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Bill Analysis

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Sen. Nein

BILL SUMMARY

- Sets forth circumstances under which the Department of Insurance and the Divisions of Financial Institutions and Securities of the Department of Commerce may share confidential documents and information with, and receive confidential documents and information from, other specified regulators and officials, or otherwise disclose such documents and information.

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CONTENT AND OPERATION

Overview

In general, the bill modifies the authority of the Divisions of Financial Institutions and Securities of the Department of Commerce, and the authority of

the Department of Insurance, to permit the sharing of information the use of which is otherwise restricted by the Revised Code.

Under the bill, the Division of Financial Institutions is permitted to implement certain cooperative arrangements with additional regulatory authorities, including other Ohio regulators. The Superintendent of Financial Institutions is also authorized to disclose, for purposes of regulating one industry, information obtained by the Superintendent under the Superintendent's authority to regulate another industry.

The bill authorizes inspection of certain information and records of the Division of Securities by additional state, federal, and law enforcement agencies.

With respect to the Department of Insurance, the bill provides the Superintendent of Insurance with specific authority to receive confidential documents and information from specified persons, including other regulatory and law enforcement agencies and the National Association of Insurance Commissioners (NAIC), provided the Superintendent maintains as confidential any document or information received. The bill also permits the Superintendent to share and disclose confidential documents and information to the persons, for the uses, and under the conditions specified by the bill.

Information sharing by the Division of Financial Institutions

Banks

(secs. 1101.01(J) and 1121.11)

Current law permits the Superintendent of Financial Institutions, in administering the Banking Law (Chapters 1101. to 1127.), to implement certain cooperative arrangements with financial institution regulatory authorities of other states, the United States, and other countries relative to examinations of banks and trust companies, sharing of information obtained from such examinations, use of that information, and regulatory actions taken in response to violations of law.

The bill expands this authority by additionally permitting such cooperative arrangements with financial institution regulatory authorities of *this* state. It also provides a definition of "financial institution regulatory authority." For purposes of the Banking Law, "financial institution regulatory authority" includes a regulator of a business activity in which a bank or trust company is engaged, to the extent that the regulator has jurisdiction over a bank or trust company engaged in that business activity. The bill specifies that a bank or trust company is engaged in a business activity, and a regulator of that business activity has jurisdiction over the bank or trust company, whether the bank or trust company conducts the

activity directly or a subsidiary or affiliate of the bank or trust company conducts the activity.

Savings and loan associations

Cooperative arrangements (secs. 1151.01(L) and 1155.091). Current law permits the Superintendent of Financial Institutions, in administering the Savings and Loan Associations Law (Chapters 1151. to 1157.), to implement certain cooperative arrangements with financial institution regulatory authorities of other states, the United States, and other countries relative to examinations of savings and loan associations, sharing of information obtained from such examinations, use of that information, and regulatory actions taken in response to violations of law.

The bill expands this authority by additionally permitting such cooperative arrangements with financial institution regulatory authorities of *this* state. It also provides a definition of "financial institution regulatory authority." For purposes of the Savings and Loan Associations Law, "financial institution regulatory authority" includes a regulator of a business activity in which a savings and loan association is engaged, to the extent that the regulator has jurisdiction over a savings and loan association engaged in that business activity. The bill specifies that a savings and loan association is engaged in a business activity, and a regulator of that business activity has jurisdiction over the savings and loan association, whether the savings and loan association conducts the activity directly or a subsidiary or affiliate of the savings and loan association conducts the activity.

Confidentiality of information (sec. 1155.16(B)(4) and (D)). Under current law, examination reports, information obtained in an examination, and any other information obtained by reason of the official position of the Division of Financial Institutions is not discoverable from any source, and cannot be introduced into evidence, except in specified situations. The bill adds an additional situation in which such information is discoverable: when authorized by agreements between the Superintendent and financial institution regulatory authorities of this and other states, the United States, and other countries.

The bill also provides a penalty for failure to comply with the confidentiality requirements of current law. Under the bill, such a violation is a felony of the fourth degree.

Savings banks

Cooperative arrangements (secs. 1161.01(A)(11) and 1163.121). Current law permits the Superintendent of Financial Institutions, in administering the

Savings Banks Law (Chapters 1161. to 1165.), to implement certain cooperative arrangements with financial institution regulatory authorities of other states, the United States, and other countries relative to examinations of savings banks, sharing of information obtained from such examinations, use of that information, and regulatory actions taken in response to violations of law.

The bill expands this authority by additionally permitting such cooperative arrangements with financial institution regulatory authorities of *this* state. It also provides a definition of "financial institution regulatory authority." For purposes of the Savings Banks Law, "financial institution regulatory authority" includes a regulator of a business activity in which a savings bank is engaged, to the extent that the regulator has jurisdiction over a savings bank engaged in that business activity. The bill specifies that a savings bank is engaged in a business activity, and a regulator of that business activity has jurisdiction over the savings bank, whether the savings bank conducts the activity directly or a subsidiary or affiliate of the savings bank conducts the activity.

