



# Ohio Legislative Service Commission

## Final Analysis

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### Sub. H.B. 300

128th General Assembly  
(As Passed by the General Assembly)

**Reps.** Dyer and Hottinger, Heard, Combs, Luckie, Murray, B. Williams, Okey, Fende, Brown, Batchelder, Boyd, Carney, Chandler, DeBose, Dodd, Domenick, Evans, Garland, Hackett, Harris, Harwood, Letson, Mecklenborg, Sayre, Snitchler, Stewart, Yates

**Sens.** Schaffer, Buehrer, Faber, Gillmor, Harris, Hughes, Husted, D. Miller, Turner, Wagoner, Schiavoni

**Effective date:** Emergency, February 25, 2010; certain provisions effective January 1, 2012; certain sections effective other than those dates

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## ACT SUMMARY

- Makes changes to insurance agent and surety bail bond agent licensure requirements, including examination requirements, filing a change of address, application requirements, criminal records checks, and continuing education.
- Requires biennial renewal for insurance agents and makes changes to the license renewal requirements for surety bail bond agents.
- Revises and expands the reasons for which the Superintendent of Insurance may suspend, revoke, or refuse to issue or renew a license of an agent or impose other specified sanctions.
- Adds to the list of certain persons and classes of persons that are prohibited from acting as surety bail bond agents or employees of a surety bail bond agent or business (1) prisoners incarcerated in any jail, prison, or any other place used for the incarceration of persons, (2) any person employed at an attorney's office, and (3) judges.
- Prohibits posting anything without using a bail instrument representing an insurer, to have a defendant released on bail on all types of set court bail with certain exceptions.

- Makes changes, with regard to surety bail bond agents, to former law's requirements for appointments by insurers and for registering with a court.
- Repeals regulation of appointments of solicitors by agents.
- Allows the Superintendent to adopt rules regarding the renewal, extension, reactivation, and reinstatement of certain licenses and to establish certain fees.
- Requires certain fees to be deposited in the Department of Insurance Operating Fund.
- Moves the due date for the foreign insurers tax to on or before the 31st day of March.
- Allows the Superintendent to delay the implementation and enforcement of the provisions and repeals of the act, with certain expectations.
- Changes the method by which a health insuring corporation can deliver certain information to its subscribers.
- Increases certain thresholds relating to potential liability of the Ohio Life and Health Guaranty Association.
- Removes from the annual statement of the condition of an insurance company a certification regarding loss and loss adjustment reserves for medical malpractice business.
- Removes an additional reporting requirement for certain property and casualty insurers.
- Adds a "company action level event" for which a health insuring corporation or property and casualty insurer must file a RBC plan.
- Allows the National Association of Insurance Commissioners' amendments to RBC instructions to take effect without the Superintendent of Insurance adopting those amendments.
- Transfers from the Board of Directors of the Ohio Health Reinsurance Program to the Superintendent of Insurance the authority to design OHC plans.
- Excludes from the franchise tax calculation for a domestic insurance company's health insuring corporation line of business payments received pursuant to the Medical Assistance Program (Medicaid) for the period ending September 30, 2009.

- Temporarily extends the time after employment during which a person can keep the person's health insurance coverage from 12 months to up to 15 months, dependent on whether federal subsidies are available for the continuation coverage premiums.

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## CONTENT AND OPERATION

### Resident agent license examination

Under continuing law, a resident of Ohio who applies for an insurance agent license with any of the following lines of authority must take a written examination prior to licensure: life, accident and health, property, casualty, personal lines, title, surety bail bonds, and any other line of authority designated by the Superintendent of Insurance. The act removes the previous requirement that applicants for a variable life and variable annuity products line of authority take the written examination (R.C. 3905.04(B)(1) and 3905.06(B)). Additionally, the act requires that an individual pass the written examination *before* applying for licensure and requires the individual to pay only an examination fee, rather than an application fee, before admission to the examination (R.C. 3905.04(A)).

Unless an individual is applying for a title insurance line of authority or any other line of authority exempted by the Superintendent, under continuing law, an individual is not permitted to take the examination until the individual has either earned a bachelor's or associate's degree in insurance from an accredited institution or completed 20 hours of study in a program of insurance education approved by the Superintendent for each line of authority for which the individual has applied. The act adds a third option: an individual may take the exam if the individual has earned a professional designation approved by the Superintendent. (R.C. 3905.04(C).)

Continuing law does not require an individual who applies for a resident insurance agent license in Ohio within 90 days after establishing a principal place of residence or principal place of business in Ohio to complete a program of insurance education or to pass a written examination if either of the following are true: (1) the individual is currently licensed in another state and is in good standing for the line or lines of authority requested, or (2) the individual was previously licensed in another state, the individual's application for a resident insurance agent license in Ohio is received within 90 days after the cancellation of the individual's previous license, and, at the time of license cancellation, the individual was in good standing for the line or lines of authority requested. The act adds that the individual also must have paid all applicable fees required under the law regulating insurance agents in Ohio. (R.C. 3905.041.)

## **Licensure requirements**

### **Resident insurance agent license**

Continuing law requires the Superintendent to issue a resident license to an individual applicant who meets certain requirements, including being at least 18 years old and not having committed any act that is a ground for the denial, suspension, or revocation of the license. The act adds the following requirements:

(1) The applicant has submitted a completed application and paid all applicable fees.

(2) Any applicant applying for variable life-variable annuity line of authority is registered with the Financial Industry Regulatory Authority (FINRA) as a registered representative after having passed at least one of the following examinations administered by the FINRA: the series 6 examination, the series 7 examination, the series 63 examination, the series 66 examination, or any other FINRA examination approved by the Superintendent.

(3) If required, the applicant has consented to a criminal records check and the results of the applicant's criminal records check are determined to be satisfactory by the Superintendent.

(4) The applicant is a United States citizen or has provided proof of having legal authorization to work in the United States. (R.C. 3905.06(A)(1).)

