

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Department of Commerce, Division of Financial Institutions

Regulation/Package Title: Pawnbroker Rules 2016

Rule Number(s): 1301:8-5-01 (Amend); 1301:8-5-02 (No Change); 1301:8-5-03 (Amend); 1301:8-5-04 (Amend); 1301:8-5-05 (No Change); 1301:8-5-06 (Amend); 1301:8-5-07 (Amend); 1301:8-5-08 (Amend).

Date: _____

Rule Type:

☐ New ☒ 5-Year Review

☒ Amended ☐ Rescinded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

1. Please briefly describe the draft regulation in plain language.

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

These draft regulations amplify the Ohio Pawnbroker Act codified at Chapter 4727. of the Revised Code.

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1301:8-5-01 Definitions (Amend): The rule defines numerous terms used in Chapter 4727. of the Revised Code. This rule is being amended to remove the redundant use of the terms “person” and “individual.” The rule was also amended to remove the definition of “employee” and to place that definition in rule 1301:8-5-08, which addresses continuing education. This will clarify that this particular definition of “employee” is only intended to be used for purposes of determining continuing education compliance, not for the general operations of the pawn business.

1301:8-5-02 Advertising (No Change): This rule defines "advertisement" and requires that the licensee's name, address and license number be included on all advertisements. A licensee must maintain a file of all advertisements for two years. This rule also clarifies requirements for internet advertising.

1301:8-5-03 Notifications (Amend): This rule sets forth requirements to notify the superintendent concerning changes to business location, changes to posted hours of operation, surrender or non-renewal of license, and requires licensees that are going to sell active pawn loans to notify the pledgors/sellers in writing at least ten days prior to the sale of the loan. The rule also requires the licensee to make certain notifications to the superintendent regarding the designation of employees for the purpose of complying with the continuing education requirements set forth in section 4727.19 of the Revised Code. The rule is being amended to clarify the process for designating an employee, and to set forth what circumstances will allow a licensee to designate a new employee to complete the continuing education requirements, and to clarify when notice must be given to the superintendent if a new employee is designated to complete the continuing education requirements. The amendment allows the licensee 30 days to notify the superintendent of a change, whereas the current rule requires that the notification be made within 10 days of the change.

1301:8-5-04 Obstruction of inspection; statement to pledgor; authorized fees (Amend): This rule prohibits licensees from obstructing Division examinations, requires fees and interest to appear on the licensee's copy of the pawn statement, requires licensees to maintain proof of third-party fees, and prohibits licensees from charging, demanding or receiving fees other than those authorized by section 4727.06 of the Revised Code. This rule is being amended to clarify that an inspection, examination, or investigation must be permitted during the licensee's posted business hours, and to properly cite to the Brady Handgun Violence Protection Act.

1301:8-5-05 Unlicensed pawnbrokers (No Change): This rule prohibits an unlicensed pawnbroker from profiting from unlicensed loans and from continuing to possess the property pledged for such unlicensed loans.

1301:8-5-06 Purchases; list of property held for sale (Amend): This rule prohibits licensees from purchasing personal property in such a manner as to circumvent the recordkeeping requirements set forth in Chapter 4727. of the Revised Code, and requires them to document the acquisition of all property held for sale, and specifies the acceptable methods for that documentation. This rule is being amended to clarify that a pledgor must sign each completed pawn form, and to require the documentation of certain information when a pawn is redeemed.

1301:8-5-07 Payments on a pawn loan (Amend): This rule clarifies how to properly charge interest and storage fees when a pledgor makes a principle reduction on a loan. This rule prohibits refinancing or establishing a new pawn date on a loan if a pledgor is unable to pay the monthly interest and storage fee, or to redeem the pledged item at the end of the pawn month. It clarifies how to calculate "thirty days from the date the notice was mailed," as used in section 4727.11(A) of the Revised Code. Paragraph (A) of the rule is being amended to be consistent with the changes made to division (D) of section 4727.06 of the Revised Code pursuant to Senate Bill 235 of the 131st General Assembly.

1301:8-5-08 Continuing education (Amend): This rule clarifies the continuing education requirements in section 4727.19 of the Revised Code. It sets forth the requirements for persons applying to offer continuing education courses, course approval criteria, and who needs to take continuing education on behalf of the licensee. The rule is being amended to provide stakeholders with more options to meet their continuing education requirements, and allows additional methods for obtaining approval of courses. Paragraph (F) is being added to clarify what is required in the event a new employee is designated to comply with continuing education requirements pursuant to paragraph (E) of rule 1301:8-5-03. The definition of "employee" was moved from rule 1301:8-5-01 at the request of stakeholders because that particular definition of "employee" was only intended to clarify the types of employees who are qualified to fulfill the continuing education requirement on behalf of a licensee.

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

Section 4727.13(A) of the Revised Code.

- 2. Does the regulation implement a federal requirement? 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? If yes, please briefly explain the source and substance of the federal requirement.**

No, these regulations do not implement a federal requirement.

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

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Not applicable.