Confidentiality of information (sec. 1163.20(B)(4)). Under current law, examination reports, information obtained in an examination, and any other information obtained by reason of the official position of the Division of Financial Institutions is not discoverable from any source, and cannot be introduced into evidence, except in specified situations. The bill adds an additional situation in which such information is discoverable: when authorized by agreements between the Superintendent and financial institution regulatory authorities of this and other states, the United States, and other countries.

Credit unions

(secs. 1733.01(S), 1733.32, and 1733.327(B)(4))

Current law permits the Superintendent of Financial Institutions to exchange information relating to an examined credit union with officials of properly authorized "state or federal supervisory authorities." The bill changes that phrase to "state or federal financial institution regulatory authorities" and defines "financial institution regulatory authority" to include a regulator of business activity in which a credit union is engaged, to the extent that the regulator has jurisdiction over a credit union engaged in that business activity. It also specifies that a credit union is engaged in a business activity, and a regulator of that business activity has jurisdiction over the credit union, whether the credit union conducts the activity directly or a subsidiary or affiliate of the credit union conducts the activity.

Under current law, all conferences and administrative proceedings related to corrective orders, and all records pertaining to those conferences or

proceedings, must be kept confidential unless specified situations occur. The bill adds, as one of those situations, when the Superintendent furnishes such confidential information to financial institution regulatory authorities as authorized by the bill.

Consumer finance

(secs. 1321.09, 1321.55(E) and (F), 1321.76(D) and (E), and 1322.06(D) and (E))

The bill amends the Small Loans Law (sections 1321.01 to 1321.19), Mortgage Loan Law (sections 1321.51 to 1321.60), Insurance Premium Finance Company Law (sections 1321.71 to 1321.83), and Mortgage Brokers Law (sections 1322.01 to 1322.12) to specify that the confidentiality requirements of those laws do not prevent the Division of Financial Institutions from releasing to or exchanging with other financial institution regulatory authorities information relating to persons licensed or registered under those laws. The bill provides that "financial institution regulatory authority" includes a regulator of a business activity in which a licensee or registrant is engaged, to the extent that the regulator has jurisdiction over a licensee or registrant engaged in that business activity. A licensee or registrant is engaged in a business activity, and a regulator of that business activity has jurisdiction over the licensee or registrant, whether the licensee or registrant conducts the activity directly or a subsidiary or affiliate of the licensee or registrant conducts the activity.

Pawnbrokers

(sec. 4727.18)

Under current law, any information arising from an investigation of a person licensed as a pawnbroker, or of any person the Superintendent of Financial Institutions reasonably suspects is violating the Pawnbrokers Law (Chapter 4727.), is confidential. The bill states that this confidential information may only be disclosed, discovered, or introduced into evidence (1) to a law enforcement agency, (2) in connection with criminal proceedings, and (3) in any action taken or litigation by or against the Superintendent in connection with the powers, duties, and obligations imposed upon the Superintendent by the Pawnbrokers Law.

"Cross-industry" use of restricted information

(secs. 1121.18(C)(1)(e), 1155.16(B)(5), 1163.20(B)(5), 1181.25, 1321.09(A), 1321.55(C), 1322.06(C), 1733.32(H), 1733.327(B)(5), and 4727.18(C)(4))

The bill permits the Superintendent of Financial Institutions to introduce into evidence or disclose, or authorize to be introduced into evidence or disclosed, information that, under the Banking Law, Savings and Loan Associations Law, Savings Banks Law, Credit Unions Law, Small Loans Law, Mortgage Loan Law, Mortgage Brokers Law, or Pawnbrokers Law, is privileged, confidential, or otherwise not public information or a public record, *provided* the Superintendent acts only in accordance with those respective laws *or* in the following circumstances:

(1) When in the opinion of the Superintendent, it is appropriate with regard to any enforcement actions taken and decisions made by the Superintendent under the Banking Law, Savings and Loan Associations Law, Savings Banks Law, Credit Unions Law, Small Loans Law, Mortgage Loan Law, Insurance Premium Finance Company Law, Mortgage Brokers Law, Pawnbrokers Law, Money Transmitters Law (sections 1315.01 to 1315.18), Check-Cashing Businesses Law (sections 1315.21 to 1315.30), Loans by Check-Cashing Businesses Law (sections 1315.35 to 1315.44), Ohio Credit Services Organization Act (Chapter 4712.), or Precious Metals Dealers Law (Chapter 4728.);

