

Ohio Senate Bill 140 Proposes Sweeping Changes to Ohio Insurance Laws

Overview

Introduced on June 4, 2013, [Ohio Senate Bill \(S.B.\)140](#) proposes to make some of the most significant changes to Ohio's insurance laws in recent years. The bill proposes to greatly expand the authority of the Superintendent of the Ohio Department of Insurance (ODI) to examine and obtain books and records of not only insurers but their non-insurance affiliates. The bill also proposes many requirements affecting insurers' operations, from filing and disclosure obligations, reinsurance options, corporate governance and internal controls, risk management programs, intra-holding company system transactions and investment strategies. If the bill is passed, Ohio will be joining a number of other states that have adopted similar laws.

Origin of S.B. 140

Many of the laws proposed by S.B. 140 originate from the revisions to the National Association of Insurance Commissioners (NAIC) [Insurance Holding Company System Regulatory Act](#) in 2011. In light of the financial problems encountered by the American International Group (AIG) and others in the insurance industry, NAIC proposed revisions to its model act, which expands the authority of departments of insurance to unregulated affiliates within an insurance holding company system. The thinking behind those revisions is that an insurer's solvency risk does not reside completely within the insurer; non-insurance affiliates of an insurer may pose a greater risk to the insurer's solvency.

Summary of Changes Proposed by S.B. 140

Examination of Affiliates and Penalty for Insurer – “Play or Pay”

Ohio law currently allows the Superintendent to have access to records of affiliates in certain circumstances. The bill gives the Superintendent generous authority to access and examine any affiliate within an insurance holding company system. Any insurer that fails to provide an affiliate's books and records to ODI in a compliance review may face a fine of US\$10,000 per day or suspension/revocation of its license.

Enterprise Risk Report

Under the bill, insurers must prepare and file with the Superintendent a new form called “Enterprise Risk Report.” This report requires disclosure of certain financial information of non-insurance affiliates. This form is intended to allow the Superintendent to oversee not only the “enterprise risk” to insurers by non-insurance affiliates, but also material risks that “could be” enterprise risk.

Risk Management Framework; Own Risk and Solvency Assessment

Insurers will be required to establish a risk management framework and to file a summary report of an assessment process referred to as the “Own Risk and Solvency Assessment.” This report provides an additional tool for the Superintendent to assess the risk undertaken by an insurer and affiliates and impact on the insurer's solvency.

Alternative Investment Law

An alternative investment law will allow certain insurers to invest according to an alternative set of requirements from existing law. Insurers will be required to submit an application to ODI to take advantage of the alternative investment options. Limits and oversight of the alternative investments are set forth in the proposed law.

Divesture Notice by Controlling Entities of Insurers

Under the bill, any person or entity that owns or controls at least 10% of an insurer must notify the Superintendent of divesture of the ownership or control of the insurer.

Corporate Governance and Internal Controls

The bill requires ODI, through rule-making process, to adopt corporate governance standards and internal controls procedures. It also requires the management of an insurer to attest to their compliance with those standards in the holding company system registration statement. In order to meet the standards and the attestation requirement, insurers may need to start keeping track of directors' attendance of board meetings and to take corrective actions against those that fail to attend to insurer's business on a regular basis.

Operational Standards

The bill has also incorporated many "desk rules" of ODI. For example, the bill requires an insurer to submit audited financial statements of non-insurance affiliates and to seek ODI's prior approval for all transactions between an insurer and affiliates, not just "material transactions" under the current law. Other operational changes contained in the bill include new information standards, and any other accounting and operational standards through rule making by ODI.

Impact on Provider-Sponsored Health Plans

This bill is of particular interest to provider-sponsored health plans because healthcare providers have traditionally not been regulated by ODI. Insurance is a heavily regulated industry. If the bill is passed as proposed, unregulated affiliates of a provider-sponsored health plan, such as hospitals and other healthcare providers, may be subject to a new level of oversight and regulation to which they may not be currently accustomed.

Status of S.B. 140

This bill is currently under review by the Ohio Senate's [Insurance & Financial Institutions Committee](#). It is likely to be subject to revisions and clarifications as well as comments from healthcare and insurance industry stakeholders.

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