- 4. 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)?**

The public purpose of this rule package is to provide clarity to licensed pawnbrokers as to the requirements of the Pawnbroker Act. In addition, the regulations protect consumers in pawnbroker transactions by ensuring that licensees have the requisite experience and fitness to act as a pawnbroker and comply with the requirements of the Pawnbroker Act.

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

The rules will not affect the number of pawnbroker licenses issued by the Division. Rather, the Division will measure the success of these regulations by continuing to receive industry feedback on the licensing and regulation of pawnbrokers and by reviewing consumer complaints submitted to the Division. The Division will also measure success by any increase in number of new continuing education courses approved by the superintendent pursuant to the amended rules.

Development of the Regulation

- 6. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.** The proposed rules were sent to all of the main branch licensees for review and comment, consisting of approximately 140 individuals. Please see the attached spreadsheet for a complete list.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

The Division emailed draft regulations for review and comment to the above mentioned stakeholders on September 19, 2016, and they were given until September 30, 2016 to provide input either by email or phone.

- 7. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?** The Ohio Pawnbroker's Association (OPA) requested a conference call with the Agency. As a result of that call the following amendment was made to the rules.

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The OPA requested that the definition of “employee” in rule 1301:8-5-01 not be limited to those individuals who make pawn loans on behalf of the licensee. They indicated that all employees should be held accountable for their actions and limiting the definition in this way could allow another type of employee, such as a janitor, to escape accountability for actions as an employee. As a result of this request, the Division moved the definition to rule 1301:8-5-08, in order to clarify that this definition is only to clarify what employees are qualified to complete the required 8 hours of CE for each business location on behalf of the licensee.

The OPA requested that the requirement in rule 1301:8-5-01(B) that fees be disclosed to a pledgor on each pawn ticket be removed. After discussion and consideration, the Division has declined to make that change. It is a minimal burden on the licensee to make the disclosures for each separate pawn ticket, and the Division believes the regulation is necessary to protect consumers and ensure that they understand that items pawned at the same time but on a different pawn ticket will each be charged separate fees.

The OPA also requested that areas of a business location, such as file cabinets, rooms or vaults not be subject to inspection if they are used for purposes unrelated to the pawnbroker business. The Division gave serious consideration to this request and considered the proposed language submitted by the OPA. After that consideration and discussion, the Division declined to make the requested change. Section 4727.05 of the Revised Code requires the Division to conduct an investigation on each licensee at least once every 18 months, “and for that purpose shall have free access to all the pledged or purchased articles, books, and all papers relating to the licensee's business.” In light of this statutory requirement, allowing a licensee to designate portions of the business to be “off limits” to Division personnel would circumvent the purpose of the statute and the duty of the Division to ensure that a business is in compliance with all administrative and statutory requirements. Additionally, division (F) of section 4727.13 of the Revised code specifically states that “The superintendent may examine and investigate the business, including the business location and any books, records, writings, including electronic writings, safes, files, or storage areas located in or utilized by the business location, of any person the superintendent reasonably suspects to be advertising, transacting, or soliciting business as a pawnbroker.” Therefore, adding the requested language to the rule would be in direct conflict with the plain language of the statute.

Additional concerns were raised and discussed, and as a result of the discussion the OPA and the Division agreed that no changes were actually needed to address these concerns.

The Division also received comments from First Cash. First Cash requested clarification on who would determine what event would trigger the appointing of a new employee to

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complete continuing education in rule 1301:8-5-03. The Division made the requested clarification, including First Cash's proposed language. First Cash also requested that the notification time be extended from 30 to 45 days. Since the Division had already extended the notification time from 15 to 30 days in the original draft, the Division declined to further extend the deadline for licensees to notify the Division of a change in the designated employee.

8. **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?** Not applicable.
9. **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?** These regulations are subject to their five-year rule review, therefore every rule was reviewed and numerous alternatives were considered as part of the process.
10. **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, these rules are for the purpose of carrying out the processes that stakeholders must follow in order to comply with the provisions of sections 4727.01 to 4727.99 of the Revised Code.
11. **What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?** The Division is the primary regulator of licensees under the Pawnbroker Act, and is not aware of any duplicative regulations.
12. **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 regulations have been available to stakeholders throughout the rule review process, and will continue to be available to them through the Division's website throughout the JCARR process. Once finalized, the regulations will be brought to the attention of stakeholders at every available opportunity. Additionally, Division staff will be trained on the regulations to ensure their consistent application.

Adverse Impact to Business

13. **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;**

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This rule package applies to licensed pawnbrokers. There are currently 132 licensed pawnbroker companies, having a total of 308 licensed business locations.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

1301:8-5-01 Definitions (Amend): This rule does not create an adverse impact as it simply defines the terms that are used throughout chapter 4727. of the Revised Code, and the Administrative Code.

1301:8-5-02 Advertising (No Change): Section 4727.16(A) of the Revised Code requires a licensee to include the name, address and license number in all advertisements, offers, and solicitations. In order to allow the Division to verify compliance with the statute this rule requires the licensee to maintain advertisements for two years from the date last disseminated. This rule requires a minimal expenditure of employee time in order to comply.

1301:8-5-03 Notifications (Amend): The adverse impact of this rule is minimal because all notifications may be delivered via email. This rule requires the employee time necessary to email the notification to the Division or the pledgor or seller of an item.