(2) When litigation has been initiated by the Superintendent in furtherance of the powers, duties, and obligations imposed upon the Superintendent by the Banking Law, Savings and Loan Associations Law, Savings Banks Law, Credit Unions Law, Small Loans Law, Mortgage Loan Law, Insurance Premium Finance Company Law, Mortgage Brokers Law, Pawnbrokers Law, Money Transmitters Law, Check-Cashing Businesses Law, Loans by Check-Cashing Businesses Law, Ohio Credit Services Organization Act, or Precious Metals Dealers Law;

(3) When in the opinion of the Superintendent it is appropriate with regard to enforcement actions taken or decision made by other financial institution regulatory authorities to whom the Superintendent has provided the information pursuant to authority in the Banking Law, Savings and Loan Associations Law, Savings Banks Law, Credit Unions Law, Small Loans Law, Mortgage Loan Law, Insurance Premium Finance Company Law, Mortgage Brokers Law, Pawnbrokers Law, Money Transmitters Law, Check-Cashing Businesses Law, Loans by Check-Cashing Businesses Law, Ohio Credit Services Organization Act, or Precious Metals Dealers Law.

Information sharing by the Division of Securities

(sec. 1707.12)

Under current law, information obtained by the Division of Securities through an investigation is not available for inspection other than by persons who have a direct economic interest in the information or by law enforcement officers. The bill permits inspection of this information by law enforcement agencies, state agencies, federal agencies, and any other entity determined by the Division by rule. With respect to confidential law enforcement investigatory records and trial preparation records of the Division, the bill also permits inspection by state agencies, federal agencies, and any other entity determined by the Division by rule.

Lastly, the bill states that no employee or representative of the Division or the Department of Commerce can be required to testify concerning any document or record described above, except as determined by the Division by rule.

Information sharing by the Department of Insurance

Receipt of documents and information

(sec. 3901.045)

The bill permits the Superintendent of Insurance to receive documents and information, including otherwise confidential or privileged documents and information, from local, state, federal, and international regulatory and law enforcement agencies, from local, state, and federal prosecutors, and from the National Association of Insurance Commissioners (NAIC) and its affiliates and subsidiaries, *provided* the Superintendent maintains as confidential or privileged any document or information received with notice or the understanding that the document or information is confidential or privileged under the laws of the jurisdiction that is the source of the document or information.

The Superintendent may also receive documents and information, including otherwise confidential or privileged documents and information, from the chief deputy rehabilitator, the chief deputy liquidator, other deputy rehabilitators and liquidators, and from any other person employed by, or acting on behalf of, the Superintendent pursuant to Chapter 3901. (relative to the powers and authority of the Superintendent) or 3903. (relative to reserve valuation and the rehabilitation and liquidation of insurers) of the Revised Code, *provided* the Superintendent maintains as confidential or privileged any document or information received with the notice or understanding that the document or information is confidential or privileged. However, the Superintendent is permitted to share and disclose such a

document or information when authorized by any other provision of the Revised Code.

The bill expressly states that the Superintendent has the authority to maintain as confidential or privileged the documents and information received pursuant to the above provisions. It also states that the Superintendent's authority to receive such documents and information, from the persons and subject to the conditions listed above, is not limited in any way by the confidentiality requirements set forth in specified sections of the Health Insuring Corporation Law (Chapter 1751.) or the Insurance Code (Title 39). (See "***Sharing and use of documents and information***," below.)

Sharing and use of documents and information

Complaint system of a health insuring corporation (sec. 1751.19). Under current law, copies of complaints initiated by enrollees and the responses provided by a health insuring corporation, including medical records related to those complaints, must be available to the Superintendent and the Director of Health for inspection for three years. Any document or information provided to the Superintendent that contains a medical record is confidential and is not a public record.

The bill specifies that, notwithstanding this provision, the Superintendent may share documents and information that contain a medical record in connection with the investigation or prosecution of any illegal or criminal activity with the chief deputy rehabilitator, the chief deputy liquidator, other deputy rehabilitators and liquidators, and any other person employed by, or acting on behalf of, the Superintendent pursuant to Chapter 3901. or 3903. of the Revised Code, with other local, state, federal, and international regulatory and law enforcement agencies, with local, state, and federal prosecutors, and with the NAIC and its affiliates and subsidiaries, *provided* the recipient agrees to maintain the confidential or privileged status of the document or information and has authority to do so. The Superintendent is authorized by the bill to enter into agreements governing the sharing and use of documents and information consistent with the bill's requirements.

The bill states that no waiver of any applicable privilege or claim of confidentiality in the documents and information occurs as a result of sharing or receiving documents and information as authorized under the bill.

Registration and examination of insurers (sec. 3901.36). Under current law, all information reported by an insurer subject to registration under the Insurance Holding Company Systems Law, and all information and documents obtained by or disclosed to the Superintendent or any other person in the course of

an examination or investigation of such an insurer, must be given confidential treatment except under specified circumstances.

