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Sens. Hite, Beagle, Bacon, Brown, Hughes, Lehner, Peterson, Seitz

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ACT SUMMARY

Fraternal benefit societies

- Adds "fraternal benefit society" to the definition of "life or health insurer" for the purpose of the law regarding risk-based capital for insurers, and subjects fraternal benefit societies to risk-based capital requirements in continuing law.
- Requires a fraternal benefit society to provide evidence specifically related to its compliance with surplus requirements when applying for a certificate of authority from the Superintendent of Insurance (Superintendent).
- Specifies surplus requirements for fraternal benefit societies offering various contractual benefits, but delays implementation of those requirements until January 1, 2016.
- Requires a fraternal benefit society that provides certain medical coverage and has assets of less than \$5 billion to reinsure at least 50% of the risk arising from the offered coverage if the society's risk-based capital is less than 300%.
- Requires the board of directors or other corresponding body of a fraternal benefit society to provide 30 days notice to the Superintendent if the society plans to impose indebtedness on any of its members upon deficiency of funds.
- Requires that a fraternal benefit society provide a disclosure statement at the time of application and specifies what information must be included in that disclosure.

- Expressly subjects the authority of a fraternal benefit society to open one or more separate accounts and issue contracts on a variable basis to the law applying to contracts providing variable or variable and fixed or contractual payments.
- Makes a fraternal benefit society liable for the payment of any additional expense resulting from unreasonable delays by the society in fulfilling a request for documents or information by a financial examiner during a financial examination.
- Provides that any agent of a fraternal benefit society who sells an annuity contract is subject to the licensing requirements of insurance company agents under continuing law.
- Allows a domestic fraternal benefit society to choose its legal agent as long as certain criteria are met, and does not require the society to retain the Superintendent as its appointed legal agent.
- Replaces the requirement for a foreign or alien fraternal benefit society to file a power of attorney to the Superintendent with a requirement that the society file a written appointment of an agent.
- Replaces the prior process for notice and correction of a deficiency by a domestic fraternal benefit society with the continuing process for notice, hearing, rehabilitation, and liquidation of a domestic insurance company.
- Replaces the prior process for notice and correction of deficiency by a foreign or alien fraternal benefit society with the continuing process for notice and hearing on a deficiency for a foreign or alien insurance company.
- Delays the effective date of most fraternal benefit society provisions of the act until January 1, 2013.

Investments

- Expands the type of ownership interest an insurance company may purchase in another company to include limited partnership interests and limited liability partnership interests in specified types of entities.
- Adds to the types of companies in which an insurance company may hold ownership interest to include an entity created for the purpose of acquiring or holding an asset or liability for bankruptcy remoteness or limitation of liability.
- Increases from 10% to 15% the amount of the admitted assets of an insurance company other than a life insurance company may invest in investments denominated in foreign currency.

Adverse benefit determinations

- Removes Medicare supplements, Medicare, and Tricare from those types of benefit plans excluded from the definition of "health benefit plan" for the purposes of adverse benefit determinations.
- Excludes from the definition of "health benefit plan" for the purposes of adverse benefit determinations supplemental coverage, as described in section 3923.37 of the Revised Code (a supplemental sickness and accident policy).
- Replaces the definition of "rescission" with a definition of "rescind."
- Clarifies that a request for a standard external review may be made electronically.
- Removes the requirement that a written confirmation of an oral request for an expedited external review must be submitted to a health plan issuer within five days after the oral request is made.
- Specifies that a person whose ability to regain maximum function could be jeopardized by the time required to complete an internal appeal is eligible for an external review prior to completing the internal review.
- Requires that an expedited external review be completed within 72 hours after the request for the review has been received, as opposed to after the external review has been assigned.
- Restricts the requirement that a clinical reviewer assigned to an external review be an expert in the requested treatment to those requests for an experimental or investigational review.

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CONTENT AND OPERATION

Fraternal benefit societies subject to risk-based capital law requirements

The act adds "fraternal benefit society" to the definition of "life or health insurer" for the purpose of the law regarding risk-based capital for insurers.¹ The change subjects a fraternal benefit society to the same requirements as other life or health insurance companies with regard to risk-based capital (RBC).

