

**MEMORANDUM**

**TO:** Tom Simmons, Policy Manager and Regulatory Ombudsman, Ohio Department of Aging

**FROM:** Sydney King, Regulatory Policy Advocate

**DATE:** December 20, 2013

**RE:** **CSI Review – Criminal Records Check (Chapter 173-9)**

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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 (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

**Analysis**

The Ohio Department of Aging (ODA) submitted a rule package to the CSI Office for review consisting of twelve rules. The rule package contains ten new rules (Rules 173-9-01, 173-9-02, 173-9-03, 173-9-03.1, 173-9-04, 173-9-04.1, 173-9-05, 173-9-08, 173-9-09, 173-9-10) and several amendments throughout Rules 173-9-06 and 173-9-07. The two amended rules are also being reviewed as part of the five-year review process required by ORC 119.032. The rule package was filed with the CSI Office on November 22, 2013, and the comment period for the rules closed on December 8, 2013. No comments were received during the public comment period.

Chapter 173-9 requires employers to perform criminal records checks when hiring applicants and when reviewing the retention of employees for paid ombudsman positions and paid direct-care positions. The rules provide the list of databases employers must review, the type of applicant/employee criminal records checks must be performed on, when the criminal records check should be performed, and the disqualifying offenses for employment. According to ODA, the rules are being proposed in order to implement House Bill 59's recently-enacted changes to the criminal records check law, increase reader comprehension by addressing many frequently asked questions from stakeholders, simplifying language, and maintain content unity with the

collaborating state agencies.

One of ODA's main objectives is to replace the current rule language with language that would be less likely to require interpretation from stakeholders. ODA began analyzing the website's most frequently accessed pages. The "FAQ" page is one of the most visited on ODA's website and viewed twelve times more often than the most-viewed criminal records check rule.

ODA performed significant outreach to stakeholders during the drafting process. Stakeholders were engaged in webinars, seminars, monthly meetings, and conferences. ODA also emailed stakeholders about the proposed amendments for Chapter 173-9. Additionally, ODA asked for input on implementing House Bill 59's amendments. The rules were amended by ODA based on stakeholder input. During the public comment period, no comments were received.

ODA identified several adverse impacts to employers of "direct-care positions" and "ombudsman positions." House Bill 59 now requires area agencies on aging and PASSPORT administrative agencies to conduct criminal records checks. According to ODA, these agencies have already been conducting criminal records checks on staff members. House Bill 59 also requires the monitoring of subcontractors' criminal background checks. ODA estimates subcontractors who did not conduct business with other state agencies may be the only newly impacted business community. The BIA states the direct adverse impacts are the fees and the indirect adverse impacts are the administrative expenses required for conducting the check. A potential adverse impact, depending on the circumstance, could be the job losses caused by disqualifying criminal records. ODA justifies the impacts as required by statute in House Bill 487 and House Bill 59. Additionally, ODA's proposed amendments that increase understanding of the requirements attempt to minimize the administrative costs associated with interpreting the rules.

The CSI Office is not suggesting any further changes with respect to the rules or the BIA for the following reasons:

- ODA used stakeholder input to amend the rules to decrease the adverse impact. Additionally, no public comments were received during the public comment period.
- The BIA submitted by ODA is accurate and complete and does not raise any ongoing issues.
- Generally, the rule package satisfactorily meets the standards espoused by the CSI Office.

### **Recommendation**

For the reasons explained above this office does not have any recommendations regarding this rule package.

### **Conclusion**

Based on the above comments, the CSI Office concludes that the Department should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.

cc: Mark Hamlin, Lt. Governor's Office