



Ohio Revised Code

Section 3999.36 Notice of impairment to be given by chief executive.

Effective: June 18, 2002

Legislation: Senate Bill 138 - 124th General Assembly

(A) As used in this section and sections 3999.37 and 3999.38 of the Revised Code:

(1) "Insurer" means any person that is authorized to engage in the business of insurance in this state under Title XXXIX of the Revised Code, any health insuring corporation, or any other person engaging either directly or indirectly in this state in the business of insurance or entering into contracts substantially amounting to insurance under section 3905.42 of the Revised Code.

(2) "Impaired" or "impairment" means a financial situation in which the insurer's assets are less than the sum of the insurer's minimum required capital, minimum required surplus, and all liabilities, as determined in accordance with the requirements for the preparation and filing of the insurer's annual financial statement.

(3) "Chief executive officer" means the person, irrespective of the person's title, designated by the board of directors or trustees of an insurer as the person charged with the responsibility of administering and implementing the insurer's policies and procedures.

(B) Whenever a chief executive officer of an insurer knows or has reason to know that the insurer is impaired, the chief executive officer shall provide written notice of the impairment to the superintendent of insurance and to each member of the board of directors or trustees of the insurer. The chief executive officer shall provide the notice as soon as reasonably possible, but no later than thirty days after the chief executive officer knows or has reason to know of the impairment. No chief executive officer shall fail to provide notice in compliance with this division.

(C) The notice received by the superintendent under division (B) of this section is confidential and is not a public record under section 149.43 of the Revised Code.

(D) Notwithstanding division (C) of this section, the superintendent may do any of the following:



(1) Disclose the notice upon obtaining prior written consent from the insurer to which the notice pertains;

(2) Share the notice that is the subject of this section with the chief deputy rehabilitator, the chief deputy liquidator, other deputy rehabilitators and liquidators, and any other person employed by, or acting on behalf of, the superintendent pursuant to Chapter 3901. or 3903. of the Revised Code, with other local, state, federal, and international regulatory and law enforcement agencies, with local, state, and federal prosecutors, and with the national association of insurance commissioners and its affiliates and subsidiaries, provided that the recipient agrees to maintain the confidential status of the notice and has authority to do so;

(3) Disclose the notice in the furtherance of any regulatory or legal action brought by or on behalf of the superintendent or the state, resulting from the exercise of the superintendent's official duties.

(E) Notwithstanding divisions (C) and (D) of this section, the superintendent may authorize the national association of insurance commissioners and its affiliates and subsidiaries by agreement to share confidential notices received pursuant to division (D)(2) of this section with local, state, federal, and international regulatory and law enforcement agencies and with local, state, and federal prosecutors, provided that the recipient agrees to maintain the confidential status of the notice and has authority to do so.

(F) Notwithstanding divisions (C) and (D) of this section, the chief deputy rehabilitator, the chief deputy liquidator and other deputy rehabilitators and liquidators may disclose notices in the furtherance of any regulatory or legal action brought by or on behalf of the superintendent, the rehabilitator, the liquidator, or the state resulting from the exercise of the superintendent's official duties in any capacity.

(G) Nothing in this section shall prohibit the superintendent from receiving notices in accordance with section 3901.045 of the Revised Code.

(H) The superintendent may enter into agreements governing the sharing and use of notices consistent with the requirements of this section.



(I)(1) No waiver of any applicable privilege or claim of confidentiality in the notices that are the subject of this section shall occur as a result of sharing or receiving notices as authorized in divisions (D)(2), (E), and (G) of this section.

(2) The disclosure of a notice in connection with a regulatory or legal action pursuant to divisions (D)(3) and (F) of this section does not prohibit an insurer or any other person from taking steps to limit the dissemination of the notice to persons not involved in or the subject of the regulatory or legal action on the basis of any recognized privilege arising under any other section of the Revised Code or the common law.