Brief overview of continuing risk-based capital law

Continuing law with regard to RBC requires a domestic insurer to provide an annual report to the Superintendent of Insurance (Superintendent) and other regulators on the insurer's RBC levels using a standardized formula to determine those levels. For a life or health insurer, and therefore a fraternal benefit society, the RBC formula takes into account asset risk, insurance risk, interest rate risk, and all other relevant business risks.² Continuing RBC law also requires each insurer to submit an RBC plan to the Superintendent if a company action level event occurs. A company action level event occurs when the insurer's total adjusted capital exceeds specified levels. The RBC plan

¹ R.C. 3903.81(G).

² R.C. 3903.82 (not in the act).

is a comprehensive financial plan that provides financial projections as to operating income, net income, capital, and surplus, identifies potential problems with regard to RBC levels, and addresses solutions to those problems.³

Under continuing law, the Superintendent can take action against an insurer based upon the insurer's status within a range of RBC levels, including requiring an insurer to submit a revised RBC plan or placing the insurer under regulatory control.⁴

An insurer can challenge any determination or action taken by the Superintendent through a hearing process. Hearings are private unless the insurer requests a public hearing.⁵

Granting of certificate of authority

Continuing law requires that a fraternal benefit society present satisfactory evidence to the Superintendent of Insurance that the society has complied with all applicable provisions of law before the Superintendent of Insurance grants the fraternal benefit society a certificate of authority. The certificate authorizes the fraternal benefit society to transact business in the State of Ohio, pursuant to the applicable provisions of continuing law governing the practices of fraternal benefit societies.⁶

The act adds a requirement that the fraternal benefit society provide evidence to the Superintendent that is specifically related to the society's compliance with the surplus requirements created in the act before a certificate of authority may be granted.⁷

Surplus requirements

The act specifies the required surplus for fraternal benefit societies offering the various contractual benefits listed in the chart below, but delays the implementation of the surplus requirements for all benefit categories until January 1, 2016.

³ R.C. 3903.83 (not in the act).

⁴ R.C. 3903.84 to 3903.86 (not in the act).

⁵ R.C. 3903.87 (not in the act).

⁶ R.C. 3921.10.

⁷ R.C. 3921.10(E).

| Benefits offered | Benefit amount provided | Surplus requirement |
|--|--------------------------------|----------------------------|
| Death | \$10,000 or less | \$500,000 |
| Death | Greater than \$10,000 | \$2,500,000 |
| Endowment | \$10,000 or less | \$500,000 |
| Endowment | Greater than \$10,000 | \$2,500,000 |
| Annuity | \$10,000 or less | \$500,000 |
| Annuity | Greater than \$10,000 | \$2,500,000 |
| Temporary or permanent disability | Any | \$2,500,000 |
| Hospital, medical, or nursing | Any | \$2,500,000 |
| Monument or tombstone for deceased members | Any | \$500,000 |
| Any other with prior approval of the Superintendent of Insurance | Any | \$2,500,000 |

The surplus requirements described above are not cumulative: a fraternal benefit society with a surplus of at least \$2,500,000 satisfies the surplus requirements of the act.⁸

Reinsurance of risks

Continuing law allows a domestic fraternal benefit society to cede any individual risks, in whole or in part, to another insurer by way of a reinsurance agreement. The reinsuring insurer must have the ability to reinsure the society and must be authorized to transact insurance business in Ohio. In lieu of authorization to transact insurance business in Ohio, the Superintendent may approve the reinsurer. A fraternal benefit society is also prohibited from reinsuring substantially all of its total risk without written permission from the Superintendent.⁹

The act requires a fraternal benefit society that provides major medical, Medicare supplemental, or long term care coverage and has assets of less than \$5 billion to reinsure at least 50% of the risk arising from the offered coverage if the society's risk-based capital is less than 300%.¹⁰

⁸ R.C. 3921.101.

⁹ R.C. 3921.13(A).

¹⁰ R.C. 3921.13(C).

