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*Bill Analysis*  
*Legislative Service Commission*

### **Sub. H.B. 425\***

125th General Assembly  
(As Reported by S. Insurance, Commerce and Labor)

**Reps. J. Stewart, Aslanides, Hollister, Schaffer, Seitz, Skindell, Cirelli, Domenick, Niehaus, Blasdel, Carano, Collier, Daniels, DeBose, C. Evans, D. Evans, Gibbs, Otterman, Slaby, D. Stewart, Wilson, Wolpert**

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## **BILL SUMMARY**

- Removes current limits under which the loss covered by mine subsidence insurance must be the loss in excess of 2% of the policy's total insured value, and changes the provision under which an insurance company is not precluded from selling insurance coverage in excess of \$50,000 by increasing the amount to \$300,000.
- Increases the cap on the amount of reinsurance coverage that the Ohio Mine Subsidence Insurance Underwriting Association offers from \$50,000 to \$300,000.
- Eliminates authority for state appropriations to, and the annual distribution to policyholders of excess money in, the Mine Subsidence Insurance Fund.
- Allows the election of a representative of member companies to the Mine Subsidence Insurance Governing Board without a meeting of the members.
- Specifies the Ohio counties in which mine subsidence insurance must be offered as an option in connection with property and homeowners insurance.

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*\* This analysis was prepared before the report of the Senate Insurance, Commerce and Labor Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

- Extends the period of the Ohio coal tax credit.
- Provides exceptions to the examination and residency requirements for the licensing of public insurance adjusters.
- Establishes a formula for the determination of bail bond premiums for use in insurance companies annual statements of condition.

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## CONTENT AND OPERATION

### MINE SUBSIDENCE INSURANCE PROVISIONS

#### Background

Ohio law establishes a mine subsidence insurance program to provide coverage to homeowners in counties in which abandoned mines are located. Under the program, insurance premiums are paid into the Mine Subsidence Insurance Fund, which is a custodial account. The program is administered by the Ohio Mine Subsidence Insurance Underwriting Association, which in turn is governed by the Mine Subsidence Insurance Governing Board. The bill makes changes in a number of the statutes that establish the program's requirements and procedures as discussed below.

#### Definitions

The bill alters several definitions in the Mine Subsidence Insurance Law and adds new definitions to that Law. Under that Law, "mine subsidence" is defined to mean loss caused by the collapse or lateral or vertical movement of structures resulting from the caving in of underground mines, including coal mines, clay mines, limestone mines, and salt mines. "Mine subsidence" does not include loss caused by earthquake, landslide, volcanic eruption, or collapse of strip mines, storm and sewer drains, or rapid transit tunnels. (Sec. 3929.50(A).) Currently, "structure" is defined as any one- to four-family dwellings as defined and limited in standard fire policies. The bill revises that definition by defining "structure" as any one- to four-family dwellings as defined and limited in dwelling fire, homeowners, and farm policies (see below) and other structures as described, defined, or limited in the mine subsidence insurance form. (Sec. 3929.50(B).)

Under current law, "basic property insurance" is defined to mean insurance against direct loss to property as defined and limited in standard fire policies and extended coverage endorsements on them, as approved by the Superintendent of Insurance, and insurance for such types, classes, and locations of property against the perils of vandalism, malicious mischief, burglary, or theft, as the

superintendent designates. The bill generally retains the definition, but changes the reference in the first portion of the definition to insurance as defined in standard fire policies to dwelling fire, homeowners, and farm policies. (Sec. 3929.50(C).) In addition, "homeowners insurance" is defined under current law to mean insurance on owner-occupied dwellings providing personal multi-peril property and liability coverages commonly known as homeowners insurance, and is subject to such reasonable underwriting standards, exclusions, deductibles, rates, and conditions as are customarily used by member insurers for similar coverages. The bill retains only the first part of the definition, thus defining "homeowners insurance" to mean insurance on owner-occupied dwellings providing personal multi-peril property and liability coverages commonly known as homeowners insurance. (Sec. 3929.50(D).)

Finally, the bill adds the following definitions:

(1) "Mine subsidence coverage" means the limits and type of coverage as defined by the Mine Subsidence Insurance Governing Board in the coverage form and approved by the Superintendent (sec. 3929.50(E)).