Continuing law requires the Superintendent to issue a resident license to a business entity applicant that meets certain requirements, including being either domiciled in Ohio or maintaining its principal place of business in Ohio and designating a licensed insurance agent who will be responsible for the applicant's compliance with the insurance laws of Ohio. The act adds the requirement that the applicant has submitted a completed application, any applicable fees, and any other documents requested by the Superintendent. (R.C. 3905.06(A)(2).)

### **Nonresident insurance agent license**

Under continuing law, the Superintendent must issue a nonresident agent license to an applicant that is a nonresident person if the Superintendent finds that the applicant meets certain requirements, including that the applicant has submitted or has had transmitted to the Superintendent the application for licensure that the applicant submitted to the applicant's home state or a completed applicable uniform application. The act removes a requirement that the applicant must submit a request for licensure

prescribed by the Superintendent in addition to the above application for licensure and adds the following requirements:

- (1) That the applicant has paid all required fees;
- (2) That the applicant is licensed in the applicant's home state for the lines of authority requested in Ohio;
- (3) If the applicant is a business entity, that the applicant has designated an insurance agent licensed as an agent in Ohio to be responsible for the applicant's compliance with the insurance laws of Ohio.
- (4) That the applicant has submitted any other documents requested by the Superintendent. (R.C. 3905.07(A).)

### **Surplus line broker license**

Under continuing law, to be eligible for a surplus line broker's license, a person must have both a property license and a casualty license. The act specifies that this requirement is for *resident* surplus line broker's licenses. To be eligible for a nonresident surplus line broker's license, under the act, a person must hold an active surplus line broker license in the person's home state. However, a nonresident surplus line broker must obtain a nonresident license with a property and casualty line of authority in Ohio if the broker is or will be personally performing the specified due diligence requirements that require surplus line brokers to ensure that the insurance product is not available from an authorized insurer. (R.C. 3905.30 and R.C. 3905.33, not in the act.)

Before receiving a surplus line broker license, under continuing law, the person named in the license must execute and deliver to the Superintendent of Insurance a bond in the sum of \$25,000, payable to the state and conditioned that the person will faithfully comply with the law regulating surplus line brokers. Under the act, this bond is required only for resident surplus line broker licenses. (R.C. 3905.35.)

### **Variable life-variable annuity line of authority**

The act specifies that a person who applies for a resident insurance agent license with a variable life-variable annuity line of authority must include in the person's application the person's individual central registration depository number (R.C. 3905.05(A)).

## **Surety bail bond agents**

Under continuing law, the Superintendent must issue to an applicant a license that states in substance that the person is authorized to do the business of a surety bail bond agent, if the Superintendent is satisfied that all of the following apply:

- (1) The applicant is 18 years of age or older.
- (2) The applicant is a person of high character and integrity.
- (3) The applicant has successfully completed the educational requirements and passed the required examination.

The act differentiates four types of surety bail bond licenses: individual resident and nonresident surety bail bond licenses and business entity resident and nonresident surety bail bond licenses.

In order to receive the individual resident surety bail bond license, the person must satisfy the above requirements and must not have committed any act that is grounds for the refusal to issue, suspension of, or revocation of a license. Additionally, the applicant's home state must be Ohio and the applicant must be a United States citizen or have provided proof of having legal authorization to work in the United States.

In order to receive the individual nonresident surety bail bond license, the person must be 18 years of age or older, currently licensed as a resident in another state and in good standing in the applicant's home state for surety bail bond or qualified for the same authority. Additionally, the person must be a person of high character and integrity and must not have committed any act that is grounds for the refusal to issue, suspension of, or revocation of a license. (R.C. 3905.85(B).)

To receive the business entity resident or nonresident surety bail bond license, all of the following must be true of the applicant: (1) the applicant has submitted an application for the license in a manner prescribed by the Superintendent and the \$150 application fee, (2) the applicant has designated an individual licensed surety bail bond agent who will be responsible for the applicant's compliance with the insurance laws of Ohio, (3) the applicant has not committed any act that is grounds for the refusal to issue, suspension of, or revocation of a license, and (4) the applicant has submitted any other documents requested by the Superintendent. In order to receive the resident business entity license, the applicant additionally must either be domiciled in Ohio or maintain its principal place of business in Ohio, and the applicant must be authorized to do business in Ohio by the Secretary of State if required under current law. In order to receive the nonresident business entity license, the applicant additionally must be

currently licensed and be in good standing in the applicant's home state with surety bail bond authority. (R.C. 3905.85(B).)

Under law retained in part by the act, a person that holds a surety bail bond license cannot execute or deliver a bond during the first 180 days after the initial issuance of the person's license. Under the act, however, this prohibition does not apply to resident or nonresident business entity licenses. (R.C. 3905.85(C).)

### **Application fees**

Under law retained in part by the act, each applicant for licensure as an individual insurance agent except applicants for licensure as limited lines insurance agents and surplus line brokers must pay \$10 for each line of authority requested. The act requires all insurance agents, rather than only individual agents, to pay this fee and excludes surety bail bond agents rather than limited lines insurance agents. (R.C. 3905.40(C).)

### **License renewal**

#### **General**

Former law did not require license renewal. Under former law, a resident or nonresident agent license was perpetual unless surrendered by the licensee or suspended or revoked by the Superintendent.

The act requires resident and nonresident agents to renew their licenses. Under the act, an individual seeking to renew a resident or nonresident insurance agent license must apply biennially for a renewal of the license on or before the last day of the licensee's birth month. A business entity seeking to renew a resident or nonresident insurance agent license must apply biennially for a renewal of the license on or before the date determined by the Superintendent. The Superintendent must send a renewal notice to all resident agent licensees at least one month prior to the renewal date. (R.C. 3905.06(C) and 3905.07(C).)

Applications for license renewal must be submitted to the Superintendent on forms prescribed by the Superintendent. Each application must be accompanied by a biennial renewal fee (see "**License renewal fee**" below). The Superintendent also may require an applicant to submit any document reasonably necessary to verify the information contained in the renewal application. (R.C. 3905.06(C) and 3905.07(C).)

