

Common Sense  
Initiative

Mike DeWine, Governor

Jon Husted, Lt. Governor

Sean McCullough, Director

**Business Impact Analysis**Agency Name: Ohio Department of InsuranceRule Contact Name: Loretta MedvedRule Contact Information: 614-644-0239loretta.medved@insurance.ohio.gov

Regulation/Package Title (a general description of the rules' substantive content):

Unfair and Deceptive Practices RulesRule Number(s): 3901-1-07, 3901-1-08, 3901-1-54Date of Submission for CSI Review: August 2, 2021Public Comment Period End Date: August 16, 2021, 12:00AMRule Type/Number of Rules:

- |  |  |
|--|--|
| <input type="checkbox"/> New/ rules                              | <input checked="" type="checkbox"/> No Change/ 1 p rules (FYR? 2021) |
| <input checked="" type="checkbox"/> Amended/ 2 rules (FYR? 2021) | <input type="checkbox"/> Rescinded/ rules (FYR? )                    |

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

### **Reason for Submission**

1. R.C. 106.03 and 106.031 requires agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.

Which adverse impact(s) to businesses has the Agency determined the rule(s) create?

The rule(s):

- ☐ a. Requires a license, permit, or any other prior authorization to engage in or operate a line of business.
- ☐ b. Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- ☒ c. Requires specific expenditures or the report of information as a condition of compliance.
- ☐ d. Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

### **Regulatory Intent**

2. 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 focused heavily 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. Technical amendments restructure the rule for uniformity with other department rules and correct a spelling error.***

***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. There are no proposed amendments.***

***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. The proposed technical amendment will correct a citation in paragraph (C)(9).***

3. Please list the Ohio statute(s) that authorize the Agency to adopt the rule(s) and the statute(s) that amplify that authority.

***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.***

4. 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.***

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

***Not applicable.***

6. 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.***

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

***Successful outcomes of both the unfair and deceptive practice statute and these rules are evident in a reduction in instances or allegations of unfair practices occurring within Ohio's insurance market place. Success is measured both through regular financial and market conduct reviews, as well as thorough review and investigation of consumer complaints submitted to the department.***

8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931? ☐ Yes ☒ No

*If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.*

*Not applicable.*

### **Development of the Regulation**

9. 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 spring 2021 the department reached out to industry stakeholders including the Ohio Insurance Institute (OII) regarding substantive amendments to rule 3901-1-54. Currently both industry and the department identify sections of rule 3901-1-54 that have the potential to strike a better balance of regulatory application. Conversations are ongoing and were not concluded in time for the filing of the 2021 five year rule review. For the purposes of this filing, only technical amendments are proposed. Stakeholders continue to engage with the department and did not raise any concern over the proposed technical amendments.*

*Additionally, in June 2021, an email requesting comment on this group of rules was sent to various stakeholders, interested parties, trade associations and companies. Specifically, the department reached out to the Ohio Land Title Association, the Ohio Insurance Institute (OII), 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 Ohio Insurance Agents Association Inc., among others. Additionally, these rules were also posted on the department's web site for review.*

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

*No comments were received during or after the two week comment period. The department will continue conversations with industry regarding the potential for future substantive amendments.*

11. 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.*

12. 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.***

13. 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 purpose of these rules are to clarify prohibited practices.***

14. 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.***

15. 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. Proposed amendments are technical in nature and will not require any implementation for the regulated community.***

### **Adverse Impact to Business**

16. 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.***

***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.***

b. -

*c. All three rules clarify certain prohibited acts 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 insurer may be required to report information to the superintendent for purposes of an investigation. Additionally, 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.*

17. 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**

18. 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.*

19. 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. The department works with insurers in the case of a violation to ensure the issue is corrected and consumer protection is preserved. The primary goal is to ensure any prohibited practices are stopped.*

20. 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.*