(2) "Farm insurance" means insurance providing property coverage on farm dwelling buildings (sec. 3929.50(F)).

(3) "Dwelling fire insurance" means a policy providing property coverage on residential buildings for the perils of fire and lightning and additional coverages (sec. 3929.50(G)).

### **Mine subsidence coverage**

Current law requires the premium charged for mine subsidence coverage to be the same as the premium level set by the plan of operation that is required to be formulated by the Mine Subsidence Insurance Governing Board for the economical, fair, and nondiscriminatory administration of the Mine Subsidence Insurance Fund. The loss covered must be the loss in excess of 2% of the policy's total insured value, but at no time can the deductible be less than \$250 or more than \$500, and the total insured value reinsured by the Ohio Mine Subsidence Insurance Underwriting Association cannot exceed \$50,000. However, current law does not preclude an insurance company from selling mine subsidence insurance coverage in excess of \$50,000. The bill revises the limits on mine subsidence coverage. It eliminates the requirement that the loss covered must be the loss in excess of 2% of the policy's total insured value. In addition, it changes the requirement that the total insured value reinsured by the Association cannot exceed \$50,000 by increasing the amount to \$300,000. Finally, the bill revises the provision that states that an insurance company is not precluded from selling

insurance coverage in excess of \$50,000 by increasing the amount from \$50,000 to \$300,000. (Secs. 3929.53, not in the bill, and 3929.56(B).)

### **Reinsurance coverage**

Current law requires all companies authorized to write basic property insurance in this state to enter into a reinsurance agreement with the Ohio Mine Subsidence Insurance Underwriting Association in which each company agrees to cede 100%, up to \$50,000, of any subsidence insurance underwritten to the Association. Such a company, in consideration of the ceding commission retained by the company, also must agree to undertake payment of taxes and all other expenses of the company necessary for sale of policies. The bill increases the cap from \$50,000 to \$300,000. (Sec. 3929.58.)

### **Mine Subsidence Insurance Fund**

Current law creates the Mine Subsidence Insurance Fund for the purpose of making available insurance coverage against mine subsidence. The Treasurer of State is the custodian of the Fund, which is not a part of the state treasury. The money in the Fund is derived from appropriations by the state and premiums for reinsurance assumed by the Mine Subsidence Insurance Underwriting Association on policies written by members of the Association. The bill eliminates the provision under which money in the Fund is derived from appropriations by the state. Thus, under the bill, money in the Fund is derived only from premiums for reinsurance. (Sec. 3929.52(A).)

Current law states that at the expiration of each fiscal year, any amount in the Fund that the Mine Subsidence Insurance Governing Board determines to be safely distributable, after reimbursing the Federal Special Revenue Fund for amounts appropriated to the Board, must be distributed among current policyholders in proportion to the premiums paid by them. The bill eliminates this provision. (Sec. 3929.52(E).)

### **Mine Subsidence Insurance Governing Board**

Current law creates the Mine Subsidence Insurance Governing Board to govern the Ohio Mine Subsidence Insurance Underwriting Association.<sup>1</sup> The

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<sup>1</sup> *The Ohio Mine Subsidence Insurance Underwriting Association consists of all insurers authorized to write and engaged in writing within the state, on a direct basis, basic property insurance or any component of it in multi-peril policies, to operate in accordance with the plan of operation adopted pursuant to the Mine Subsidence Insurance Law. Every such insurer must be a member of the Association and must remain a member as a condition of its authority to write such insurance in Ohio. (Sec. 3929.51(A).)*

Board consists of the Director of Natural Resources or the Director's designee, as chairperson, the Treasurer of State or the Treasurer's designee, the Superintendent of Insurance or the Superintendent's designee, and one representative from member companies. The representative from member companies must be an Ohio domiciled member, elected every three years by members of the Association. The representative must be elected at a meeting of the members or their authorized representatives, which must be held at a time and place designated by the Superintendent. All actions of the Association must be approved by the Board. The Board may employ, compensate, and prescribe the duties and powers of employees and consultants that are necessary to carry out the Mine Subsidence Insurance Law and may enter into a contract with the Ohio Fair Plan Underwriting Association for administrative and claims adjusting services. The bill retains the Board, the Board's membership, and its authority and duties, but eliminates the requirement that the representative from member companies be elected at a meeting of the members or their authorized representatives that must be held at a time and place designated by the Superintendent. (Sec. 3929.51(C).)