The bill specifies that such documents and information are also privileged, and permits the Superintendent to do the following:

--Disclose such documents and information (1) upon obtaining prior written consent from the insurer to which the documents and information pertain, (2) in any manner the Superintendent considers appropriate, after giving the insurer and its affiliates notice and an opportunity to be heard in accordance with the Administrative Procedure Act, if the Superintendent determines that the interests of policyholders, shareholders, or the public will be served by the disclosure, or (3) in the furtherance of any regulatory or legal action brought by or on behalf of the Superintendent or the state, resulting from the exercise of the Superintendent's official duties.

--Share the documents and information with the chief deputy rehabilitator, the chief deputy liquidator, other deputy rehabilitators and liquidators, and any other person employed by, or acting on behalf of, the Superintendent pursuant to Chapter 3901. or 3903. of the Revised Code, with other local, state, federal, and international regulatory and law enforcement agencies, with local, state, and federal prosecutors, and with the NAIC and its affiliates and subsidiaries, *provided* the recipient agrees to maintain the confidential or privileged status of the document or information and has authority to do so. The Superintendent may authorize the NAIC and its affiliates and subsidiaries by agreement to share such confidential or privileged documents or information with local, state, federal, and international regulatory and law enforcement agencies and with local, state, and federal prosecutors, *provided* the recipient agrees to maintain the confidential or privileged status of the document or information and has authority to do so. The chief deputy rehabilitator, the chief deputy liquidator, and other deputy rehabilitators and liquidators are permitted to disclose such documents and information in the furtherance of any regulatory or legal action resulting from the exercise of the Superintendent's official duties.

The Superintendent is authorized by the bill to enter into agreements governing the sharing and use of documents and information consistent with the bill's requirements.

The bill states that no waiver of any applicable privilege or claim of confidentiality in the documents and information occurs as a result of sharing or receiving documents and information as authorized under the bill. In addition, the disclosure of a document or information in connection with a regulatory or legal action does not prohibit an insurer or any other person from taking steps to limit the dissemination of the document or information to persons not involved in or the

subject of the action on the basis of any recognized privilege arising under any other section of the Revised Code or the common law.

Insurance fraud investigations (sec. 3901.44). Under current law, all papers, documents, reports, and evidence in the possession of the Superintendent or the Superintendent's designee that pertain to an insurance fraud investigation are confidential law enforcement investigatory records and, generally, are not subject to subpoena in civil actions until opened for public inspection by the Superintendent.

Under the bill, the Superintendent is permitted to do the following:

--Disclose such documents, reports, and evidence in the furtherance of any regulatory or legal action brought by or on behalf of the Superintendent or the state, resulting from the exercise of the Superintendent's official duties.

--Share such documents, reports, and evidence with the chief deputy rehabilitator, the chief deputy liquidator, other deputy rehabilitators and liquidators, and any other person employed by, or acting on behalf of, the Superintendent pursuant to Chapter 3901. or 3903. of the Revised Code, with other local, state, federal, and international regulatory and law enforcement agencies, with local, state, and federal prosecutors, with the NAIC and its affiliates and subsidiaries, with insurers, and with investigators hired by insurers, *provided* the recipient agrees to maintain the confidential or privileged status of the document, report, or evidence and has authority to do so. The Superintendent may authorize the NAIC and its affiliates and subsidiaries by agreement to share such confidential or privileged documents, reports, and evidence with local, state, federal, and international regulatory and law enforcement agencies and with local, state, and federal prosecutors, *provided* the recipient agrees to maintain the confidential or privileged status of the document, report, or evidence and has authority to do so. The chief deputy rehabilitator, the chief deputy liquidator, and other deputy rehabilitators and liquidators are permitted to disclose such documents, reports, and evidence in the furtherance of any regulatory or legal action resulting from the exercise of the Superintendent's official duties.

The Superintendent is authorized by the bill to enter into agreements governing the sharing and use of documents, reports, and evidence consistent with the bill's requirements.

The bill states that no waiver of any applicable privilege or claim of confidentiality in the documents, reports, and evidence occurs as a result of sharing or receiving documents, reports, and evidence as authorized under the bill. In addition, the disclosure of a document, report, or evidence in connection with a regulatory or legal action does not prohibit an insurer or any other person from

taking steps to limit the dissemination of the document, report, or evidence to persons not involved in or the subject of the action on the basis of any recognized privilege arising under any other section of the Revised Code or the common law.

Work papers (sec. 3901.48). In general, existing law provides for the confidentiality of the work papers of (1) a certified public accountant performing an audit of an insurance company or health insuring corporation that is required to file an audited financial report with the Superintendent and (2) the Superintendent or the Superintendent's appointee resulting from the conduct of a financial examination or performance regulation examination of an insurer.