Imposition of indebtedness upon deficiency of funds

Continuing law requires a fraternal benefit society to issue a certificate specifying the amount of benefits that each owner of a benefit contract is provided under the contract. The benefit contract is comprised of the aforementioned certificate, any riders or endorsements attached to the certificate, the laws of the society, the application for membership, the application for insurance and declaration of insurability signed by the applicant, and all amendments to any of the documents.¹¹ The board of directors or a corresponding body may require each owner of a class of certificates to pay an equitable proportion of any deficiency in funds if the society's reserve with regard to that class of certificates becomes impaired. In such a case, the board determines the amount that each owner is required to pay. If an owner is required to, but fails to, pay, either of the following may apply:

- The owner's debt to the society stands as an indebtedness against the owner's certificate and draws interest at a rate not exceeding the rate specified under the certificate for certificate loans.
- In lieu of, or in combination with, the first option, the owner accepts a proportionate reduction in benefits under the certificate.¹²

Under the act, if a society decides to impose any indebtedness on a certificate owner as described above, the board of directors or corresponding body must notify the Superintendent in writing at least 30 days prior to imposing that indebtedness. The notification must include the board's intent to require payment by the certificate owner and a statement of the reason why the request for payment is necessary. Pursuant to the act, that submission is confidential and not subject to a public records request.¹³

Required benefit contract disclosure

The act requires a fraternal benefit society to provide a disclosure statement to each applicant for insurance at the time of sale that must be signed by the applicant and maintained in the certificate or contract file by the fraternal benefit society. The disclosure requirement applies only to business written after the act's effective date. The disclosure statement may be part of the society's membership application or certificate or policy application.

¹¹ R.C. 3921.19(A).

¹² R.C. 3921.19(D).

¹³ R.C. 3921.19(E).

The disclosure must substantially include all of the following information:

- The name of the fraternal benefit society;
- The tax status of the society;
- A statement that the society is not included in the Ohio Insurance Guaranty Association, and is responsible for its own solvency;
- A disclosure that a certificate holder may be assessed a proportionate share of any impairment of reserves, should one occur;
- A statement that the process for assessment in the case of impairment is described in the certificate issued by the society.¹⁴

Authority to establish separate accounts

Continuing law permits a society to establish and operate one or more separate accounts and issue contracts on a variable basis, pursuant to resolution by its governing body and subject to the provisions of continuing law regulating life insurers that establish separate accounts and issue contracts on a variable basis.

The act explicitly subjects this authority to the law applying to contracts providing variable or variable and fixed or contractual payments.¹⁵

Examination of a society's financial affairs by the Superintendent

Continuing law provides that each fraternal benefit society and each applicant for incorporation as a domestic fraternal benefit society is subject to examination by the Superintendent with regard to the society's financial affairs. The examination occurs before a license is issued and generally at least once every three years thereafter.¹⁶

The act provides that a society is liable for the payment of any additional expense resulting from unreasonable delays by the society in fulfilling a request for documents or information by the examiner conducting the financial examination. A delay is considered unreasonable if the examiner has made two unfulfilled requests for particular documents or information. A request is considered unfulfilled if the documents or information are not produced by the society within ten days of receiving the request. In the event of an alleged unreasonable delay by a fraternal benefit society,

¹⁴ R.C. 3921.191.

¹⁵ R.C. 3921.22(C).

¹⁶ R.C. 3921.28(A)(1).

the financial examiner notifies the Superintendent who then arranges a hearing to determine whether the delay was in fact unreasonable and, if so, what expense was incurred by the Superintendent as a result of the unreasonable delay.¹⁷

Licensing requirement of agent making sales within a fraternal benefit society

Continuing law requires that agents of fraternal benefit societies be licensed in the same manner as agents of insurance companies, and are subject to the same continuing education requirements as agents of insurance companies.¹⁸ However, an agent of a fraternal benefit society who devotes, or intends to devote, less than 50% of the agent's time to the solicitation and procurement of insurance contracts is exempt from the licensing requirement, but, the agent is presumed to have met the 50% requirement if in the preceding year the agent received a commission or other compensation for the solicitation and procurement of any of the following insurance contracts:

- Life insurance contracts exceeding \$200,000 in the aggregate for all lives insured;
- A permanent life insurance contract offering more than \$10,000 in coverage on a single life;
- A term life insurance contract offering more than \$50,000 in coverage on a single life;
- Any other insurance contracts that insure the lives of more than 25 individuals;
- Any contract issued on a variable basis.¹⁹

The act provides that any agent of a fraternal benefit society who sells an annuity contract is subject to the licensing requirements of insurance company agents under continuing law, regardless of whether the agent devotes less than 50% of the agent's time to those sales.²⁰

¹⁷ R.C. 3921.28(A)(2).

