



Greg Schwab

*Final Analysis*  
*Legislative Service Commission*

## **Sub. H.B. 421**

124th General Assembly  
(As Passed by the General Assembly)

**Reps. G. Smith, Husted, Seitz, Flowers, Willamowski, Collier, Schaffer, Jolivet, Krupinski, Ogg, Evans, Stapleton, Hughes, McGregor, Reidelbach, Perry, Clancy, Carano, D. Miller, Lendrum, Coates, Sferra, Niehaus, Latell, Flannery, Distel, Cirelli, Roman, Strahorn, Redfern, Allen, Otterman, Sulzer, DeBose, Key, Schmidt, Salerno**

**Sens. Nein, Blessing, Robert Gardner, Roberts**

**Effective date: \***

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### **ACT SUMMARY**

- Places restrictions on providers of funeral or burial goods and services with respect to the transfer or encumbering of insurance policies covering the cost of funeral or burial goods and services.
- Specifies that life insurance policies covering the purchase of funeral or burial goods and services are not subject to the law governing preneed funeral contracts.
- Sets the minimum nonforfeiture rate on certain variable annuity contracts issued before September 1, 2004, at 1½%.
- Applies new procedures to the conduct of public hearings held in connection with the Superintendent of Insurance's review of mergers and acquisitions resulting in the control of a domestic insurer.

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*\* The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.*

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## CONTENT AND OPERATION

### *Insurance covering the purchase of funeral or burial goods or services*

(secs. 3905.45 and 3905.451)

Prior to this act, the Revised Code regulated the benefits paid by "insurer[s] engaged in the business of providing for the payment of funeral or burial goods or services." The act continues the regulation but amends the approach of the law. The act governs benefit payments from "insurance polic[ies] . . . issued, sold, or assigned for the purpose of purchasing any funeral or burial goods or services." It also replaces references to "funeral directors or funeral homes" with references to "providers" of funeral or burial goods or services, and includes the payout of a policy's cash surrender value as one form of the benefit payments covered by the law.

Prior to this act, the law required a funeral director or funeral home to provide an insurer with a certified copy of the certificate of death of the insured and a certificate of completion as a condition to receiving the benefits of the insurance policy. The act permits a provider of funeral or burial goods or services to furnish the insurer with "other evidence of death satisfactory to the insurer" as an alternative to the certified copy of the certificate of death.

The act adds a new provision, prohibiting a provider of funeral or burial goods or services from pledging, assigning, transferring, borrowing from, or otherwise encumbering an insurance policy for funeral or burial goods or services prior to delivering all the goods and performing all the services contracted for, by, or on behalf of the insured. However, the act permits a provider to assign or otherwise transfer the policy to another provider of funeral or burial goods or services in conjunction with the other provider's assumption of the contractual obligations.

Prior to this act, the law provided that the sale of life insurance policies that pay benefits to the provider of funeral or burial goods or services was not the sale of preneed funeral contracts as defined in section 1111.19 of the Revised Code. The act amends this provision, stating that life insurance policies "issued, sold, or assigned," for the purpose of purchasing funeral or burial goods or services, and the contractual obligation to provide these goods or services, are not subject to section 1111.19 of the Revised Code. (Sec. 3905.451.)

## Acquisitions under the Holding Company Systems Law

(sec. 3901.321)

This section of the Revised Code regulates many mergers and other acquisitions resulting in the control of a domestic insurer. These mergers and acquisitions continue to be subject, following public hearing, to the approval of the Superintendent of Insurance.

Prior to this act, the Administrative Procedure Act, Chapter 119. of the Revised Code, applied to all matters related to the conduct of the public hearing on these mergers and acquisitions. The act applies new procedures to the conduct of the public hearing and related matters. It specifies that section 119.09 of the Administrative Procedure Act does not apply to the conduct of the public hearing. All other sections of the Administrative Procedure Act remain applicable, "but only to the extent that Chapter 119. of the Revised Code is not inconsistent or in conflict with this section."

Continuing law mandates acquiring parties file an information statement with the Superintendent in connection with these mergers and acquisitions. With respect to proposed affiliations between depository institutions or affiliates thereof and domestic insurers, within the meaning of Title I, section 104(c) of the federal "Gramm-Leach-Bliley Act," the act requires that the information statement identify the proposed effective date of the acquisition or change in control; the content of the information statement is otherwise unaffected by the act.