The bill specifies that such work papers are also privileged, and permits the Superintendent to do the following:

--Disclose such work papers in the furtherance of any regulatory or legal action brought by or on behalf of the Superintendent or the state, resulting from the exercise of the Superintendent's official duties.

--Share such work papers with the chief deputy rehabilitator, the chief deputy liquidator, other deputy rehabilitators and liquidators, and any other person employed by, or acting on behalf of, the Superintendent pursuant to Chapter 3901. or 3903. of the Revised Code, with other local, state, federal, and international regulatory and law enforcement agencies, with local, state, and federal prosecutors, and with the NAIC and its affiliates and subsidiaries, *provided* the recipient agrees to maintain the confidential or privileged status of the work paper and has authority to do so. The Superintendent may authorize the NAIC and its affiliates and subsidiaries by agreement to share such confidential or privileged work papers with local, state, federal, and international regulatory and law enforcement agencies and with local, state, and federal prosecutors, *provided* the recipient agrees to maintain the confidential or privileged status of the work paper and has authority to do so. The chief deputy rehabilitator, the chief deputy liquidator, and other deputy rehabilitators and liquidators are permitted to disclose such work papers in the furtherance of any regulatory or legal action resulting from the exercise of the Superintendent's official duties.

The Superintendent is authorized by the bill to enter into agreements governing the sharing and use of work papers consistent with the bill's requirements.

The bill states that no waiver of any applicable privilege or claim of confidentiality in the work papers or copies of the work papers occurs as a result of sharing or receiving work papers as authorized under the bill. In addition, the disclosure of work papers in connection with a regulatory or legal action does not prohibit an insurer or any other person from taking steps to limit the dissemination

of the work papers to persons not involved in or the subject of the action on the basis of any recognized privilege arising under any other section of the Revised Code or the common law.

Disclosure of material transactions (sec. 3901.70). Under current law, all reports obtained by or disclosed to the Superintendent under the Disclosure of Material Transactions Model Act (sections 3901.67 to 3901.70) are confidential and not subject to subpoena, except under specified circumstances.

The bill specifies that such reports are also privileged, and permits the Superintendent to do the following:

--Disclose such a report (1) upon obtaining prior written consent from the insurer to which the report pertains, (2) in any manner the Superintendent considers appropriate, after conducting a hearing in accordance with the Administrative Procedure Act and determining that the interests of policyholders, shareholders, or the public will be served by the disclosure, or (3) in the furtherance of any regulatory or legal action brought by or on behalf of the Superintendent or the state, resulting from the exercise of the Superintendent's official duties.

--Share such a report with the chief deputy rehabilitator, the chief deputy liquidator, other deputy rehabilitators and liquidators, and any other person employed by, or acting on behalf of, the Superintendent pursuant to Chapter 3901. or 3903. of the Revised Code, with other local, state, federal, and international regulatory and law enforcement agencies, with local, state, and federal prosecutors, and with the NAIC and its affiliates and subsidiaries, *provided* the recipient agrees to maintain the confidential or privileged status of the report and has authority to do so. The Superintendent may authorize the NAIC and its affiliates and subsidiaries by agreement to share such confidential or privileged reports with local, state, federal, and international regulatory and law enforcement agencies and with local, state, and federal prosecutors, *provided* the recipient agrees to maintain the confidential or privileged status of the report and has authority to do so. The chief deputy rehabilitator, the chief deputy liquidator, and other deputy rehabilitators and liquidators are permitted to disclose such a report in the furtherance of any regulatory or legal action resulting from the exercise of the Superintendent's official duties.

The Superintendent is authorized by the bill to enter into agreements governing the sharing, use, and disclosure of reports consistent with the bill's requirements.

The bill states that no waiver of any applicable privilege or claim of confidentiality in the reports occurs as a result of sharing or receiving reports as

authorized under the bill. In addition, the disclosure of a report in connection with a regulatory or legal action does not prohibit an insurer or any other person from taking steps to limit the dissemination of the report to persons not involved in or the subject of the action on the basis of any recognized privilege arising under any other section of the Revised Code or the common law.

External review of coverage denials (sec. 3901.83). If, in the course of an external review of a denial of health care coverage, a record containing information pertaining to the medical history, diagnosis, prognosis, or medial condition of an enrollee of a health insuring corporation, insured of an insurer, or plan member of a public employee benefit plan is provided to the Superintendent, the Superintendent is required by existing law to maintain the confidentially of the record.