### **Eligible counties**

Existing law requires every insurer that offers basic property and homeowners insurance insuring on a direct basis a structure located in the counties of Athens, Belmont, Carroll, Columbiana, Coshocton, Gallia, Guernsey, Harrison, Hocking, Holmes, Jackson, Jefferson, Lawrence, Mahoning, Meigs, Monroe, Morgan, Muskingum, Noble, Perry, Scioto, Stark, Trumbull, Tuscarawas, Vinton, and Washington to include mine subsidence coverage provided by the Association in each policy of basic property and homeowners insurance that is delivered, issued for delivery, or renewed in any of those counties on or after January 1, 1993. The bill eliminates the trigger date. (Sec. 3929.56(A)(1).)

Current law also authorizes the Board to designate any county, other than a county identified above, in which mine subsidence coverage must be offered by an insurer on an optional basis. Any designation made by the Board must be made in the Association's plan of operation required in statute and must be based on a county's risk of loss due to mine subsidence and other criteria established by the Board. Every insurer that offers basic property and homeowners insurance insuring on a direct basis a structure located in any county designated by the Board must offer to include, on an optional basis, mine subsidence coverage provided by the Association in each policy of basic property and homeowners insurance that is delivered, issued for delivery, or renewed in a designated county on or after January 1, 1993. The bill eliminates the Board's authority to designate such counties and the related provisions. It instead specifies that every insurer that offers basic property and homeowners insurance insuring on a direct basis a structure located in the counties of Delaware, Erie, Geauga, Lake, Licking,

Medina, Ottawa, Portage, Preble, Summit, and Wayne must offer to include, on an optional basis, mine subsidence coverage as discussed above, except that the trigger date is eliminated. (Sec. 3929.56(A)(2).)

## **PUBLIC INSURANCE ADJUSTER PROVISIONS**

### **Examination requirement**

(secs. 3951.05 and 3951.09)

Under continuing law, a public insurance adjuster is a person or business entity that for compensation "acts on behalf of or aids in any manner, an insurer or insured or another in negotiating for, or effecting the settlement of a claim or claims . . . under any policy of insurance covering real or personal property . . ." (sec. 3951.01). Under the current Public Insurance Adjusters Law, Chapter 3951. of the Revised Code, all applicants for a public insurance adjuster's certificate of authority must pass a written examination. The bill establishes an exception to this requirement.

The bill permits the Superintendent of Insurance to waive the examination requirement, provided that the applicant is licensed as a public insurance adjuster in another state that required the applicant to submit to an examination as a condition of licensure. Prior to waiving the examination requirement for an applicant the Superintendent must issue a notice, in a manner deemed appropriate by the Superintendent, identifying the applicant's other state of licensure. The notice must be issued at least 60 days prior to the effective date of the waiver. Once the Superintendent has issued a notice in this manner, the Superintendent may waive the examination requirement for other applicants from that state without issuing further notices.

### **Residency requirement**

(secs. 3951.01 and 3951.06)

Under the current Public Insurance Adjusters Law, no public insurance adjuster license can be issued or renewed unless the applicant is a resident of Ohio. The bill creates exceptions to this residency requirement.

In addition to residents, the bill allows public insurance adjuster licenses to be issued to lending institutions and to any bona fide employee of a lending institution who is authorized to act as a public insurance adjuster in another state on behalf of the lending institution. Pursuant to the bill, the requirement for a licenseholder to post a bond remains applicable to lending institutions and their employees.

The bill defines a "lending institution" for purposes of the Public Insurance Adjusters Law as:

[A] lending institution, as defined in [R.C. 175.01], that is not organized for the purpose of qualifying to do business as a public insurance adjuster in this state, as determined by the superintendent, and that has been engaged in business as a bona fide lending institution for at least five years, and any member of an affiliated group, as defined by [R.C. 5739.01], associated with a lending institution, which member has been a member of the affiliated group for at least five years and which member is not organized or affiliated with the lending institution for the purpose of qualifying to do business as a public insurance adjuster in this state, as determined by the superintendent.

