

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Insurance
Regulation/Package Title: Chapter 2 Rules- Proxies, Consents and Authorizations of Domestic Stock Insurance
Rule Number(s): 3901-2-01 through 3901-2-15

Date: July 23, 2019

Rule Type:

☐ New

☒ Amended

☐ Rescinded

☒ 5-Year Review

☒ No Change

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

These rules establish procedures that domestic stock insurance companies must follow when soliciting proxy, consent or authorization from security holders. The rules clarify the required information to be filed with the department and provided to the security holders in proxy statements and other information distributed about meetings and proposed actions, including annual meetings and/or elections meetings. The rule chapter applies to domestic stock insurance companies having at least fifty shareholders. Companies that file with the securities and exchange commission are exempt. The department recommends a technical

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change to rule 3901-2-01 to correct references to federal code that has changed since the last review. Rule 3901-2-08 requires a technical change to correct a spelling error. A change to rule 3901-2-13 is recommended to amend industry terminology for modernization and ease of understanding. All rules that are being amended have also been updated to include a statement of authority, purpose and severability in accordance with department standards for rule composition.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

Section 3901.041 of the Revised Code; and amplifies section 3901.31 of the Revised Code.

3. Does the regulation implement a federal requirement? ☐ Yes ☒ No

Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

☐ Yes ☒ No

If yes, please briefly explain the source and substance of the federal requirement.

Not applicable.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

Not applicable.

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

This chapter clarifies a process for domestic stock insurance companies to comply with statutory requirements regarding proxy statements and information that must be filed with the department and provided to shareholders when there are proposed actions requiring shareholder votes.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

The department will measure success by fewer or no complaints from shareholders regarding adequate access to information regarding proxies sought by companies.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation. *If applicable, please include the date and medium by which the stakeholders were initially contacted.*

In April 2019, an email requesting comment on the rule was sent to various stakeholders, interested parties, trade associations and companies. Specifically, the department reached out to the Association of Ohio Life Insurance Companies (AOLIC), the American Council of Life Insurance (ACLI), the National Association of Insurance and Financial Advisors (NAIFA), Ohio Association of Health Plans (OAHP), and the Professional Independent Agents Association (PIAA), among others. Additionally, these rules were also posted on the department's web site for review.

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

These rules were reviewed as part of the five year rule review. The department received no comments on the rules from industry or the general public during the comment period.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

Ohio Revised Code requires domestic stock insurance companies with at least fifty shareholders to provide proxy statements, supporting information and notice of upcoming meeting to shareholders in advance when seeking proxy votes. Statute requires the department to receive information and provide rules regarding instructions and procedures for providing required information and submitting to the department.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

These rules represent nationwide industry standards. The rules provide consistent regulatory requirements for insurance carriers and serve as an important measure of protection for company shareholders by ensuring that they receive adequate information regarding company actions.

11. Did the Agency specifically consider a performance-based regulation? Please explain.

Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

These rules establish procedures that domestic stock insurance companies must follow when soliciting proxy, consent or authorization from security holders. The requirements ensure that companies provide adequate information to shareholders when proposed actions require a vote, allowing for greater transparency. Performance-based regulations are not appropriate for these rules.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

The department, which serves as the sole regulator of insurance in Ohio, reviewed Ohio statutes and rules and determined that it does not duplicate other regulations.

13. Please describe the Agency’s plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

The rule will be applied consistently and predictably as the impacted companies are required to distribute to shareholders and provide to the department standard information specific to the company’s requests for proxy votes.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

- a. Identify the scope of the impacted business community;
- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and
- c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.

A. When soliciting proxy votes, domestic stock insurance companies with at least fifty shareholders are required by statute to provide information on the proxy request and the meeting seeking shareholder votes.

B. Any action necessary to comply with the requirements of these rules would be administrative based. The cost would be limited to employee time and office supplies needed to conduct meetings and hold voting sessions.

C. The estimated cost is conditional on how often voting is required and limited to time and resources to compile and distribute information. Quantifying such costs is dependent on the internal operations of the entity. These rules do not impose adverse impact but rather provide details and instructions on the content of the required information. They do not require additional actions from the company other than what is required under statute.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

Statute requires the distribution of information clarified in the chapter of rules to ensure shareholders receive adequate information related to company actions that require shareholder votes.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

Yes. The requirements affect domestic stock insurance companies with at least fifty shareholders and are specific to information related to actions of the companies that require shareholder votes.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

Non-compliant filings or filing submissions with inappropriate information are identified in the review process and discussed with the company. Generally, companies agree to change a filing as requested by the department, or propose an acceptable alternative. In the event that a company would refuse to revise a filing, the department will proceed with the administrative remedies available.

18. What resources are available to assist small businesses with compliance of the regulation?

Department staff is available to answer questions, regardless of the size of business. Furthermore, the department provides filing information and instructions on its web site. The department intends to continue dialogue with stakeholders through the implementation process to ensure compliance and facilitate questions.