The bill permits the Superintendent to share such a record in connection with the investigation or prosecution of any illegal or criminal activity with the chief deputy rehabilitator, the chief deputy liquidator, other deputy rehabilitators and liquidators, and any other person employed by, or acting on behalf of, the Superintendent pursuant to Chapter 3901. or 3903. of the Revised Code, with other local, state, federal, and international regulatory and law enforcement agencies, with local, state, and federal prosecutors, and with the NAIC and its affiliates and subsidiaries, *provided* the recipient agrees to maintain the confidential or privileged status of the record and has authority to do so.

The Superintendent is authorized by the bill to enter into agreements governing the sharing and use of records consistent with the bill's requirements.

The bill states that no waiver of any applicable privilege or claim of confidentiality in the records occurs as a result of sharing or receiving records as authorized under the bill.

Delinquency proceedings (sec. 3903.11). Under current law, certain delinquency-related proceedings and judicial reviews, all records of the insurer, and all Department of Insurance files and court records and papers pertaining to the proceedings, are confidential except under certain circumstances.

The bill specifies that such documents and information are also privileged, and permits the Superintendent to do the following:

--Disclose the documents and information in the furtherance of any regulatory or legal action brought by or on behalf of the Superintendent or the state, resulting from the exercise of the Superintendent's official duties.

--Share the documents and information with the chief deputy rehabilitator, the chief deputy liquidator, other deputy rehabilitators and liquidators, and any other person employed by, or acting on behalf of, the Superintendent pursuant to Chapter 3901. or 3903. of the Revised Code, with other local, state, federal, and international regulatory and law enforcement agencies, with local, state, and federal prosecutors, and with the NAIC and its affiliates and subsidiaries, *provided* the recipient agrees to maintain the confidential or privileged status of the document or information and has authority to do so. The Superintendent may authorize the NAIC and its affiliates and subsidiaries by agreement to share such confidential or privileged documents or information with local, state, federal, and international regulatory and law enforcement agencies and with local, state, and federal prosecutors, *provided* the recipient agrees to maintain the confidential or privileged status of the document or information and has authority to do so. The chief deputy rehabilitator, the chief deputy liquidator, and other deputy rehabilitators and liquidators are permitted to disclose such documents and information in the furtherance of any regulatory or legal action resulting from the exercise of the Superintendent's official duties.

The Superintendent is authorized by the bill to enter into agreements governing the sharing and use of documents and information consistent with the bill's requirements.

The bill states that no waiver of any applicable privilege or claim of confidentiality in the documents and information occurs as a result of sharing or receiving documents and information as authorized under the bill. In addition, the disclosure of documents and information in connection with a regulatory or legal action does not prohibit an insurer or any other person from taking steps to limit the dissemination of the document or information to persons not involved in or the subject of the action on the basis of any recognized privilege arising under any other section of the Revised Code or the common law.

Valuation of reserves for life insurance policies (sec. 3903.72). The Superintendent currently is required to annually value the reserve liabilities for all outstanding life insurance policies and annuity and pure endowment contracts of life insurance companies. Each life insurance company must submit to the Superintendent the opinion of a qualified actuary relative to its reserves. The Superintendent is required to keep confidential any memorandum received in support of an actuary's opinion, and any other material provided by the insurance company in connection with the opinion, except under specified circumstances.

The bill provides that such memoranda and other materials are also privileged, and permits the Superintendent to do the following:

--Disclose such memoranda and other materials (1) upon obtaining prior written consent from the insurer to which the memorandum or other materials pertain, (2) in the furtherance of any regulatory or legal action brought by or on behalf of the Superintendent or the state, resulting from the exercise of the Superintendent's official duties, or (3) to the American Academy of Actuaries upon receipt of a written request from the Academy stating that a memorandum or other material is required for the purpose of professional disciplinary proceedings. (A request from the Academy must set forth the procedures the Academy will use to preserve the confidential and privileged status of the memorandum or other material. If the procedures are not satisfactory to the Superintendent, the Superintendent is prohibited from releasing the memorandum or other material.)

--Share such memoranda and other materials with the chief deputy rehabilitator, the chief deputy liquidator, other deputy rehabilitators and liquidators, and any other person employed by, or acting on behalf of, the Superintendent pursuant to Chapter 3901. or 3903. of the Revised Code, with other local, state, federal, and international regulatory and law enforcement agencies, with local, state, and federal prosecutors, and with the NAIC and its affiliates and subsidiaries, *provided* the recipient agrees to maintain the confidential or privileged status of the memorandum or other material and has authority to do so. The Superintendent may authorize the NAIC and its affiliates and subsidiaries by agreement to share such confidential or privileged memoranda and other material with local, state, federal, and international regulatory and law enforcement agencies and with local, state, and federal prosecutors, *provided* the recipient agrees to maintain the confidential or privileged status of the memorandum or other material and has authority to do so. The chief deputy rehabilitator, the chief deputy liquidator, and other deputy rehabilitators and liquidators are permitted to disclose such memoranda and other material in the furtherance of any regulatory or legal action resulting from the exercise of the Superintendent's official duties.

