from the Superintendent's Examination Fund (Fund 5550) and the Department's expenses from conducting an examination of a company are paid by the company to the Superintendent and deposited into Fund 5550.
- Potential increase in GRF revenue from a tax on domestic surplus lines insurers. LSC does not have an estimate of the magnitude of any such increase.
- No direct fiscal effect on political subdivisions.

Detailed Fiscal Analysis

Insurance rating agency

The bill defines "insurance rating agency" for the purposes of the Revised Code as certain specified insurance rating agencies, or as any rating agency approved by a national entity that engages in specified approval processes. The bill also requires the Superintendent of Insurance, when adopting or amending rules related to an insurance rating agency, to give consideration to the definition of insurance rating agency under the bill.

The provision has no fiscal effect on the state or its political subdivisions.

Surplus lines

The bill specifies eligibility requirements and criteria in accordance with which a domestic insurer may be designated as a domestic surplus lines insurer. This provision would allow surplus lines insurance brokers to negotiate for and obtain insurance, other than life insurance, on property or persons in this state from domestic surplus lines insurers. The bill exempts domestic surplus lines insurers from most insurance laws in Ohio, including protection under either of the Ohio insurance guaranty associations. However, domestic surplus lines insurers are required to possess capital and surplus of at least \$15 million, must be approved by the Superintendent of Insurance, and are subject to certain financial, reserve, and solvency requirements that are imposed on domestic admitted insurers. The bill prohibits domestic surplus lines insurers from engaging in the business of insurance in Ohio on an admitted basis. Surplus lines insurance written by domestic surplus lines insurers is subject to the state's 5% tax on surplus lines insurance.¹

This provision would increase the Department of Insurance's administrative costs. Any increase in such amounts would be paid from the Department of Insurance Operating Fund (Fund 5540). Fees related to insurance agent licensing requirements and regulations of surplus lines insurers are mostly collected and allocated to Fund 5540. The bill may also increase GRF revenue because the remaining fees and surplus lines tax revenue are deposited into the GRF.

Cybersecurity

The bill requires a licensee² (i.e., a person or insurer licensed, authorized to operate, or registered, or required to be licensed, authorized, or registered pursuant to Ohio's insurance laws) to develop, implement, and maintain a comprehensive written information security program based on the licensee's risk assessment. The bill exempts a licensee from this requirement if the licensee has (1) fewer than 20 employees, (2) less than \$5 million in gross annual revenue, or (3) less than \$10 million in assets, measured at the end of the licensee's fiscal year.

The bill specifies a number of required features of such security programs. The bill requires each licensee to establish a written incident response plan that is designed to promptly respond to, and recover from, any cybersecurity event that compromises the confidentiality, integrity, or availability of nonpublic information in its possession

¹ Domestic surplus lines insurers are exempted from the 1.4% tax on gross premiums paid by domestic and foreign insurers that are regulated by the Department of Insurance. Domestic surplus lines insurers may write surplus lines insurance in other jurisdictions, but they must comply with any requirements of those jurisdictions.

² A licensee does not include a purchasing group or a risk retention group chartered and licensed in another state or a licensee that is acting as an assuming insurer that is domiciled in another state or jurisdiction.

or information systems, or the continuing functionality of any aspect of its business or operations. The bill also specifies certain required contents of an incident response plan.

The bill requires each insurer domiciled in this state to submit to the Superintendent of Insurance a written statement certifying that the insurer is in compliance with the bill's cybersecurity requirements by February 15 of each year. An insurer domiciled in this state and licensed exclusively to conduct business in this state and no other state is allowed to submit the written statement certifying its compliance with the requirements by filing it on June 1 of each year, as part of the insurer's corporate governance annual disclosure under existing law. Each insurer must maintain all records, schedules, and data supporting such certificate for a period of five years for examination by the Department of Insurance. An insurer must also document any areas, systems, or processes that require material improvement, updating, or redesign and make such documentation available for inspection by the Superintendent. A licensee that meets the requirements of the bill is deemed to have implemented a cybersecurity program that reasonably conforms to an industry-recognized cybersecurity framework for the purposes of Chapter 1354. of the Revised Code.