To be eligible for renewal of an individual resident insurance agent license, the applicant must complete the continuing education requirements prior to the renewal date. To be eligible for renewal of an individual or business entity nonresident license,

the applicant must maintain a resident license in the applicant's home state for the lines of authority held in Ohio. If an applicant submits a completed renewal application, qualifies for renewal under the above requirements, and has not committed any act that is a ground for the refusal to issue, suspension of, or revocation of a license, the Superintendent must renew the applicant's resident or nonresident insurance agent license. (R.C. 3905.06(C) and 3905.07(C).)

Under the act, if an individual or business entity does not apply for the renewal of the individual or business entity's license on or before the license renewal date, the individual or business entity may submit a late renewal application along with all applicable fees prior to the first day of the second month following the license renewal date. A license that is not renewed on or before its normal renewal date or its late renewal date automatically is suspended for nonrenewal on the first day of the second month following the normal renewal date. If a license is suspended for nonrenewal, the individual or business entity is eligible to apply for reinstatement of the license within the 12-month period following the date by which the license should have been renewed by complying with the reinstatement procedure established by the Superintendent and paying all applicable fees. (R.C. 3905.06(D) and (E) and 3905.07(D) and (E).)

A license that is suspended for nonrenewal that is not reinstated as described above automatically is canceled unless the Superintendent is investigating any allegations of wrongdoing by the agent or has initiated proceedings under the Administrative Procedure Act (R.C. Chapter 119.). In that case, the license automatically is canceled after the completion of the investigation or proceedings unless the Superintendent revokes the license. (R.C. 3905.06(F) and 3905.07(F).)

Under the act, an individual licensed as a resident or nonresident insurance agent who is unable to comply with the license renewal procedures and who is unable to engage in the business of insurance due to military service, a long-term medical disability, or some other extenuating circumstance may request an extension of the renewal date of the individual's license. To be eligible for such an extension, the individual must submit a written request with supporting documentation to the Superintendent. At the Superintendent's discretion, the Superintendent may not consider a written request made after the renewal date of the license. (R.C. 3905.06(G) and 3905.07(G).)

### **Surety bail bond agents**

Under former law, a surety bail bond agent license could be renewed, at the discretion of the Superintendent and the payment of a \$150 fee, effective the first day of March next after its issue and after the first day of March in each succeeding year unless the license was revoked or suspended by the Superintendent or surrendered by the

surety bail bond agent. Under the act, a person seeking to renew a surety bail bond agent license must apply annually for a renewal of the license on or before the last day of February. Applications must be submitted to the Superintendent on forms prescribed by the Superintendent. Each application must be accompanied by a \$150 renewal fee. To be eligible for renewal, an individual applicant must complete the applicable continuing education requirements prior to the renewal date. If an applicant submits a completed renewal application, qualifies for renewal pursuant to the above requirements, and has not committed any act that is a ground for the refusal to issue, suspension of, or revocation of a license, the Superintendent must renew the applicant's surety bail bond insurance agent license. (R.C. 3905.85(F)(1) to (3).)

If an individual or business entity does not apply for the renewal of the individual or business entity's license on or before the last day of February, the act allows the individual or business entity to submit a late renewal application along with all applicable fees prior to the last day of March following the renewal date. The Superintendent must renew the license of an applicant that submits a late renewal application if the applicant satisfies all of the following conditions: (1) the applicant submits a completed renewal application, (2) the applicant pays the \$150 renewal fee, (3) the applicant pays the late renewal fee established by the Superintendent, (4) the applicant provides proof of compliance with the continuing education requirements, and (5) the applicant has not committed any act that is grounds for the refusal to issue, suspension of, or revocation of a license. (R.C. 3905.85(F)(4).)

A surety bail bond agent license that is not renewed on or before the last day of March is automatically suspended for nonrenewal effective the first day of April. If a license is suspended for nonrenewal, the individual or business entity is eligible to apply for reinstatement of the license within the 12-month period following the date by which the license should have been renewed by complying with the reinstatement procedure established by the Superintendent and paying all applicable fees. (R.C. 3905.85(F)(5) and (6).)

A license that is suspended for nonrenewal that is not reinstated as discussed above automatically is canceled unless the Superintendent is investigating any allegations of wrongdoing by the agent or has initiated proceedings under the Administrative Procedure Act (R.C. Chapter 119.). In that case, the license automatically is canceled after the completion of the investigation or proceedings unless the Superintendent revokes the license. (R.C. 3905.85(F)(7).)

### **License renewal fee**

The act requires each insurance agent doing business in Ohio to pay a biennial license renewal fee of \$25, except the act does not require the following insurance

agents to pay the license renewal fee: (1) individual resident agents who have met their continuing education requirements, (2) surety bail bond agents, and (3) surplus line brokers (R.C. 3905.40(E)).

## **Change of address**

Under former law, if a person licensed as a resident insurance agent changed the person's address within Ohio, or if a nonresident agent changed the person's address within that other state, the person was required to, within 30 days after making that change, file a change of address with the Superintendent. Under the act, the person must file that change of address with either the Superintendent *or the Superintendent's designee*. (R.C. 3905.061(A) and 3905.071(A)(1).)

Under law retained in part by the act, if a resident insurance agent changes the person's state of residence, or if a nonresident agent changes the person's state of residence or the state in which the person's principal place of business is located, the person must, within 30 days after making that change, file a change of address with the Superintendent and provide the Superintendent with certification from the new state of residence or, in the case of a nonresident insurance agent, the new state in which the principal place of business is located. As a result, the resident agent's license becomes a nonresident license. No fee or license application can be required in either situation.