¹⁸ R.C. 3921.33(A).

¹⁹ R.C. 3921.33(B)(2).

²⁰ R.C. 3921.33(C).

Appointment of legal agent – domestic fraternal benefit society

Former law

Former law required each authorized domestic fraternal benefit society to appoint the Superintendent and each successor of the Superintendent to be its true and lawful attorney upon whom all lawful process in any action or proceeding against it is to be served. The society must agree that any lawful process against it that is served on the Superintendent as its attorney has the same legal force and validity as if served upon the society, and that the authority continued in force so long as any liability remained outstanding in Ohio. Any legal process served upon the society was to be served upon the Superintendent or the person in charge of the Superintendent's office. Under former law, copies of the appointment certified by the Superintendent were considered to be sufficient evidence of the appointment.²¹

New requirements under the act

The act maintains the requirement that a society have an agent upon who may be served any process, notice, or demand directed at the society. However, the act does not require that agent to be the Superintendent. The society may choose an agent that is either an Ohio resident or a corporation licensed to do business in Ohio if the corporation is authorized by its articles of incorporation to act as an agent. If the society chooses a corporation, the corporation must have a business address in Ohio. The agent is not required to be a licensed insurance agent.²²

Appointment of agent

The appointment of the agent is in a form that the Superintendent prescribes and may include a consent to service of process. The form also includes the name and complete address of the agent. If the agent changes their address, the society must immediately inform the Superintendent of the change and submit the agent's new address along with a \$5 fee. If the agent of a fraternal benefit society dies, resigns, or moves out of state, the society must immediately appoint another agent and submit that appointment to the Superintendent and must pay the same \$5 fee. The Superintendent is responsible for keeping a record of all fraternal benefit societies doing business in Ohio and their respective agents.²³

²¹ R.C. 3921.35 (version repealed by the act).

²² R.C. 3921.35(A) (as re-enacted in the act).

²³ R.C. 3921.35(B) to (D) and (J).

Service of process

Any process, notice, or demand that is to be served upon a fraternal benefit society may be served directly to the society's agent. If the agent cannot be found, or if the society has not maintained an agent, the process may be served upon the Superintendent along with an affidavit stating why the process was not served upon an agent of the applicable fraternal benefit society. In such a case, the Superintendent acts as the agent of the society in handling the process, and notifies the society by regular mail that it has been served along with a copy of the process, notice, or demand, at which time service is deemed complete. The Superintendent is responsible for keeping a record of each process, notice, or demand delivered to the Superintendent's office. The act specifies that it does not limit or affect the right of any party to serve any process, demand, or notice on a fraternal benefit society in any legal manner.²⁴

Resignation of agent

An agent may resign by filing a signed, written notice with the Superintendent and sending a copy of that notice to the current or last known address of the fraternal benefit society that had appointed the agent. The written notice must contain the society's name, current or last known address of the society, name and address of the agent, resignation of the agent, a statement that the notice was sent to the society, and the date. The agent's authority to represent the society expires 30 days following the filing of a resignation notice with the Superintendent.²⁵

Revocation of appointment

A fraternal benefit society may revoke the appointment of an agent by filing a written notice with the Superintendent. Simultaneously, the society must appoint another agent and include a \$5 fee with that submission. The agent whose authority is revoked ceases to represent the society 30 days after the notice is filed.²⁶

Failure to appoint or maintain agent

If a fraternal benefit society fails to appoint or maintain an agent, or to notify the Superintendent if the agent changes addresses, the Superintendent will notify the society by certified mail of that failure. The society has 30 days from the date of the mailing to remedy the situation. The Superintendent may grant additional time. If the society does not remedy the situation within the allotted time, the Superintendent must

²⁴ R.C. 3921.35(G) to (I).

²⁵ R.C. 3921.35(E).

²⁶ R.C. 3921.35(F) and (J).

fine the society between \$25 and \$200 per violation. The Superintendent may also charge the society a \$50 fee for each time that the Superintendent is required to act as the society's agent due to the society's failure to appoint, maintain, or provide an accurate address for its appointed agent.²⁷

Moneys collected

All money collected by the Superintendent related to these requirements is deposited into the Department of Insurance Operating Fund.²⁸

Appointment of legal agent – foreign or alien society

Continuing law prohibits a foreign or alien fraternal benefit society from transacting business in Ohio without a license issued by the Superintendent. Among other requirements to obtain a license, prior law required a foreign or alien society to file a power of attorney to the Superintendent.