The Superintendent is authorized by the bill to enter into agreements governing the sharing and use of memoranda and materials consistent with the bill's requirements.

The bill states that no waiver of any applicable privilege or claim of confidentiality in the memoranda and materials occurs as a result of sharing or receiving memoranda and material as authorized under the bill. In addition, the disclosure of any memorandum or material in connection with a regulatory or legal action does not prohibit an insurer or any other person from taking steps to limit the dissemination of the memorandum or material to persons not involved in or the subject of the action on the basis of any recognized privilege arising under any other section of the Revised Code or the common law.

Risk-based capital requirements (secs. 3903.83 and 3903.88). Under the Risk-Based Capital for Insurers Model Act (sections 3903.81 to 3903.93), all risk-based capital plans, reports, examinations, and corrective orders are confidential and not subject to subpoena, except for use by the Superintendent in accordance with Ohio insurance law.

The bill provides that such plans, reports, information, and orders are also privileged, and permits the Superintendent to do the following:

--Use the plans, reports, information, and orders in accordance with Ohio insurance law.

--Disclose the plans, reports, information, and orders in the furtherance of any regulatory or legal action brought by or on behalf of the Superintendent or the state, resulting from the exercise of the Superintendent's official duties.

--Share the plans, reports, information, and orders with the chief deputy rehabilitator, the chief deputy liquidator, other deputy rehabilitators and liquidators, and any other person employed by, or acting on behalf of, the Superintendent pursuant to Chapter 3901. or 3903. of the Revised Code, with other local, state, federal, and international regulatory and law enforcement agencies, with local, state, and federal prosecutors, and with the NAIC and its affiliates and subsidiaries, *provided* the recipient agrees to maintain the confidential or privileged status of the plan, report, information, or order and has authority to do so. The Superintendent may authorize the NAIC and its affiliates and subsidiaries by agreement to share such confidential or privileged plans, reports, information, or orders with local, state, federal, and international regulatory and law enforcement agencies and with local, state, and federal prosecutors, *provided* the recipient agrees to maintain the confidential or privileged status of the plan, report, information, or order and has authority to do so. The chief deputy rehabilitator, the chief deputy liquidator, and other deputy rehabilitators and liquidators are permitted to disclose such plans, reports, information, and orders in the furtherance of any regulatory or legal action resulting from the exercise of the Superintendent's official duties.

The Superintendent is authorized by the bill to enter into agreements governing the sharing and use of plans, reports, information, and orders consistent with the bill's requirements.

The bill states that no waiver of any applicable privilege or claim of confidentiality in the plans, reports, information, and orders occurs as a result of sharing or receiving plans, reports, information, and orders as authorized under the bill. In addition, the disclosure of a plan, report, information, or order in connection with a regulatory or legal action does not prohibit an insurer or any

other person from taking steps to limit the dissemination of the plan, report, information, or order to persons not involved in or the subject of the action on the basis of any recognized privilege arising under any other section of the Revised Code or the common law.

Disciplinary actions relating to an agent's license (sec. 3905.492). Current law provides that all records and other information obtained by the Superintendent relating to an investigation of an insurance agent or of an applicant for licensure as an agent, are confidential until the applicant or licensee is provided notice and opportunity for hearing. The records and other information must remain confidential except when the Superintendent takes official action regarding the affairs of the applicant or licensee or in connection with actual or potential criminal proceedings. Employees or agents of the Department of Insurance cannot be required by any court to testify in a civil action, if the testimony concerns any matter related to records or any other information considered confidential of which they have knowledge.

Under the bill, the Superintendent is permitted to do the following:

--Disclose such records and other information in the furtherance of any regulatory or legal action brought by or on behalf of the Superintendent or the state, resulting from the exercise of the Superintendent's official duties.

--Share such records and other information with the chief deputy rehabilitator, the chief deputy liquidator, other deputy rehabilitators and liquidators, and any other person employed by, or acting on behalf of, the Superintendent pursuant to Chapter 3901. or 3903. of the Revised Code, with other local, state, federal, and international regulatory and law enforcement agencies, with local, state, and federal prosecutors, and with the NAIC and its affiliates and subsidiaries, *provided* the recipient agrees to maintain the confidential status of the record or other information and has authority to do so. The Superintendent may authorize the NAIC and its affiliates and subsidiaries by agreement to share such confidential records or other information with local, state, federal, and international regulatory and law enforcement agencies and with local, state, and federal prosecutors, *provided* the recipient agrees to maintain the confidential status of the record or other information and has authority to do so. The chief deputy rehabilitator, the chief deputy liquidator, and other deputy rehabilitators and liquidators are permitted to disclose such records and other information in the furtherance of any regulatory or legal action resulting from the exercise of the Superintendent's official duties.

