

**MEMORANDUM**

**TO:** David Miran, Ohio Department of Agriculture

**FROM:** Chris Smyke, Lt. Governor's Office

**DATE:** February 2, 2017

**RE:** **CSI Review – Online auctions held in conjunction with live auctions and ownership reporting requirements (OAC 901:8-2-05 and 901:8-2-11)**

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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**

This rule package consists of one new and one amended rule proposed by the Ohio Department of Agriculture (ODA). The rule package was submitted to the CSI Office on December 1, 2016 and the public comment period was held open through December 21, 2016. No comments were received during that time.

Both rules under consideration relate to the licensure of auction companies. Ohio Administrative Code (OAC) 901:8-2-11 is being proposed in response to recently-enacted legislation. House Bill 131 of the 131st General Assembly amended ORC Chapter 4707 to clarify that auction licensure requirements only apply to internet auctions when they are held in conjunction with a live auction. OAC 901:8-2-05 lists the instances in which a business must submit a reapplication for licensure with ODA. The rule is proposed to be amended to add the requirement for any Limited Liability Corporation that undergoes a change in the controlling interest to submit a reapplication for licensure.

The BIA states that early stakeholder outreach was conducted through the Ohio Auctioneers Commission, which is comprised of four auctioneers with at least five years of auctioneering experience and one member of the public. The BIA lists the members of the Commission and notes that they reviewed and voted unanimously in favor of the proposed language. The Commission stated that the rule would help to clarify the obligations of licensees as they conduct activities that fall under ODA's regulatory oversight.

As noted in the BIA, the affected business community includes all licensed and apprentice auctioneers in Ohio. Ohio law had required auctioneers/auction firms to enter into written contracts with buyers prior to the enactment of HB 131, and the legislation simply clarifies that the requirement extends to live auctions held in conjunction with an online auction. In addition, LLCs that undergo a controlling interest change must submit a reapplication for licensure, which costs either \$100 or \$200 based on whether it is early or late in the state's biennium.

ODA justifies these impacts by citing the need to keep state regulation compatible with the legislative changes in the ORC. In addition, the Department explains that the rules are necessary to protect consumers, help adjudicate disputes, and set a framework for auction transactions in Ohio.

After reviewing the proposed rules and the BIA, the CSI Office has determined that the rules satisfactorily meet the standards espoused by the CSI Office, and the purpose of the rule package is justified.

### **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 Ohio Department of Agriculture should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.