



Common Sense Initiative

Mike DeWine, *Governor*
Jon Husted, *Lt. Governor*

Joseph Baker, *Director*

MEMORANDUM

TO: Loretta Medved, Ohio Department of Insurance

FROM: Michael Bender, Business Advocate

DATE: July 15, 2024

RE: **CSI Review – Captive Insurer Rules (OAC 3901-11-01, 3901-11-02, 3901-11-03, 3901-11-04, 3901-11-05, and 3901-11-06)**

On behalf of Lt. Governor Jon Husted, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Department as provided for in ORC 107.54.

Analysis

This rule package consists of six amended rules proposed by the Ohio Department of Insurance (ODI) as part of the statutory five-year review process. This rule package was submitted to the CSI Office on June 14, 2024, and the public comment period was held open through June 28, 2024. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on June 14, 2024.

Ohio Administrative Code (OAC) 3901-11-01 outlines the information that must be filed by an applicant for authority to form and license a captive insurance company domiciled in Ohio. The rule is amended to update language and remove a provision regarding the Superintendent of Insurance (Superintendent) posting certain forms online. OAC 3901-11-02 establishes the procedure for the Superintendent to require additional capital and surplus of a captive insurance company. The rule is amended to update language. OAC 3901-11-03 establishes the process and procedure for a captive insurance company to appoint an independent certified public accountant (CPA) and file audited annual financial statements, an actuarial opinion on policy reserves, and annual statements with the

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

Superintendent. The rule is amended to update language and grammar, remove the ability for comparative data to be omitted from first-year audited financial statements, remove language regarding the locations where work papers should be made available for review, and allow the Superintendent to grant an exemption from compliance with any provision of the rule if compliance would constitute a hardship.

OAC 3901-11-04 sets forth the notice requirements of a captive insurance company's independent CPA in the event of a determination that the company materially misstated its financial condition in its report to the Superintendent. The rule is amended to update language. OAC 3901-11-05 outlines the acceptable information that must be submitted to the Superintendent when a special purpose financial captive requests to use an alternative reserve methodology. The rule is amended to update language. OAC 3901-11-06 outlines the information required by the Superintendent in setting an acceptable total capital and surplus requirement for special purpose financial captive insurance companies and insurers that cede risks and obligations to a special purpose financial captive insurance company. The rule is amended to update language.

During early stakeholder outreach, ODI sent an email to industry stakeholders on March 22, 2024, seeking comments on the draft rules over a four-week period. The contacted stakeholders included Nationwide, the Association of Ohio Life Insurance Companies, the American Council of Life Insurance, the National Association of Insurance and Financial Advisors, the Ohio Association of Health Plans, the Ohio Insurance Agents, and others. No comments were submitted during this time or during the CSI public comment period, although ODI revised the rules to make grammatical and technical corrections.

The business community impacted by the rules includes any entity applying to form a captive insurance company or special purpose captive. Only Ohio-domiciled parent or affiliated companies authorized to transact business in Ohio are eligible to apply. There is no requirement to apply, and establishing a captive is elective. The adverse impacts created by the rules include completing an application, submitting reports and information, and providing documentation. A \$500 application fee is required along with a \$50 fee for each additional entity established under the licensed captive. ODI estimates that it will take approximately twenty-four hours to gather financial reports to support an application, although it may depend on how an entity maintains its financial records and information. Similarly, the cost to secure a qualified actuary varies and is dependent on the complexity of the review and proposed structure relative to industry standards. ODI notes that one of the changes to the rules reduces the impact on businesses by allowing the Superintendent to grant an exemption from certain auditing provisions if compliance would constitute a hardship. ODI states that the adverse impacts to business are justified to provide ease of use and promote solvency of both special purpose financial captive and their parent life insurance companies.

Recommendations

Based on the information above, the CSI Office has no recommendations on this rule package.

Conclusion

The CSI Office concludes that ODI should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.