The act replaces the requirement to file a power of attorney with a requirement that a foreign or alien fraternal benefit society file a written appointment of an agent as described above under "**Appointment of legal agent – domestic fraternal benefit society**."²⁹

Notice and correction of deficiency – domestic fraternal benefit society

Notice

Under law unchanged by the act, the Superintendent must issue a written notice if a domestic fraternal benefit society has done any of the following:

- Exceeded its power;
- Failed to comply with any provision of applicable law;
- Has a membership of less than 400 after being in existence for a year;
- Is not fulfilling its contracts in good faith;
- Is conducting its business in a fraudulent or hazardous manner.

²⁷ R.C. 3921.35(K).

²⁸ R.C. 3921.35(L).

²⁹ R.C. 3921.29.

The notice describes the deficiency and the reason for the Superintendent's dissatisfaction. The society is required to correct the deficiency within 30 days of receipt of the notice.³⁰

Correction and hearing – prior law

Under prior law, if the society failed to correct the deficiency within the 30-day period, the Superintendent notified the society of its failure and gave the society time to show cause as to why the society should not be prevented from carrying on its business until the deficiency is corrected, or why an action in quo warranto (an action to prevent the continued exercise of authority unlawfully asserted) should not be commenced against the society.

If the Superintendent was not satisfied by the society's response, prior law permitted the Superintendent to present the facts to the Attorney General. Under prior law, the Attorney General was permitted to commence an action to enjoin the society from transacting business or in quo warranto.³¹ Actions for deficiencies were required to be brought by the Attorney General upon request of the Superintendent to be valid, but members of a society were permitted to bring a civil action against the society for any dispute not based on the Superintendent's exercise of authority.

If an action was commenced, the appropriate court notified the society officers of a hearing. If after the hearing, it appeared that the society should be enjoined, liquidated, or have a receiver appointed, the court entered the necessary order. If the court appointed a receiver for a domestic society, the receiver was the Superintendent.

If a society was enjoined, the society could not transact business until the Superintendent found that the deficiency had been corrected, the costs of the action commenced against the society had been paid if necessary, the court had dissolved its injunction, and the Superintendent had reinstated the society's certificate of authority. If the court ordered that the society be liquidated, the society was enjoined from carrying on any further business. The appointed receiver took immediate possession of the assets of the society, and, under the direction of the court, closed the affairs of the society and distributed its funds to any entitled persons.³²

³⁰ R.C. 3921.30.

³¹ R.C. 3921.30.

³² R.C. 3921.30.

Changes under the act

The act replaces the prior law process for enjoinder, hearing, and liquidation of a fraternal benefit society with the continuing process for notice, hearing, rehabilitation, and liquidation of a domestic insurance company.³³

Notice and supervision

Under the continuing law process that the act adopts for fraternal benefit societies, the Superintendent may provide written notice to a domestic insurer if the Superintendent has reasonable cause to believe that the insurer is acting in such a way as to render the continuance of its business hazardous to the public or to holders of its policies or certificates of insurance. With regard to fraternal benefit societies, the umbrella of "hazardous practices" appears to be in addition to the deficiencies described in the continuing fraternal benefit societies law. At the time of notice, the Superintendent must provide a written list of the Superintendent's requirements to abate the deficiency.³⁴

The Superintendent may decide to supervise the insurer during the abatement process. If so, the Superintendent may appoint a supervisor. The order appointing the supervisor may also prohibit an insurer from taking any of the following actions during the supervisory period:

- Disposing of, conveying, or encumbering any of its assets or its business in force;
- Withdrawing from any of its bank accounts;
- Lending any of its funds;
- Investing any of its funds;
- Transferring any of its property;
- Incurring any debt, obligation, or liability;
- Merging or consolidate with another company;
- Entering into any new reinsurance contract or treaty.³⁵

³³ R.C. 3921.30 and R.C. 3903.01 to 3903.59 (not in the act).

³⁴ R.C. 3903.09(B) (not in the act).

³⁵ R.C. 3903.09(C) (not in the act).

