

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Insurance
Regulation/Package Title: Proxy Rules
Rule Number(s): 3901-2-01 to 3901-2-15
(15 rules)
Date: June 9, 2014

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☐ Rescinded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.

The rules establish procedures certain 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 of Insurance 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 50 shareholders. However, companies that file with the Securities and Exchange Commission are exempt.

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Recommending technical amendments to rules 3901-2-13 and 3901-2-15 to correct errors in the instructions. The errors in 3901-2-13 are a word omission and two spelling errors in sections (L); (M)(2); and (N)(1).

Rule 3901-2-15 in part instructs what is required in an information statement regarding an upcoming meeting, stating that information required in 3901-2-13 and also relating to actions to be taken at the meeting must be included. Paragraph (B) provides exclusion paragraphs from 3901-2-13 because those pieces of information do not relate to actions to be taken at the meeting. However, the paragraphs are incorrectly referenced. Technical amendment strikes the letters (B), (D), and (E) and inserts the letters (C), (E), and (F). This change aligns the rule with model law.

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

Section 3901.041 of the Ohio Revised Code; and amplifies section 3901.31 of the Ohio 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)?

The purpose of the chapter is to clarify and establish a process for domestic stock insurance companies to comply with statutory requirements regarding proxy statements and information that must be filed with the Department of Insurance 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.*

The chapter applies exclusively to those domestic stock insurance companies that do not file proxy information with the Securities and Exchange Commission, and which are not owned or controlled by a parent for affiliate company. The Department posted the rule chapter on its website for public review and made trade associations representing insurance companies aware the rules were due for five year review. In addition, in February 2014, an email requesting comment on the rule was sent to various stakeholders, interested parties, and trade associations who signed up for updates on the Department's rules and bulletins. On April 28, 2014, the Department held a public information meeting to facilitate comments, questions and concerns.

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

Stakeholders did not express concerns or submit requests for any additional changes. There have also been no inquiries or requests for additional information on the rules in this chapter. In addition, Department staff has not received additional inquiries or concerns regarding ability to comply with or understand the requirements.

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 50 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?

Ohio Revised Code requires the rules to describe the enclosed procedures that impacted domestic stock insurance companies must provide to remain statutorily compliant. The rule is consistent with the National Association of Insurance Commissioners model language, which is developed collaboratively with a broad range of stakeholders. Alternative regulation could cause confusion or compliance issues, and would therefore be

inappropriate. The recommended amendments to rules 3901-2-13 and 3901-2-15 are technical changes to correct instructions for accuracy.

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.

The chapter cannot be performance-based regulations as the statutory requirement is that impacted companies provide and the Department review specific and required information to be provided to shareholders regarding proxies.

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

The Department reviewed Ohio statutes and rules and determined that the chapter 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.

When soliciting proxy votes, domestic stock insurance companies with at least 50 shareholders are required by statute to provide information on the proxy request and the meeting seeking shareholder votes. The estimated cost is nominal and limited to time and resources to compile and distribute information. The rule provides details and instructions

on the content of the required information and does not require additional actions from the company other than what is required under law.

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 50 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?

The Department will provide oversight to staff regarding proxy materials and will allow waivers as appropriate under the statute.

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. This chapter of rules specifically impacts domestic stock insurance companies with at least 50 shareholders.