



## MEMORANDUM

**TO:** Vicki Rich, Ohio Department of Insurance

**FROM:** Sean T. McCullough, Regulatory Policy Advocate

**DATE:** August 22, 2014

**RE:** CSI Review – Proxy Rules (OAC §§ 3901-2-01; 3901-2-02; 3901-2-03; 3901-2-04; 3901-2-05; 3901-2-06; 3901-2-07; 3901-2-08; 3901-2-09; 3901-2-10; 3901-2-11; 3901-2-12; 3901-2-13; 3901-2-14 and 3901-2-15)

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On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (R.C.) § 107.54, CSI has reviewed the abovementioned administrative rules and associated Business Impact Analysis (BIA). This memo represents CSI's comments to the Agency as provided for in R.C. § 107.54.

### I. INTRODUCTION AND BACKGROUND

On June 17, 2014, the Ohio Department of Insurance (ODI) submitted a rule package containing a total of fifteen (15) rules; specifically, two (2) amended rules and thirteen (13) no-change rules. ODI submitted these rules as a result of the five-year review requirement contained in R.C. § 119.032. The rules govern procedures of certain stock insurance companies when soliciting proxy, consent or authorization from security holders. ODI cites R.C. §§ 3901.041 and 3901.31 as authority to establish these rules. The official comment period ended June 30, 2014. No stakeholder comments were submitted during the CSI review period.

### II. ANALYSIS

#### A. ADVERSE IMPACT ON BUSINESS

The scope of the impacted business community is comprised of Ohio stock insurance companies having at least fifty (50) shareholders and which are not required to follow similar procedures to

these rules through the federal Securities and Exchange Commission (“SEC”).

The rules consist of numerous requirements of specific, enumerated information to be shared by an issuer of securities (as described above) with the holder of those securities regarding annual meetings, board of director elections, authority and soliciting of proxy, etc. For example, one provision contains requirements of specific information a proxy statement must contain, such as financial statements, a summary of the issuer’s operations, a brief description of recent business done by the issuer, identification of directors of the issuer, etc. Moreover, much of this documentation required in the rules, whether in the form of notices or statements, must also be filed with ODI. For example, copies of the reports of information contained in the proxy statement, as described above, must be provided to ODI no later than the date it was first given or sent to the security holders. The rules contain similar requirements for other reports of information that are too voluminous to list in this recommendation.

The above provisions impose on certain Ohio stock insurance companies requirements to report information through filings of such statements and notices of information with ODI. Such requirements are enumerated in R.C. § 107.52, and therefore, are considered adverse impacts to business.

## **B. JUSTIFICATION FOR ADVERSE IMPACT**

According to ODI, the Department reached out to interested stakeholders for feedback on the proposed rules. Through discussions with ODI, and a review of the BIA, CSI understands that no stakeholders have expressed comments or concerns with the proposed rule. Moreover, CSI understands the scope of to business community affected by these rules to be limited. ODI argues that the rules are based on the National Association of Insurance Commissioners (NAIC) model act. ODI explained that the model act is a national set of best practices with regard to insurance industry standards, and is continually created and shaped by insurance companies, consumers and regulators. Further, ODI argues that the reporting requirements and procedures are similar to those of the SEC, a federal body to which most stock insurance companies already report the information contained in these rules.

CSI is satisfied with ODI’s justification because (1) ODI reached out to stakeholders from an early stage of rule review, (2) the stakeholders have expressed no concerns with the proposed rules, and (3) ODI has provided sufficient substantive reasoning as to why these proposed rules are necessary; specifically, that many of the impacts are based on a national model of best practices for the insurance industry, along with procedures of the SEC. Accordingly, the adverse impacts of these rules have been sufficiently justified by ODI.

### **III. RECOMMENDATIONS**

After reviewing the BIA, and pursuant to the more detailed reasons outlined above, CSI has no specific recommendations regarding the rule package.

### **IV. CONCLUSION**

Based on the above analysis and recommendations, CSI concludes that ODI should proceed with the formal filing of the rule package with the Joint Committee on Agency Rule Review.

cc: Mark Hamlin, Lt. Governor's Office