

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Insurance
 Regulation/Package Title: Agent & Annuity
 Rule Number(s): 3901-5-12 Misconduct by insurance license applicants and
licensees.
3901-6-16 Annuity nonforfeiture product standards.
 Date: July 11, 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 Rescinded | |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

- Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

3901-5-12 - This rule establishes standards of conduct and responsibility that apply to insurance license applicants, licensees, and/or insurance companies. The rule outlines practices that would be deemed unfair and deceptive in the sale of insurance. Various amendments are proposed; elimination of the word "sub-agent" throughout the rule, paragraph (D)(1)(b) provides more clarity on the scope of confidentiality, paragraph (D)(2)(a) is amended to conform to language in Ohio Revised Code. Paragraph (D)(2)(a) "and" was intended to be "or", and paragraph (D)(2)(b) is modernized.

3901-6-16 - The purpose of this rule is to amplify Ohio Revised Code by defining the maturity date used for the purpose of calculating nonforfeiture values for annuity contracts. The rule implements what is commonly referred to as the "70/10 Rule" which limits the duration of an annuity to 10 years or age 70, whichever is greater. Specifically the rule prevents unreasonable surrender charges and provides reasonable access to funds. The rule protects senior citizens who purchase individual deferred annuities.

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

3901-5-12 - Sections 3901.041, 3905.14 and 3905.85(D) of the Revised Code.

3901-6-16 - Sections 3901.041, 3901.21 and 3915.073 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)?

3901-5-12 - This rule works to protect consumers from being misled or harmed by prohibiting unfair and deceptive acts on behalf of insurance license applicants, licensees and companies.

3901-6-16 - The purpose for this rule is to provide consumer protection, especially to senior citizens when purchasing annuity products. This regulation is specifically intended to prevent unreasonable surrender charges and provide reasonable access to funds.

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

Both rules are currently in effect and continue to provide consumer protection. Success is determined by reviewing trends in complaints and violations; as well as an understanding of expectations set forth in these rules on behalf of the regulated community.

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 the rule include Ohio Insurance Institute (OII), Ohio Insurance Agents Association (OIA), National Association of Public Insurance Adjusters (NAPIA), American Association of Public Insurance Adjusters (AAPIA), domestic property & casualty insurers Ohio Insurance Institute (OII), and Association of Ohio Life Insurance Companies (AOLIC). 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 was sent to the stakeholders.

8. 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 throughout the vetting process.

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?

3901-5-12 - Agent rules are developed from extensive outreach and reviewing standards set by the National Association of Insurance Commissioners (NAIC). Proposed amendments are mostly technical necessities, the update to paragraph (D)(2)(b) reflects a modernized approach as this situation has not occurred in recent memory as well as the elimination of popularity in printed newspapers.

3901-6-16 - Representatives from industry and other state insurance departments worked together to develop the basics of this rule for the Interstate Insurance Product Regulation Commission. Several other states have implemented a similar rule or statute. The department conducted extensive outreach in 2012 to develop a good fit for Ohio.

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?

3901-5-12 - The practices outlined in this rule were gathered after reviewing trends in the industry and common areas of consumer complaint.

3901-6-16 - The standards established in this rule were reached through extensive outreach and review of other states regulations. An industry standard was established to prevent adverse financial impact on senior citizens.

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.

Rule 3901-5-12 addresses acts which are unfair and deceptive. Therefore this rule looks only to build a fair and safe market for consumers to purchase insurance products.

Rule 3901-6-16 requires that products filed meet a specific standard. This standard ensures consumer protection and a balanced market.

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.

Both rules included in this package are existing and are not proposed to have major substantive amendments. The department maintains multiple divisions; including agent licensing, product regulation and legal services, that are available to assist the regulated community.

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 3901-5-12 impacts insurance license applicants, licensees, and/or companies licensed or authorized to transact the business of insurance. Adverse impact is not imposed as the rule addresses only areas of misconduct. It is the responsibility of the individual and or company to comply with the rule as a matter of every day business practices. In cases where an insurance company has reasonable cause to believe that there has been a violation or is a continuing violation of this rule, and the details thereof which are known, the department shall be notified. The department maintains both the market conduct and agent licensing divisions to address such matters, informing the department may require minimal to moderate communications to determine the extent of any investigation.

Insurance companies which sell annuity products have been required to comply with the provisions of rule 3901-6-16 with no adverse impact.

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

Both rules work to ensure consumer protection and a balanced, reasonable market to purchase insurance products. Neither rule imposes a quantifiable adverse impact.

Regulatory Flexibility

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

The rules included in this package are both founded in consumer protection and establish straight-forward business and product standards, it is crucial that they are complied with consistently across the industry.

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?

Paperwork violations and/or first time offender issues would be dealt with on a case-by-case basis to determine whether the violation could have a serious impact on the consumer or the general public. Minor errors would be handled by advising the agent or company and giving them an opportunity to cure the omission or irregularity.

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.