Any insurer placed under supervision has 60 days from the date the supervision order is served to comply with the requirements of the Superintendent. If the insurer does not comply within that time, the Superintendent may commence proceedings to have a rehabilitator or liquidator appointed, or may extend the period of supervision. Upon complaint or motion of the Superintendent, the Court of Common Pleas may issue a temporary restraining order, a preliminary injunction, a permanent injunction, or any other orders as the court considers necessary and proper to enforce a supervision order.³⁶

During the supervisory period, the insurer may request the Superintendent to review any action taken or proposed to be taken by the supervisor, on the grounds that the action would not be in the best interest of the insurer.³⁷

If the Superintendent has reasonable cause to believe that a supervision order has been violated, the Superintendent may request the Attorney General to take any appropriate action against the insurer to recover a civil penalty of no more than \$10,000.³⁸

Hearing

If an insurer receives a notice from the Superintendent with a request to abate an alleged delinquency or deficiency, the insurer may request a hearing to review that request. Unless mutually agreed between the Superintendent and the insurer, the hearing shall occur between 10 and 30 days after notice of the hearing is served. The hearing will take place either in Franklin County or in some other place convenient to the parties designated by the Superintendent. The hearing is private unless the insurer requests a public hearing.³⁹

A request for a hearing does not stay the Superintendent's request for abatement of a delinquency or deficiency by an insurer. If an insurer wants, the insurer can waive an administrative hearing and immediately initiate a judicial hearing.⁴⁰

³⁶ R.C. 3903.09(D) and (I) (not in the act).

³⁷ R.C. 3903.09(G) (not in the act).

³⁸ R.C. 3903.09(H) (not in the act).

³⁹ R.C. 3903.09(E) (not in the act).

⁴⁰ R.C. 3903.09(F) (not in the act).

At any time, and without regard to the status of any administrative or judicial proceeding, the Superintendent may initiate a rehabilitation or liquidation proceeding.⁴¹

Rehabilitation

The process provides for the rehabilitation of an insurer, in formal judicial proceedings by the Superintendent, if any of the following conditions are present:

- The insurer's condition is financially hazardous;
- Illegal conduct threatens the insurer's solvency;
- The insurer is found to be in control by dishonest individuals;
- The insurer has been found to have willfully violated insurance laws;
- The insurer has failed to pay its debts, or has systemically attempted to compromise them on grounds of insufficient assets;
- The insurer's property has been seized by judicial action;
- The insurer has sold its business or changed its business form without the consent of the Superintendent;
- The insurer has failed to explain the failure to file reports required by law.⁴²

The Superintendent, acting as rehabilitator, is permitted, with the approval of the court, to carry out a plan for the reorganization, consolidation, conversion, merger, or other transformation of the insurer.⁴³

Liquidation

If an insurer is found to be insolvent or if continuance of its business would be hazardous to its policyholders, creditors, or the public, liquidation of the insurer is permitted.⁴⁴ The Superintendent, as liquidator, is permitted to collect the assets and records of the insurer, wherever they are located, and reduce them to the degree of liquidity necessary for distribution to parties holding a viable claim against those

⁴¹ R.C. 3903.09(K) (not in the act).

⁴² R.C. 3903.12 (not in the act).

⁴³ R.C. 3903.14(D) (not in the act).

⁴⁴ R.C. 3903.17 (not in the act).

assets.⁴⁵ The continuing process for liquidation that the act adopts for fraternal benefit societies describes the liquidation process in much greater detail than prior fraternal benefit societies law, including with regard to the claiming of the society's assets.⁴⁶

Notice and correction of deficiency – foreign or alien society

Notice

Under law unchanged by the act, the Superintendent must issue a written notice if a foreign or alien fraternal benefit society has done any of the following:

- Exceeded its power;
- Failed to comply with any provision of applicable law;
- Is not fulfilling its contracts in good faith;
- Is conducting its business in a fraudulent or hazardous manner.

The notice describes the deficiency and the reason for the Superintendent's dissatisfaction. The society is required to correct the deficiency within 30 days of receipt of the notice.⁴⁷

Correction and Superintendent action – prior law

Under prior law, if the society failed to correct the deficiency within the 30-day period, the Superintendent notified the society of its failure and gave the society time to provide good and sufficient reason why its authority to do business in Ohio should not be suspended, revoked, or refused. If the Superintendent was not satisfied by the society's response, the Superintendent was permitted to suspend or refuse the license of the society to do business in Ohio until satisfactory evidence was presented that would convince the Superintendent to withdraw the suspension or revocation. Alternatively, the Superintendent could have revoked the authority of the society to do business in Ohio outright.⁴⁸

Former law did not prevent a foreign or alien society from continuing in good faith all contracts made in Ohio during the time the society was legally authorized to

⁴⁵ R.C. 3903.18 (not in the act).