The act requires the Superintendent to send a notice of the public hearing on the acquisition or merger by personal service, certified mail, e-mail, or another method designed to ensure and confirm receipt of the notice. The Superintendent must send the notice to the persons and addresses designated in the above information statement to receive notices and correspondence. The Superintendent also must send a copy of the notice to attorneys or other representatives of record representing the acquiring party. Confirmation of receipt of the notice, including electronic "Read Receipt" confirmation, constitutes evidence of compliance with the act.

The notice of the public hearing must include: the reasons for the proposed acquisition action; a statement informing the acquiring party that the party is entitled to a hearing; notice to the acquiring party that they may appear at the hearing in person, by attorney, or by other representative permitted to practice before the Superintendent, or, alternately, that written statements may be submitted; and notice that the acquiring party may present evidence at the hearing and examine witnesses appearing for and against the acquiring party.

The act requires the hearing to be held at the offices of the Superintendent within ten calendar days, but not earlier than seven calendar days, of the date of the transmission of the notice of hearing, unless postponed or continued. In no event may the hearing be held if notice is not received at least three days prior to the hearing.

The Superintendent may postpone or continue the hearing upon receipt of a written request by an acquiring party, or upon the Superintendent's own motion. However, if the hearing is in connection with a proposed change of control involving a depository institution or affiliate thereof and a domestic insurer, the hearing may only be postponed or continued at the request of an acquiring party, or upon the Superintendent's motion *when* the acquiring party agrees in writing to extend the 60-day period for state action provided for in Title I, section 104(c) of the "Gramm-Leach-Bliley Act" by a period equivalent to the number of days of the postponement or continuance.

The procedural provisions for the Superintendent's conduct of the hearing, as enacted in division (F)(2)(d) of this section, largely mirror provisions found in section 119.09 of the Administrative Procedure Act for other adjudicational hearings conducted by state agencies. These include provisions relating to the admission of evidence, testimony, and the use of third-parties to conduct the hearing. There are differences, including:

(1) If the Superintendent appoints a hearing officer to conduct the hearing, the hearing officer must submit a written report, including findings and recommendations, to the Superintendent, with a copy served upon the acquiring party, by personal service, certified mail, e-mail, or any other method designed to ensure and confirm receipt, within seven days thereafter; while a party to an Administrative Procedure Act hearing must be served a copy of the hearing officer's report, by certified mail, within five days of the report's submission to the relevant agency.

(2) An acquiring party has three days after its receipt of a copy of the hearing officer's report to file written objections to the report and recommendations with the Superintendent; while the Administrative Procedure Act provides for ten days for the filing of objections. The Superintendent must consider the acquiring party's objections prior to approving, modifying, or disapproving the recommendation of the hearing officer.

The act provides that any order of disapproval issued by the Superintendent may be appealed to the Court of Common Pleas of Franklin County by filing a notice of appeal with the Superintendent and a copy of the notice of appeal with the court within 15 calendar days after the transmittal of the copy of the order of disapproval. The notice of appeal must set forth the order appealed from and the



grounds for appeal, in accordance with section 119.12 of the Administrative Procedure Act.

Finally, the act amends this section to require the Superintendent, in connection with a proposed change of control involving a depository institution or an affiliate thereof and a domestic insurer, within the meaning of Title I, section 104(c) of the "Gramm-Leach-Bliley Act," within 60 days of receiving notification of a proposed change in control, to make any determination that the person acquiring control of the insurer must maintain or restore the capital of the insurer to the level otherwise required by Ohio's laws and regulations.

**Minimum interest earned on individual deferred annuities**

(sec. 3915.073)

This section is known as the Standard Nonforfeiture Law for Individual Deferred Annuities. Prior to this act, the Law imposed a 3% per annum minimum nonforfeiture rate on certain variable annuity contracts issued by life insurance companies. The act amends this rate in connection with any of these contracts issued on or after the act's effective date and before September 1, 2004, providing for a rate of 1½% per annum on accumulations of net considerations, partial withdrawals, and partial surrenders, for purposes of determining the minimum nonforfeiture amounts. The minimum nonforfeiture rate will return to 3% per annum on September 1, 2004, for these variable annuity contracts.

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**HISTORY**

| ACTION                                         | DATE     | JOURNAL ENTRY |
|------------------------------------------------|----------|---------------|
| Introduced                                     | 10-24-01 | p. 984        |
| Reported, H. Insurance                         | 01-30-02 | pp. 1354-1355 |
| Passed House (94-0)                            | 02-19-02 | pp. 1410-1411 |
| Reported, S. Insurance,<br>Commerce & Labor    | 04-11-02 | p. 1660       |
| Passed Senate (32-0)                           | 04-16-02 | pp. 1676-1677 |
| House concurred in Senate<br>amendments (93-0) | 04-23-02 | pp. 1661-1662 |

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