The bill states that no waiver of any applicable privilege or claim of confidentiality in the records and other information occurs as a result of sharing or receiving records or other information as authorized under the bill. In addition,

the disclosure of records or other information in connection with a regulatory or legal action does not prohibit an insurer or any other person from taking steps to limit the dissemination of the record or other information to persons not involved in or the subject of the action on the basis of any recognized privilege arising under any other section of the Revised Code or the common law.

Termination of independent insurance agent contracts (sec. 3905.50). Current law permits an independent agent who is terminated by an insurer to request the Superintendent to review the action to determine whether it is in compliance with the Revised Code and the particular contract of agency. If a review is requested, the insurer is required to provide the Superintendent with documentation in support of the insurer's stated reason for termination. Any information or documentation provided to the Superintendent by an insurer is confidential.

The bill permits the Superintendent to do the following:

--Disclose the information or documentation in the furtherance of any regulatory or legal action brought by or on behalf of the Superintendent or the state, resulting from the exercise of the Superintendent's official duties.

--Share the information or documentation with the chief deputy rehabilitator, the chief deputy liquidator, other deputy rehabilitators and liquidators, and any other person employed by, or acting on behalf of, the Superintendent pursuant to Chapter 3901. or 3903. of the Revised Code, with other local, state, federal, and international regulatory and law enforcement agencies, with local, state, and federal prosecutors, and with the NAIC and its affiliates and subsidiaries, *provided* the recipient agrees to maintain the confidential status of the information or documentation and has authority to do so. The Superintendent may authorize the NAIC and its affiliates and subsidiaries by agreement to share such confidential information and documentation with local, state, federal, and international regulatory and law enforcement agencies and with local, state, and federal prosecutors, *provided* the recipient agrees to maintain the confidential status of the information or documentation and has authority to do so. The chief deputy rehabilitator, the chief deputy liquidator, and other deputy rehabilitators and liquidators are permitted to disclose such information and documentation in the furtherance of any regulatory or legal action resulting from the exercise of the Superintendent's official duties.

The Superintendent is authorized by the bill to enter into agreements governing the sharing and use of information and documentation consistent with the bill's requirements.

The bill states that no waiver of any applicable privilege or claim of confidentiality in the information and documentation occurs as a result of sharing or receiving information and documentation as authorized under the bill. In addition, the disclosure of information or documentation in connection with a regulatory or legal action does not prohibit an insurer or any other person from taking steps to limit the dissemination of the information or documentation to persons not involved in or the subject of the action on the basis of any recognized privilege arising under any other section of the Revised Code or the common law.

Notice of the impairment of an insurer (sec. 3999.36). Under existing law, whenever a chief executive officer of an insurer knows or has reason to know that the insurer is impaired, the chief executive officer must provide written notice of the impairment to the Superintendent. The notice is not a public record.

The bill provides that the notice is also confidential, and permits the Superintendent to do the following:

--Disclose the notice (1) upon obtaining prior written consent from the insurer to which the notice pertains or (2) in the furtherance of any regulatory or legal action brought by or on behalf of the Superintendent or the state, resulting from the exercise of the Superintendent's official duties.

--Share the notice with the chief deputy rehabilitator, the chief deputy liquidator, other deputy rehabilitators and liquidators, and any other person employed by, or acting on behalf of, the Superintendent pursuant to Chapter 3901. or 3903. of the Revised Code, with other local, state, federal, and international regulatory and law enforcement agencies, with local, state, and federal prosecutors, and with the NAIC and its affiliates and subsidiaries, *provided* the recipient agrees to maintain the confidential status of the notice and has authority to do so. The Superintendent may authorize the NAIC and its affiliates and subsidiaries by agreement to share such confidential notices with local, state, federal, and international regulatory and law enforcement agencies and with local, state, and federal prosecutors, *provided* the recipient agrees to maintain the confidential status of the notice and has authority to do so. The chief deputy rehabilitator, the chief deputy liquidator, and other deputy rehabilitators and liquidators are permitted to disclose such notices in the furtherance of any regulatory or legal action resulting from the exercise of the Superintendent's official duties.

The Superintendent is authorized by the bill to enter into agreements governing the sharing and use of notices consistent with the bill's requirements.

The bill states that no waiver of any applicable privilege or claim of confidentiality in the notices occurs as a result of sharing or receiving notices as

authorized under the bill. In addition, the disclosure of a notice in connection with a regulatory or legal action does not prohibit an insurer or any other person from taking steps to limit the dissemination of the notice to persons not involved in or the subject of the action on the basis of any recognized privilege arising under any other section of the Revised Code or the common law.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	06-26-01	p. 709

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