The act requires a resident or nonresident insurance agent to file a change of address when the person's *home state* changes, not necessarily when the state of residence or the state in which the person's principal place of business is located changes (R.C. 3905.061(B) and 3905.071(A)(2)). "Home state" is defined to mean the state or territory of the United States, including the District of Columbia, in which an insurance agent maintains the insurance agent's principal place of residence or principal place of business and is licensed to act as an insurance agent (R.C. 3905.01(B), not in the act). Additionally, the act adds that, in order to avoid application or fee requirements as discussed above, the agent submitting a change of address must be in good standing with the Superintendent. The act also adds, for purposes of license renewal, that the residency status of a license does not change the license renewal date established by the initial license. (R.C. 3905.061(B) and 3905.071(B).)

Under law retained in part by the act, each person licensed as a surety bail bond agent must notify in writing the appropriate insurer or managing general agent, and the clerk of the court of common pleas of the county in which the licensee resides, within 30 days after a change in the licensee's principal business address or telephone number. Rather than the clerk of the court of common pleas of the county in which the licensee *resides*, the act requires the agent to notify the clerk of the court of common pleas of the county in which the licensee *is registered*. (R.C. 3905.89.)

## **Criminal records checks**

Under former law, an applicant for licensure was required to request a criminal records check conducted by the Superintendent of the Bureau of Criminal Identification and Investigation (BCII), other governmental agencies, or other sources, as required and designated by the Superintendent of Insurance. The applicant was required to direct that the responses to the request be transmitted to the Superintendent of Insurance, or to the Superintendent's designee. If the Superintendent of Insurance or the Superintendent's designee failed to receive a response to a requested criminal records check, or if the applicant failed to request the criminal records check, the Superintendent could refuse to issue a license. (R.C. 3905.05(A) and 3905.85(A).)

Under the act, each applicant must consent to a criminal records check and submit a full set of fingerprints to the Superintendent for that purpose. The Superintendent, then, rather than the applicant, must request the Superintendent of BCII to conduct a criminal records check based on the applicant's fingerprints. The Superintendent also must request that criminal record information from the Federal Bureau of Investigation (FBI) be obtained as part of the criminal records check. The act allows the Superintendent to receive criminal record information directly in lieu of the BCII that submitted the fingerprints to the FBI. (R.C. 3905.051(C), (D), and (F) and 3905.85(A)(2).)

Under the act, the Superintendent may contract for the collection and transmission of fingerprints, may agree to a reasonable fingerprinting fee to be charged by the contractor, and may order the fee for collecting and transmitting fingerprints to be payable directly to the contractor by the applicant. Under continuing law, any fee required in relation to the criminal records check must be paid by the applicant. (R.C. 3905.051(E).)

The act requires the Superintendent to treat and maintain an applicant's fingerprints and any criminal record information obtained by the required criminal records checks as confidential. The Superintendent must apply security measures consistent with the criminal justice information services division of the FBI standards for the electronic storage of fingerprints and necessary identifying information and limit the use of records solely to the purpose of criminal records checks. The fingerprints and any criminal record information are not subject to subpoena other than one issued pursuant to a criminal investigation, are confidential by law and privileged, are not subject to discovery, and are not admissible in any private civil action. (R.C. 3905.051(G).)

Under the act, only individuals applying for a resident license as an insurance agent or surety bail bond agent or applying for an additional line of authority under an

existing resident insurance agent license if a criminal records check has not been obtained within the last 12 months for insurance license purposes must consent to a criminal records check. Agents applying for renewal of an existing resident or nonresident license in Ohio are not required by the act to consent to a criminal records check. (R.C. 3905.08, 3905.051(H), and 3905.85.)

For purposes of criminal records checks, the act defines "fingerprint" as an impression of the lines on the finger taken for the purpose of identification. The impression may be electronic or converted to an electronic format. (R.C. 3905.051(B).)

## **Continuing education**

### **General requirements**

Law retained in part by the act requires each person who is issued a license as an agent to complete at least 20 hours of continuing education offered in a course or program of study approved by the Superintendent in consultation with the Insurance Agent Education Advisory Council. A person may complete continuing education requirements by demonstrating to the Council that the person has completed the minimum number of hours required in a substantially similar course or program of study offered in another state. Additionally, any person who teaches any approved course or program of study qualifies for the same number of classroom hours as would be granted to any person who takes and successfully completes that course or program.

The act requires 24 hours of continuing education, including at least three hours of approved ethics training. The act does not allow a person to meet those requirements in any course or program of study offered in another state or by teaching approved courses. (R.C. 3905.481 and 3905.484(D).)

Under former law, the person was required to complete the initial 20 hours of continuing education during a period not to exceed 24 months starting on the first day of January of the year immediately following the year of the issuance of the license and ending on the 31st day of December of the second year following the year of the issuance of the license. After that, the person was required to complete at least 20 hours of continuing education in every subsequent 24-month period starting on the first day of January and ending on the 31st day of December of the following year.

Under the act, the person must complete the continuing education requirements during the person's license renewal period. (R.C. 3905.481.) However, the act requires the Superintendent to establish a prorated phase-in schedule for the completion of continuing education requirements for the first license renewal period after the effective date of the act (Section 4).

Additionally, the act replaces the member of the Insurance Agent Education Advisory Council who is a representative of the Ohio Association of Life Underwriters with a representative of the National Association of Insurance and Financial Advisors-Ohio (R.C. 3905.483).

Under former law, the Superintendent had to suspend the license of a person that did not meet the continuing education requirements unless the Superintendent granted an extension. If the Superintendent granted an extension and the agent failed to meet the continuing education requirements within that time period, the Superintendent could revoke the person's license. The act repeals these provisions and instead includes continuing education as a requirement for the renewal of a license. (R.C. 3905.06 and 3905.482.)

### **Surety bail bond agents**

Under former law, each individual who was issued a license as a surety bail bond agent was required to complete, according to the continuing education requirements for agents described above, at least 14 hours of continuing education offered in a course or program of study related to the bail bond business that was approved by the Superintendent in consultation with the Insurance Agent Education Advisory Council. The act requires only *resident* surety bail bond agent licensees to comply with the continuing education requirements and instead of tying those requirements to the general agent requirements, the act requires that the resident surety bail bond agents complete the continuing education requirements in each license renewal period. The act also decreases the number of required hours to seven and requires that the course or program of study include at least one hour of approved ethics training.