As defined in section 175.01 of the Revised Code, lending institutions include domestic savings and loan associations and their wholly owned service corporations, banks with their principal place of business in Ohio and their wholly owned subsidiary corporations, domestic mortgage lenders whose regular business is originating, servicing, or brokering real estate loans, and mortgagees approved by the Federal Housing Administrator or qualified to do business in Ohio.

## **MISCELLANEOUS INSURANCE PROVISIONS**

### **Homeowners and residential property insurance**

(sec. 3901.211)

Continuing law prohibits persons that lend money or extend credit from taking specified actions in connection with insurance coverage relating to the loan. The bill adds another prohibition, prohibiting a person that lends money or extends credit from requiring a mortgagor or borrower, as a condition of financing a residential mortgage or providing other financing arrangements for residential property, including a mobile or manufactured home, to purchase homeowners insurance coverage or other residential property insurance coverage in an amount that exceeds the replacement value of the dwelling and its contents, regardless of the amount of the mortgage or other financing arrangement entered into by the mortgagor or borrower. Under the bill, the fair market value of the land on which the dwelling is located cannot be included in the replacement value of the dwelling and its contents.



### **Valuation fee on life insurers' policies**

(secs. 3905.40 and 3905.401)

Current law requires each life insurance company doing business in Ohio to pay a fee to the Superintendent of Insurance, for the annual valuation of its policies, in the amount of 1¢ on every \$1,000 of insurance. The bill limits the payment of this fee to domestic life insurance companies. The valuation fee, under current law, does not apply to reinsurance ceded to affiliated companies. The bill limits this exception to affiliated domestic companies.

### **Valuation of bail bond premiums**

(sec. 3905.901)

Bail bond insurers are required under continuing law to file an annual statement of condition with the Department of Insurance. The bill requires that the direct written premiums for bail bonds written by insurers be determined for use in this statement as the gross bail bond premiums less any amounts retained by surety bail bond agents. Notwithstanding this formula, the bill prohibits reporting direct written premiums for bail bonds at less than 6½% of the gross bail bond premiums received by the insurer's agents.

The bill also requires every bail bond insurer to include certain new information with the annual statement of condition. This includes bail bond premiums written prior to deducting the amounts retained by surety bail bond agents and the amounts withheld by surety bail bond agents as an expense but not reported as such by the insurer.

### **Medical malpractice information submitted by attorneys**

(sec. 3929.302; Section 3)

Continuing law requires medical malpractice insurers to report information to the Department of Insurance at least annually on all malpractice claims resulting in a final judgment of any amount, a final settlement, or a final disposition of the claim resulting in no indemnity payment on behalf of the insured. Uncodified language of the bill requests the Ohio Supreme Court to adopt rules of professional conduct that require attorneys who represent persons on medical malpractice claims to file a report with the Department of Insurance or the Department's designee describing the attorney fees and expenses received for the representation, as well as any other data necessary for the Department to reconcile the attorney fee and expense data with other medical malpractice closed claim data received by the Department. The bill defines any information submitted to the Department by an attorney, law firm, or legal professional association pursuant to

rules adopted by the Ohio Supreme Court to be confidential and privileged and not a public record. Under the bill, the information submitted is not subject to discovery or subpoena and cannot be made public by the Department of Insurance or any other person. The Department, however, is required under the bill to summarize the information received and to include the information in the annual report prepared by the Department on closed medical malpractice claims. Individual claims data cannot be released in the annual report.

**COAL TAX CREDIT PROVISION**

**Nonrefundable coal tax credit extended**

(sec. 5733.39)

Current law allows a nonrefundable credit against the tax on Ohio coal used by an electric company in any of its coal-fired electric generating units before January 1, 2005. The bill extends the grant of this credit through January 1, 2008. Currently, the credit is allowed at the rate of \$3 per ton. The rate is modified by the bill; while remaining at \$3 per ton for tax years before tax year 2006, the rate for tax years 2006, 2007, and 2008 declines to \$1 per ton. The bill defines "Ohio coal" as coal mined from coal deposits in the ground that are located within Ohio, regardless of the location of the mine's tipple.

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**HISTORY**

ACTION	DATE	JOURNAL ENTRY
Introduced	03-09-04	p. 1663
Reported, H. Energy & Environment	05-04-04	p. 1808
Passed House (98-0)	05-11-04	pp. 1890-1891
Reported, S. Insurance, Commerce & Labor	---	---

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