

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Insurance
Regulation/Package Title: Unfair trade practices; unfair and deceptive military sales practices; and unfair property/casualty claims settlement practices.
Rule Number(s): 3901-1-07, 3901-1-08 and 3901-1-54
Date: June 10, 2016

Rule Type:

- | | |
|---|---|
| <input type="checkbox"/> New | <input checked="" type="checkbox"/> 5-Year Review |
| <input checked="" type="checkbox"/> Amended | <input checked="" type="checkbox"/> No Change |
| <input type="checkbox"/> Rescinded | |

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.

Rule 3901-1-07: Enumerates specific practices that would be considered unfair and/or deceptive. The provisions of this rule pertain to all lines of insurance, although they are heavily focused on property and casualty (P&C). The rule enacts settlement standards for patterns and practices of deceptive actions, rather than occurrences on a specific claim. Various technical amendments are proposed; correction in outdated citation paragraph (C)(9), elimination of definitions which do not appear in the body of the rule; paragraph

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(F)(2) corrected to reflect “fifteen day” language throughout paragraph; grammatical and necessary formatting changes throughout.

Rule 3901-1-08: By adopting the National Association of Insurance Commissioners' (NAIC) "Military Sales Practices Model Regulation," the rule further defines Ohio's unfair trade practices in the business of insurance to include dishonest and predatory practices involving the sale of certain life insurance products, including annuities, to active military members of the United States Armed Forces and their families. The rule also sets acceptable standards for the sale and solicitation of the defined insurance products and adds special protections for enlisted service members. The proposed technical amendment in paragraph (H)(5) corrects a reference to another rule for illustration requirements (OAC 3901-6-04).

Rule 3901-1-54: Sets forth uniform minimum standards by adopting NAIC model regulation for the investigation and disposition of P&C claims. The rule defines procedures and practices which constitute unfair claims practice and provides specific settlement standards on an individual claims basis.

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

Rule 3901-1-07: Sections 3901.041, 3901.20 and 3901.21 of the Revised Code.

Rule 3901-1-08: Sections 3901.041, 3901.20 and 3901.21 of the Revised Code.

Rule 3901-1-54: Sections 3901.041 and 3901.19 to 3901.26 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)?

Rule 3901-1-07: The Unfair trade practices rule enumerates specific acts which would be unfair & deceptive to consumers. This is a consumer protection rule and works to prevent insurance companies from developing a pattern of misleading practices.

Rule 3901-1-08: The public purpose is to protect active duty service members from dishonest and predatory insurance sales practices by identifying certain practices as false, misleading or deceptive.

Rule 3901-1-54: The rule provides consumer protection by setting clear requirements for insurance companies to follow in settling claim disputes.

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

Successful outcomes of unfair and deceptive practice statute and these rules are that no instances or allegations of unfair practices occur against Ohio insurers or within Ohio's insurance market place. Success is measured both through regular financial and market conduct reviews, as well as through review and investigation of consumer complaints submitted to the department.

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.*

Interested stakeholders for these rules include Ohio Insurance Institute (OII), Association of Ohio Life Insurance Companies, Ohio Association of Health Underwriters, Ohio Association of Health Plans (OAHP), Ohio Insurance Agents Association, and domestic insurers. 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 May 2016, an email requesting comment on the rules were sent to various stakeholders, interested parties and trade associations. Department staff facilitated comments, questions and concerns during that comment period.

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

Stakeholders provided no additional requests or concerns.

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?

The rules are based on statutory prohibitions against unfair and deceptive practices, as well as model rules developed by the National Association of Insurance Commissioners (NAIC). The NAIC model rules are developed through a committee review process that considers market practices, consumer protections and industry and regulator input.

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?

There were no alternative regulations considered because the rules' purposes are to clarify the statutory prohibitions involved.

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.

No. Performance-based rules would not apply as the purposes and scopes of these rules are to clarify prohibited practices.

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

The Ohio department of insurance is the sole agency regulating insurance and there are no duplicative rules.

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 rules have been in place and the insurance industry is aware of the prohibitions against unfair and deceptive practices. The regulations are applied consistently through oversight and any market conduct reviews performed.

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.

Rule 3901-1-07 impacts insurers authorized in all lines of insurance.

Rule 3901-1-08 impacts insurers authorized to sell life insurance and that sell life insurance or annuity products to active military members.

Rule 3901-1-54 impacts insurers authorized to sell property and casualty insurance.

The rules clarifies certain prohibited acts. There are no reporting or related requirements involved, and therefore, no adverse impact for insurers that comply. If, however, an insurer violates the unfair and deceptive practices statute and requirements of any of the rules, the superintendent may issue a cease and desist order and impose other administrative penalties such as license revocation and/or order to pay back payments received as a result of the violation.

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

Unfair and deceptive practices are clearly prohibited in statute and are critical to consumer protection. The rules clarify those prohibited practices to both serve as a clear guide for insurers and to facilitate the department's clear ability and authority to protect consumers against market misconduct and deceptive sales practices.

Regulatory Flexibility

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

Prohibitions against unfair and deceptive practices are required consistently no matter the size or structure of the company. There are no alternative compliance requirements appropriate or necessary for small companies as the prohibitions do not relate to size of company.

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?

Any actions or interventions the department must take under the rules' prohibitions are not punitive in nature, but rather would be to prevent financial harm to consumers, policyholders and/or the general public. Waiving necessary action would not be appropriate, but the primary goal is to ensure any prohibited practices are stopped.

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

Department staff is available to answer questions and provide assistance as needed.