Former law generally required the Superintendent to suspend or revoke the license of any surety bail bond agent who failed to complete the required continuing education. The act, instead, requires the Superintendent to not renew the license of such a licensee and removes an allowance for an extension of time in which to complete those requirements. (R.C. 3905.482(B), 3905.85(D), and 3905.88.)

## **Prohibitions**

### **Generally prohibited acts**

Law retained in part by the act lists reasons for which the Superintendent may suspend, revoke, or refuse to issue or renew the license of an insurance agent, assess a civil penalty, or impose any other sanction or sanctions authorized under the Insurance Agent Licensing Law. The act revises several of those reasons and adds five more. The

table below gives an overview of those revisions and additions. The table is not exhaustive and does not list the reasons unchanged by the act. (R.C. 3905.14(B).)

Former law	Under the act
Obtaining or attempting to obtain a license through misrepresentation or fraud*	Adds maintaining or attempting to maintain a license through misrepresentation or fraud*
Having been convicted of a felony*	Adds having pleaded guilty or no contest to a felony and adds that this expanded reason exists regardless of whether a judgment of conviction has been entered by the court*
Having been convicted of a misdemeanor that involves the misuse or theft of money or property belonging to another, fraud, forgery, dishonest acts, or breach of a fiduciary duty, that is based on any act or omission relating to the business of insurance, securities, or financial services, or that involves moral turpitude*	Adds having pleaded guilty or no contest to such a misdemeanor and adds that this expanded reason exists regardless of whether a judgment of conviction has been entered by the court*
Improperly using notes or any other reference material to complete an examination for an insurance agent license*	Adds improperly using equipment or devices of any kind*
Failing to comply with any administrative or court order directing payment of state income tax*	Failing to comply with any official invoice, notice, assessment, or order directing payment of federal, state, or local income tax, state or local sales tax, or workers' compensation premiums*
Having any professional license suspended or revoked as a result of a mishandling of funds or breach of fiduciary responsibilities or having been subject to a cease and desist order or permanent injunction for unlicensed activities*	Breaks into the following two reasons:  Having any professional license or financial industry regulatory authority registration suspended or revoked or having been barred from participation in any industry* Having been subject to a cease and desist order or permanent injunction related to mishandling of funds or breach of fiduciary responsibilities or for unlicensed or unregistered activities*
Causing or permitting a policyholder or applicant for insurance to designate the insurance agent or the insurance agent's spouse, parent, child, or sibling as the beneficiary of a policy or annuity sold by the insurance agent, unless the insurance agent or a relative of the insurance agent is the insured or applicant*	Expands this reason to include policies and annuities for which the agent, at any time, was designated as the agent of record*

Former law	Under the act
No provision	Causing or permitting a policyholder or applicant for insurance to designate the insurance agent or the insurance agent's spouse, parent, child, or sibling as the owner or beneficiary of a trust funded, in whole or in part, by a policy or annuity sold by the insurance agent or by a policy or annuity for which the agent, at any time, was designated as the agent of record, unless the insurance agent or a relative of the insurance agent is the insured or applicant*
Failing to provide a written response to the Department of Insurance within 21 calendar days after receipt of any written inquiry from the Department, unless a reasonable extension of time has been requested of, and granted by, the Superintendent*	Adds that the extension may be requested of and granted by the Superintendent's designee*
No provision	Failing to appear to answer questions before the Superintendent after being notified in writing by the Superintendent of a scheduled interview, unless a reasonable extension of time has been requested of, and granted by, the Superintendent or the Superintendent's designee*
Submitting or using a document in the conduct of the business of insurance when the person knew or should have known that the document contained the forged signature of another person*	Rather than referring to a forged signature, refers to a "writing that was forged" as defined under Ohio's Theft and Fraud Statute (R.C. 2913.01), which includes any computer software, document, letter, memorandum, note, paper, plate, data, film, or other thing having in or upon it any written, typewritten, or printed matter, and any token, stamp, seal, credit card, badge, trademark, label, or other symbol of value, right, privilege, license, or identification*
Misrepresenting the person's qualifications or using in any way a professional designation that has not been conferred upon the person by the appropriate accrediting organization*	Adds misrepresenting the person's status or relationship to another person, agency, or entity*
Obtaining a premium loan or causing a premium loan to be made to or in the name of an insured without that person's knowledge and written authorization*	Adds obtaining a policy surrender or causing a policy surrender to be made to or in the name of an insured or policy holder without the person's knowledge and written authorization*



Former law	Under the act
Soliciting, marketing, or selling any product or service that offers benefits similar to insurance but is not regulated by the Superintendent, without fully disclosing to the prospective purchaser that the product or service is not insurance and is not regulated by the Superintendent*	Removes "marketing" and adds "negotiating" any such product or service and specifies that the disclosure must be orally and in writing*
With respect to a surety bail bond agent license, rebating or offering to rebate, or unlawfully dividing or offering to divide, any commission*	Expands this reason to also include rebating or offering to rebate, or unlawfully dividing or offering to divide, any premium or fee*
No provision	In the case of a resident business entity, failing to be qualified to do business in Ohio, failing to be in good standing with the Secretary of State, or failing to maintain a valid appointment of statutory agent with the Secretary of State
No provision	In the case of a nonresident agent, failing to maintain licensure as an insurance agent in the agent's home state for the lines of authority held in Ohio
No provision	Knowingly aiding and abetting another person or entity in the violation of any insurance law of Ohio or the rules adopted under it

\* This violation is a class A offense. Continuing law details the actions that the Superintendent may take based upon which of the reasons was violated. The actions include a civil penalty, assessment of administrative costs, suspension of the license, permanent revocation of the license, refusal to issue or renew the license, a prohibition against being employed in any capacity in the business of insurance and from having any financial interest in any insurance agency, ordering corrective action, and accepting a surrender of license. Under continuing law, certain violations are class A offenses, and the Superintendent may impose any of the penalties listed. (R.C. 3905.14(D) and (F).)