⁴⁶ R.C. 3903.17 to 3903.45 (not in the act).

⁴⁷ R.C. 3921.31.

⁴⁸ R.C. 3921.31.

transact business in Ohio, despite the fact that the society may have been under investigation by the Superintendent.⁴⁹

Changes under the act

The act replaces the prior law process for investigation by the Superintendent with the continuing process for suspension of authority of a foreign or alien insurance company.⁵⁰ Under the new process, the Superintendent may suspend the authority of a foreign or alien fraternal benefit society to transact business in Ohio for any deficiency described above and including the following:

- It cannot meet the continuing applicable requirements for incorporation and commencement of the business of insurance in Ohio;
- It has commenced, or has attempted to commence, any voluntary liquidation or dissolution proceeding, or any proceeding to procure the appointment of a receiver, liquidator, rehabilitator, sequestrator, conservator, or similar officer for itself;
- It is the subject of liquidation or dissolution proceedings undertaken by another state, or any other proceeding undertaken by another state to procure the appointment of a receiver, liquidator, rehabilitator, sequestrator, conservator, or similar officer;
- Its ratio of premium writings to surplus and capital are unreasonable as determined by the Superintendent.

Once the society receives notice of suspension, it has 30 days to demand a hearing. The hearing is performed according to the process for administrative hearings in continuing law. If it is found during the hearing that any one of the listed deficiencies exists, the Superintendent must revoke the authority of the society to transact business in Ohio. If the society does not demand a hearing in the allotted time, the suspension becomes a revocation of the society's authority to transact business in Ohio.⁵¹

⁴⁹ R.C. 3921.31.

⁵⁰ R.C. 3921.31.

⁵¹ R.C. 3903.71 (not in the act).

Effective date

The effective date of most sections related to fraternal benefit societies is delayed until January 1, 2013. In an apparent oversight, reference to the sections relating to the changes to the appointment of a legal agent (R.C. 3921.35) and the required benefit contract disclosure (R.C. 3921.191) were omitted from the provision delaying the effective date of the fraternal benefit society portions of the bill. The implementation of the surplus requirements is delayed until January 1, 2016.⁵²

Investments

The act expands how a domestic insurance company may invest its capital, surplus, and other accumulations in two ways. First, the act expands the type of ownership interest an insurance company may purchase in another company. Second, the act also adds to the types of companies in which an insurance company may hold ownership interest. The law with regard to this matter is split between life insurance companies and all other forms of insurance company. Generally, the act affects both life insurance companies and all other insurance companies in the same way, with a few slight differences.

Ownership interests

Under continuing law, an insurance company may invest in the stocks or limited liability company membership interests of specified types of companies. The act expands this authority by allowing an insurance company to also invest in the limited partnership interests or the limited liability partnership interests of specified types of companies. Accordingly, the act also applies this expansion to the restrictions placed on insurance companies as to how much of an insurance company's surplus or assets it may invest in this manner.⁵³

With regard solely to life insurance companies, the act makes a similar expansion, enabling such a company to invest in the membership interest or partnership interest, as opposed to only the stocks or shares, of a business entity formed under a foreign jurisdiction.⁵⁴ With regard solely to all other forms of insurance companies, the act enables such an insurance company to purchase limited liability company membership interests, limited partnership interests, or limited liability partnership interests, as opposed to only stock, in any solvent corporation organized

⁵² Section 3 of the act and R.C. 3921.101.

⁵³ R.C. 3907.14(P)(6) and (7) and 3925.08(D)(2) and (3) and (H).

⁵⁴ R.C. 3907.14(P)(7)(a).

under the laws of any state, the United States, the District of Columbia, Canada, or any province of Canada.⁵⁵

Under continuing law, insurance companies may purchase ownership interest in the following types of companies:

- Insurance;
- Financial;
- Investment (life insurance companies only);
- Investment management.