The bill requires a licensee or an outside vendor or service provider designated to act on behalf of the licensee to conduct a prompt investigation if the licensee learns that a cybersecurity event has or may have occurred. The bill specifies certain procedures that must be taken by the licensee or an outside vendor or service provider during the investigation. Licensees must maintain records concerning all cybersecurity events for a period of at least five years from the date of the cybersecurity event and must produce those records if requested by the Superintendent. The bill requires each licensee to notify the Superintendent as promptly as possible, but not later than three business days after a determination that a cybersecurity event involving nonpublic information and that meets certain specifications has occurred. The bill specifies certain information that must be provided in the notification to the Superintendent, and specifies that a licensee must provide such information in electronic form as directed by the Superintendent.

The bill contains comparable provisions outlining a licensee's legal responsibilities in situations in which the licensee becomes aware of a cybersecurity event (1) in a system maintained by a third-party service provider, or (2) involving nonpublic information used by or in the possession of a licensee or its third-party service provider when the licensee is acting as an assuming insurer, including an assuming insurer that is domiciled in another state or jurisdiction. When a cybersecurity event involves information in the possession of a licensee that is an insurer or its third-party service provider, that was obtained by the insurer from a consumer accessing the insurer's services through an independent insurance agent, and for which

disclosure or notice is required under section 1349.19 of the Revised Code, the insurer must notify the independent insurance agents of record of all affected consumers.³

The bill specifies that the Superintendent has the power to examine and investigate the affairs of any licensee to ensure compliance with these provisions of the bill. And the bill authorizes the Superintendent to take any necessary or appropriate action to enforce the bill's requirements. Any documents or information acquired by the Department of Insurance in connection with the bill's provisions are confidential and not public records. But the Superintendent is authorized to share such documents or information with certain regulatory and law enforcement agencies who agree in writing to maintain the confidentiality and privileged status of the information.

The bill allows the Superintendent to adopt any necessary rules to carry out the bill's requirements. The bill specifies that a licensee that satisfies the bill's requirements is entitled to an affirmative defense to any cause of action sounding in tort that is brought under the laws of this state or in the courts of this state and that alleges that the failure to implement reasonable information security controls resulted in a data breach concerning nonpublic information. Licensees are given one year from the bill's effective date to implement their comprehensive written information security programs, and two years to ensure that third-party service providers implement appropriate measures to protect and secure their systems. The bill is intended to enact an industry-recognized cybersecurity framework for the purposes of existing cybersecurity requirements under Chapter 1354. of the Revised Code.

These requirements are imposed almost entirely on licensees; few explicit requirements are imposed on the Department of Insurance. According to a Department of Insurance official, the provision would increase costs related to staff training and possibly hiring one full-time employee; the estimated increase in administrative costs is approximately \$25,000 in one-time costs, plus \$200,000 per year. Any increase in such amounts would be paid from the Department of Insurance Operating Fund (Fund 5540). In addition, the Department's costs to conduct financial examinations of insurance companies could increase due to the bill's requirements. Funding for such examinations comes from the Superintendent's Examination Fund (Fund 5550); the Department's expenses from conducting an examination of a company are paid by the company to the Superintendent and deposited into Fund 5550.

Motor vehicle ancillary product protection contracts and motor vehicle service contracts

The bill modifies provisions of current law for motor vehicle service and wheel road hazard contracts and combines wheel road hazard contracts into existing law

³ The insurer is not required to provide such notice for any independent insurance agents who are not authorized by law or contract to sell, solicit, or negotiate on behalf of the insurer, and for those instances in which the insurer does not have the current independent insurance agent of record information for an individual consumer.

governing motor vehicle ancillary product protection (MVAPP) contracts. The bill also adds contracts that provide replacement of a lost, stolen, or inoperable key or key fob to the existing definition of MVAPP contract. The bill provides that motor vehicle service contracts and certain other types of contracts are not forms of insurance unless they are issued by an insurer authorized or eligible to do business in Ohio.

This provision has no direct fiscal effect on the state or political subdivisions.

Cancellation of personal lines insurance policy

The bill authorizes an insurer to send a notice of cancellation of a policy along with a billing notice, for several types of commercial and personal lines insurance policies, if the cancellation is due to nonpayment of premiums. The bill specifies if the reason for cancellation of a personal lines insurance policy is due to a nonpayment of premium, the effective date of the cancellation must be not less than ten days from the date the notice was mailed. "Personal lines insurance" means any policy of insurance issued to a natural person for personal or family protection, including basic property, dwelling fire, homeowner's, tenant's, inland marine, personal liability, and personal umbrella liability coverage.

This provision has no direct fiscal effect on the state or political subdivisions.

Other

The bill specifies that the Superintendent does have regulatory authority of vision care providers in regard to health care contracts under section 3963.02(E).