Under continuing law, if an agent's license is surrendered, revoked, or suspended, all appointments held by the agent are void. Under the act, all appointments held by the agent also are void if the license is canceled or inactivated by request. If a new license is issued to that person or if that person's previous license is reinstated (the act adds renewed), any appointment of the person to represent an insurer must be made in accordance with the requirements of the law regulating insurance agents. Additionally, under the act, if an agent's license is surrendered, revoked, or canceled and the person wishes to apply for a new license, the person must apply as a new agent and must satisfy all requirements for a new agent license including, if applicable, submitting to a criminal records check. (R.C. 3905.16.)

## **Prohibitions for surety bail bond agents**

Under continuing law, certain persons and classes of persons are prohibited from acting as surety bail bond agents or employees of a surety bail bond agent or business including jailers, peace officers, court employees, and attorneys. Those persons or classes of persons are also prohibited from receiving any benefits from the execution of a bail bond, except as a principal. The act adds to that list: prisoners incarcerated in any jail, prison, or any other place used for the incarceration of persons; any person employed at an attorney's office; and judges. The act also clarifies that "peace officers" includes volunteer and honorary peace officers. (R.C. 3905.841.)

Additionally, the act prohibits surety bail bond agents and insurers from posting anything without using a bail instrument representing an insurer, to have a defendant released on bail on all types of set court bail, except for the following:

- (1) Cash court fees or cash reparation fees;
- (2) Ten per cent assignments;
- (3) Other nonsurety court bonds, if the agent provides full written disclosure and receipts and retains copies of all documents and receipts for not less than three years.

The act defines "instrument" as a fiduciary form showing a dollar amount for a surety bail bond. (R.C. 3905.932.)

## **Appointments by insurers**

Former law allowed insurers to appoint a person that was licensed as a surety bail bond agent by certifying to the Superintendent before the 30th day of June each year the names and addresses of the agents. Under the act, the insurer must file a notice of appointment with the Superintendent in the manner prescribed by the Superintendent. The act does not specify a date for that filing. (R.C. 3905.86.)

In addition to continuing law's \$20 fee for each agent and surety bail bond agent appointment by an insurer and each annual renewal of an agent or surety bail bond agent appointment by insurer, the act requires a fee of \$5 for each termination or expiration of an agent or surety bail bond agent appointment (R.C. 3905.20(B)(1), 3905.40(A)(8) and (9), 3905.86(B), and 3905.862).

## **Registering with a court**

Law retained in part by the act prohibits a surety bail bond agent from filing a bond in a court of Ohio unless the agent has registered with the clerk of that court, if

registration is required by the court, and the agent has registered with the clerk of the court of common pleas of the county in which the agent resides. The act removes the requirement that the agent be registered with the clerk of the court of common pleas of the county in which the agent resides. In addition to the copy of the agent's appointment required for registration with a court under continuing law, the act requires the agent to submit a copy of the agent's surety bail bond license and driver's license or state identification card. Rather than registering and filing a certified copy of a renewed power of attorney, the act requires each agent to renew the agent's registration with the court biennially by the first day of August of each odd-numbered year. (R.C. 3905.87.)

Additionally, the act requires the clerk of the court to make available a list of court-registered surety bail bond agents to the appropriate holding facility, jail, correction facility, or other similar entity within the court's jurisdiction annually not later than the first day of September. If an agent registers with a court after the last day of August, the court must add that agent to the list and make the updated list available to the appropriate holding facility, jail, correction facility, or other similar entity within the court's jurisdiction within 24 hours of the court's approval of that registration. (R.C. 3905.87.)

### **Appointment of solicitors by agent**

Former law allowed any property, casualty, personal, or title agent qualified and licensed, and appointed to represent one or more insurance corporations within Ohio, to appoint as many solicitors as the agent desired to represent the agent and the agent's agency. However, the solicitors could not represent themselves, by advertisement or otherwise, as agents of insurance companies for which their employer was the authorized agent, and the solicitors were required in all instances to represent themselves only as solicitors for the agent. To be eligible for appointment, a solicitor had to be qualified and licensed as a property, casualty, personal, or title agent under the Insurance Law and be familiar with the provisions of the policies and contracts of insurance the solicitor proposed to solicit. Under former law, an agent qualified and licensed to sell accident and health insurance could appoint a solicitor to solicit accident and health insurance only if both of the following applied:

(1) The solicitor was qualified and licensed as an accident and health insurance agent.

(2) The solicitor solicited only accident and health insurance products that were issued and underwritten by an insurer that was authorized to write accident and health insurance and that held a certificate of authority granted under R.C. 3929.01.

Additionally, a solicitor could solicit only those lines of insurance for which both the solicitor and the appointing agent were licensed, and no solicitor could be appointed by more than one agent. Unless the solicitor's license was revoked or suspended by the Superintendent, such appointment could, in the discretion of the Superintendent, and at the request of the agent who employed the solicitor and the payment of the required fee, be continued past the 30th day of June next after its issue and after the 30th day of June each succeeding year. Each agent was required to certify to the Superintendent, before the 30th day of June each year, the names and addresses of the solicitors the agent had employed during the preceding year, indicating those for whom the agent wished appointments to be continued. The agent giving written notice was required to pay to the Superintendent a fee of \$20 for every such appointment and for each continuance. The issuance of a solicitor's appointment was limited to a natural person.

The act repeals all of the above requirements. (R.C. 3905.10.)

### **Rules adopted by the Superintendent**

Continuing law allows the Superintendent to adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.) to establish procedures for the issuance and renewal of insurance agent licenses. The act also allows the Superintendent to adopt rules to establish procedures for late renewal, extension, reactivation, and reinstatement. Continuing law also allows the Superintendent to adopt rules in accordance with the Administrative Procedure Act to provide for the issuance of limited authority licenses, and establish any prelicensing education, examination, or continuing education requirements the Superintendent considers appropriate for such licenses. The act expands these rules to apply to the renewal of those licenses. (R.C. 3905.12.)