The act adds to this list an entity created for the purpose of acquiring or holding an asset or liability for bankruptcy remoteness or limitation of liability.⁵⁶ Bankruptcy remoteness is a term used to describe the immunity from liability that a parent company has from a subsidiary, or that an affiliated company has from another affiliated company, that is undergoing bankruptcy.⁵⁷ Bankruptcy remoteness is often put in to play when a parent company wants to securitize an asset or source of income and wants to isolate risk in association with the transaction.

Foreign currency

Additionally, prior law prohibited an insurance company other than a life insurance company from investing more than 10% of its admitted assets in investments denominated in foreign currency. The act allows such companies to invest up to 15%.⁵⁸

Adverse benefit determinations

The act makes several changes to the law in relation to adverse benefit determinations relating to health benefit plans.

Prior law excluded Medicare supplements, Medicare, and Tricare from the definition of "health benefit plan" under the Adverse Benefit Determination Law. The act replaces these exclusions with an exclusion of "supplemental coverage, as described

⁵⁵ R.C. 3925.08(D)(3).

⁵⁶ R.C. 3907.14(P)(6) and 3925.08(D)(2).

⁵⁷ See *Black's Law Dictionary*, 167 (9th Ed.2009).

⁵⁸ R.C. 3925.08(H)(2).

in section 3923.37 of the Revised Code[.]” Section 3923.37 of the Revised Code describes a “supplemental sickness and accident policy” to which all of the following apply:

- The policy covers a specified disease or limited plan of coverage;
- The policy is specifically designed, advertised, represented, and sold as a supplement to other basic sickness and accident insurance coverage;
- The entire premium for the policy is paid by the insured, the insured's family, or the insured's guardian.⁵⁹

The act replaces the definition of “rescission” with a definition of “rescind” and defines “rescind” to mean retroactively canceling or discontinuing coverage and specifies that rescind does not include canceling or discontinuing coverage that only has a prospective effect or canceling or discontinuing coverage that is effective retroactively to the extent it is attributable to a failure to timely pay required premiums or contributions towards the cost of coverage.⁶⁰

The act clarifies that a request for a standard external review must be made in writing, which includes electronic means, but that a request for an *expedited* review can be made orally. The act removes the requirement that written confirmation of an oral request for an expedited external review must be submitted to a health plan issuer within five days after an oral request is made.⁶¹

The act clarifies one of the criteria for eligibility for an expedited external review without first completing an internal appeal. Under continuing law, a covered person's physician must certify that the adverse benefit determination in question could seriously jeopardize the life or health of the covered person if treated after the time frame of an expedited internal appeal. Under the act, the physician may also certify that the adverse benefit determination could jeopardize the covered person's ability to regain maximum function.⁶²

Law retained in part by the act requires an expedited external review to be completed within 72 hours of the review *being assigned* to an independent review

⁵⁹ R.C. 3922.01(L) and R.C. 3923.37 (not in the act).

⁶⁰ R.C. 3922.01(V).

⁶¹ R.C. 3922.02(B) and 3922.10(D).

⁶² R.C. 3922.09(A)(1)(a).

organization. Under the act, the review must be completed within 72 hours after the request *has been received by the health plan issuer*.⁶³

Former law required that all clinical reviewers be an expert, through clinical experience in the last three years, in the treatment of the covered person who are making the request's condition and have a knowledge of the requested health care service. The act restricts the requirement to those clinical reviewers assigned to experimental or investigational reviews.⁶⁴

The act also makes several technical changes, such as correcting cross references and spelling.⁶⁵

HISTORY

| ACTION | DATE |
|---|----------|
| Introduced | 10-06-11 |
| Reported, H. Insurance | 02-02-12 |
| Passed House (91-0) | 02-15-12 |
| Reported, S. Insurance, Commerce & Labor | 05-16-12 |
| Passed Senate (32-0) | 05-22-12 |
| House concurred in Senate amendments (94-0) | 05-23-12 |

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⁶³ R.C. 3922.09(E).

⁶⁴ R.C. 3922.10(F) and 3922.15(B).

⁶⁵ R.C. 3922.03(A), 3922.04(B) and (C), 3922.05(D)(1)(b) and (H)(1), 3922.06, 3922.09, 3922.10, 3922.11, 3922.14, 3922.16, and 3922.19.