Continuing law requires insurance companies doing business in Ohio to pay certain fees including a \$175 fee for filing each statement, a \$175 fee for each certificate of authority or license and a \$5 fee for each certified copy of that certificate or authority or license, and a \$60 fee for issuing certificates of compliance or certified copies of a certificates of compliance (R.C. 3905.40). Seventy per cent of the fees specifically listed here must be credited to the Department of Insurance Operating Fund. The remaining 30% must be credited to the General Revenue Fund. (R.C. 3901.021(B).) The act additionally allows the Superintendent to adopt rules to establish a schedule of fees to be paid to the Superintendent for extensions, late renewals, reinstatements, and reactivations of a license and for credit card payments, electronic processing service, and manual processing service. The act requires that fees collected under this authority and all of the current fees required under section 3905.40 of the Revised Code except those specifically listed above be credited to the Department of Insurance Operating

Fund. However, the act maintains existing law's distribution of those fees specifically listed above. (R.C. 3901.021, 3905.12, and 3905.40.)

## **Fees**

The act specifies that all fees collected by the Superintendent under R.C. 3905.40, with the exception of a few, must be credited to the Department of Insurance Operating Fund. The fees that must be so credited include fees for filing charters and issuing certificates of deposit, administrative fees, and agent appointment and termination fees. The fees for filing a statement, for issuing certificates of compliance, and for each certificate of authority or license are excluded from this crediting requirement; instead, under continuing law 70% of these fees are credited to the Department of Insurance Operating Fund, with the remaining 30% credited to the General Revenue Fund. (R.C. 3901.021(B) and 3905.40(F).)

## **Taxes**

### **Foreign insurers tax**

Under law retained in part by the act, with certain exceptions, every insured association, company, corporation, risk retention group, or other person that enters into any agreements, either directly or through a surplus lines broker, with any insurance company, association, individual, firm, underwriter, or Lloyd's, not authorized to do business in Ohio ("foreign insurer"), to procure, continue, or renew insurance covering subjects resident in Ohio must do both of the following annually on or before the 31st day of January: (1) return to the Superintendent of Insurance a form containing certain business activity and premium collections information and (2) pay to the Treasurer of State (for deposit into the GRF) a tax equal to 5% of the gross premium, fee, assessment, dues, or other consideration for the insurance. The act moves the due date to on or before the 31st day of March but maintains the current reporting period. (R.C. 3905.36 and 3960.03.)

### **Franchise tax**

Under continuing law, each domestic insurance company must pay an annual franchise tax on the privilege of being an insurance company. For a domestic insurance company that is a health insuring corporation, and for the health insuring corporation line of business of a domestic insurer that is not a health insuring corporation, that tax is equal to 1% of all premium rate payments received. A domestic insurance company that is not a health insuring corporation must pay a franchise tax equal to 1.4% of the gross amount of premiums received from policies covering risks within Ohio. (R.C. 5725.18.)

Excluded from calculation of the tax for all of those entities are payments received under the Medicare program established under Title XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 301, as amended. A domestic insurance company that is a health insuring corporation and a domestic insurance company that is not a health insuring corporation can also exclude from the tax calculation payments received pursuant to the Medical Assistance Program (Medicaid) for the period ending September 30, 2009. The act permits this latter exclusion to apply to the health insuring corporation line of business of a domestic insurance company that is not a health insuring corporation. (R.C. 5725.18.)

## **OHC plans**

Under former law, the Board of Directors of the Ohio Health Reinsurance Program had the authority to design the OHC plans. OHC, or Ohio Health Care, plans include the basic, standard, or carrier reimbursement plan for small employers and individuals established. Those plans were required to be designed by the Board in accordance with statutorily specified criteria.

The act removes the Board's authority to design the OHC plans and instead gives the Superintendent of Insurance the authority to adopt or amend the OHC plans in accordance with the Administrative Procedure Act (R.C. Chapter 119.). The Board can make recommendations to the Superintendent regarding the design of the OHC plans under the act. The Superintendent can consider those recommendations, plus the recommendations of the Ohio Health Care Coverage and Quality Council.

The act specifies that prior to adopting any rule that makes changes to the OHC basic or standard plan, the Superintendent must conduct an actuarial analysis of the cost impact of the proposed rule. The OHC plans in effect as of June 1, 2009, remain in effect until those plans are amended or new plans are adopted in accordance with the act. (R.C. 3924.01, 3924.09, and 3924.10.)

## **Required filings**

### **RBC report**

Under continuing law, each domestic insurer must annually prepare and submit to the Superintendent of Insurance and the National Association of Insurance Commissioners (NAIC) a report on its risk-based capital, or RBC, levels. This report must be in a form and contain such information as is required by the RBC instructions. (R.C. 3903.82.) RBC instructions are adopted and amended by the NAIC in accordance with procedures adopted by the NAIC. Under former law, no NAIC amendment to the RBC instructions could become effective until the Superintendent of Insurance adopted by rule the RBC instructions as amended. The act removes that provision, allowing

NAIC amendments to the RBC instructions to become effective upon adoption by the NAIC. (R.C. 3903.81(M).)

### **RBC plans**

Continuing law also requires domestic health insuring corporations and foreign and domestic insurers to prepare and submit to the Superintendent of Insurance an RBC plan when there is a "company action level event." A "company action level event" occurs when an insurer's RBC report or adjusted RBC report indicates that the insurer's total adjusted capital is greater than or equal to its regulatory action level RBC but less than its company action level RBC. For a life or health insurer, a company action level event also occurs when the RBC report indicates that the insurer's total adjusted capital is greater than or equal to its company action level RBC but less than the product of 2.5 and its authorized control level RBC, and that indicates a negative trend.

The act adds to the definition of "company action level event" a health insuring corporation or property and casualty insurer filing an RBC report that indicates that the insurer's total adjusted capital is greater than or equal to its company action level RBC but less than the product of its authorized control level RBC and 3.0, and that triggers the trend test determined in accordance with the trend test calculation included in the RBC instructions. This addition to the definition takes effect January 1, 2012, for year-end 2012 results. (R.C. 1753.33 and 3903.83 and Section 7.)

### **Annual statement of the condition of the company**

Under continuing law, each insurance company organized under the laws of this or any other state and doing business in this state must annually prepare and deposit with the Superintendent of Insurance a statement of the condition of the company. The statement must contain certain items, including (1) the amount of the capital stock of the company, specifying the amount paid and unpaid, (2) a detailed statement of all the assets of the company and the manner of their investment, (3) the liabilities of the company, (4) the income of the company during the preceding year, and (5) the expenditure during the preceding year. As part of the statement concerning the liabilities of the company, under former law, the insurance company was required to file a statement, approved by the Superintendent, from a member of the American Academy of Actuaries certifying that the loss and loss adjustment reserves established for medical malpractice business, as reported in the statutory annual statement, were computed in accordance with accepted loss reserving standards and were fairly stated in accordance with sound loss reserving principles. The act removes the requirement that this statement be included. (R.C. 3929.30(C)(9).)

Former law also required each property and casualty insurer that had annual total direct premiums written in Ohio of \$5 million or more to submit another report, pursuant to rules adopted by the Superintendent, containing all of the following data for each line of insurance: (1) direct premiums written, (2) direct premiums earned, (3) net investment income, (4) incurred claims, (5) incurred expenses, (6) net underwriting gain or loss, (7) net operation gain or loss, including net investment income, and (8) dividends paid to policyholders. The act removes this reporting requirement in its entirety. (R.C. 3929.301.)

## **Health insuring corporations**

Under continuing law, a health insuring corporation has to provide its subscribers with a description of the health insuring corporation, its method of operation, its service area, its most recent provider list, its complaint procedure, and a description of its utilization review, internal review, and external review processes. Formerly, this information was required to be provided by mail unless the subscriber requested the information by electronic means or approved such receipt.

The act removes the requirement that a health insuring corporation provide this information by mail and instead permits the health insuring corporation to satisfy the information requirements by delivering to its subscribers a document that identifies a web site where the subscriber may view the information. If a subscriber requests a hard copy of the information, however, the act requires the health insuring corporation to provide a hard copy of the information to that subscriber by mail. (R.C. 1751.33.)

## **The Ohio Life and Health Insurance Guaranty Association**

Under continuing law, the Ohio Life and Health Insurance Guaranty Association provides coverage for annuity contracts and policies for certificate or contract owners or holders, or beneficiaries, assignees, or payees of such persons. Formerly, the benefits for which the Association could become liable could not exceed either (1) the contractual obligation for which the insurer is liable or would have been liable if it were not an impaired or insolvent insurer or (2) \$100,000 in the present value of annuity benefits, whichever was less. The amendment increases the dollar amount provided to \$250,000, meaning that the Association may be liable for up to that amount if the contractual obligation is more. (R.C. 3956.04.) This change does not apply to any liability incurred by the Association from an insurer that is impaired or insolvent on the act's effective date (Section 8).

## **Health insurance continuation coverage**

Continuing law requires group health insurance contracts and policies issued by health insuring corporations and sickness and accident insurers to provide that an

eligible employee may continue coverage under the contract or policy for a period of 12 months after loss of employment. The act provides that, notwithstanding that extended coverage, group health insurance contracts and policies issued on or after the act's effective date and until the last loss-of-employment date for which the federal government is subsidizing continuation coverage must provide that an eligible employee can continue the coverage under the contract or policy for the length of time for which the employee is eligible for federal continuation coverage premium subsidies. That time cannot exceed 15 months after the loss of employment. Expiration of the subsidized period or 15 months, whichever occurs first, ends the employee's privilege to continue coverage and ends any coverage being continued under the act.

The act defines an eligible employee as one who is an eligible employee under continuing law's extension of coverage discussed above but adds that the term only includes those individuals who are eligible for continuation coverage premium subsidies from the federal government. (Sections 9 and 10.)

### **Effective date**

The act declares an emergency and takes immediate effect. However, the act also provides that the changes relating to codified law take effect on the 90th day after the act's effective date (Sections 3 and 11). The Superintendent of Insurance also can further delay the implementation and enforcement of certain provisions of the act as discussed below.

The Superintendent of Insurance may delay the implementation and enforcement of many of the provisions and repeals of the act until the earlier of January 1, 2011, or 30 days after the Superintendent determines that the Department of Insurance is able to implement those requirements and places a notification of that determination on the Department's web site. The web site notice must include the date the delayed changes will take effect. The act requires the Superintendent to continue to enforce the previous requirements, as they existed immediately prior to the effective date of the act, until the Superintendent implements requirements amended, enacted, or repealed by this act. The provisions of the act that cannot be delayed by the Superintendent include those regarding the franchise tax, OHC plans, RBC reports, continuation of health insurance coverage, the Ohio Life and Health Insurance Guaranty Association, health insuring corporations, and the required annual statement. (Section 6.)

Additionally, for the time period beginning on the act's effective date and ending upon the Superintendent's implementation and enforcement of R.C. 3905.40, each applicant for licensure as an insurance agent except applicants for licensure as surety bail bond agents and surplus line brokers must pay \$10 for each line of authority

requested. These fees collected must be credited to the Department of Insurance Operating Fund. (Section 5.)

### Other

The act makes additional technical, conforming, and nonsubstantive changes (R.C. 3901.021, 3905.041(A)(2), 3905.061(B), 3905.07(A)(3), 3905.071(A)(2), 3905.20(B)(1), 3905.40(A)(8), 3905.41, and 3905.85(A)).

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## HISTORY

ACTION	DATE
Introduced	10-06-09
Reported, H. Insurance	11-05-09
Passed House (97-1)	12-01-09
Reported, S. Insurance, Commerce & Labor	02-24-10
Passed Senate (33-0)	02-24-10
House concurred in Senate amendments (97-0)	02-24-10

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