1301:8-5-04 Obstruction of inspection; statement to pledgor; authorized fees (Amend): There is no adverse impact associated with paragraphs (A) and (C) of this rule. Paragraph (B) of this rule requires a minimal expenditure of employee time to record the information on the licensee's copy of the pawn ticket. This is necessary to ensure that the licensee is not charging impermissible fees and that the consumer fully understands those fees.

1301:8-5-05 Unlicensed pawnbrokers (No Change): There is adverse impact associated with this rule because it applies to unlicensed persons, and simply prevents them from profiting from unlicensed activity. This rule is necessary to protect consumers who obtain a loan from an unlicensed person. It also protects licensed pawnbrokers from unfair competition by unlicensed persons making pawn loans.

1301:8-5-06 Purchases; list of property held for sale (Amend): The rule requires a minimal expenditure of owner, officer, member, partner, stockholder, agent or employee time to comply. In order to document the acquisition of property and obtain the signature of the pledgor, it takes an individual approximately 5 minutes to complete the appropriate forms.

1301:8-5-07 Payments on a pawn loan (Amend): There is no adverse impact associated with this rule. It clarifies procedures for charging interest and storage fees and for calculating the number of days before a pledged item is forfeited. Paragraph (A) of the rule is being amended to

be consistent with the changes made to division (D) of section 4727.06 of the Revised Code pursuant to Senate Bill 235 of the 131st General Assembly.

1301:8-5-08 Continuing education (Amend): Section 4727.19 of the Revised Code, as amended in Senate Bill 235, requires a pawnbroker licensee to designate one employee at each pawnbroker place of business to complete 8 hours of continuing education for every two-year period. The adverse impact of this rule is in the form of the fees charged for continuing education courses and licensee and/or employee time to complete the requirement. The rule is being amended to provide licensees and their designated employees more options to meet their continuing education requirements, and allows additional methods for obtaining approval of courses. With more options to meet the requirements and streamlined methods of approval for courses, the intention is that there will be more inexpensive, or possibly free options available to licensees and their employees to meet the requirements of the Revised Code.

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.

1301:8-5-01 Definitions (Amend): This rule does not create an adverse impact as it simply defines the terms that are used throughout chapter 4727. of the Revised Code, and the Administrative Code.

1301:8-5-02 Advertising (No Change): Section 4727.16(A) of the Revised Code requires a licensee to include the name, address and license number in all advertisements, offers, and solicitations. In order to allow the Division to verify compliance with the statute this rule requires the licensee to maintain advertisements for two years from the date last disseminated. This rule requires a minimal expenditure of employee time in order to comply. It should take less than five minutes of employee time to place a copy of an advertisement into a filing system.

1301:8-5-03 Notifications (Amend): The adverse impact of this rule is minimal because all notifications may be delivered via email. The cost of this rule is the employee time necessary to email the notification to the Division or the pledgor or seller of an item.

1301:8-5-04 Obstruction of inspection; statement to pledgor; authorized fees (Amend): There is no adverse impact associated with paragraphs (A) and (C) of this rule. Paragraph (B) of this rule requires a minimal expenditure of employee time, approximately 5 minutes, to record the information on the licensee's copy of the pawn ticket. This is necessary to ensure that the licensee is not charging impermissible fees, and to protect the consumer.

1301:8-5-05 Unlicensed pawnbrokers (No Change): There is no adverse impact to licensees associated with this rule because it applies to unlicensed persons, and simply prevents them from profiting from unlicensed activity. This rule is necessary to protect consumers who obtain a loan from an unlicensed person. It also protects licensed pawnbrokers from unfair competition by unlicensed persons making pawn loans.

1301:8-5-06 Purchases; list of property held for sale (Amend): The rule requires a minimal expenditure of owner, officer, member, partner, stockholder, agent or employee time to comply. In order to document the acquisition or sale of property and obtain the signature of the pledgor, it takes an individual approximately 5 minutes to complete the appropriate form.

1301:8-5-07 Payments on a pawn loan (Amend): There is no adverse impact associated with this rule. It clarifies procedures for charging interest and storage fees and for calculating the number of days before a pledged item is forfeited.

1301:8-5-08 Continuing education (Amend): Section 4727.19 of the Revised Code, as amended in Senate Bill 235, requires a pawnbroker licensee to designate one employee at each pawnbroker place of business to complete 8 hours of continuing education for every two-year period. The cost of completing continuing education ranges from \$50 to \$100 per hour, plus the employee time in the classroom. Many of the continuing education hours can be taken at the Ohio Pawnbroker Association and are discounted for members. The source of these estimates are from the Division licensing section that is responsible for the review, approval and tracking of approved pawnbroker continuing education classes. The rule is being amended to provide licensees and designated employees with more options available to meet their continuing education requirements, and allows additional methods for obtaining approval of courses. With more options to meet the requirements and streamlined methods of approval for courses, the intention is that there will be more inexpensive, or possibly free options available to licensees and their employees to meet the requirements of the Revised Code.

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

Any adverse impacts to licensed pawnbrokers are justified in order to ensure that pawnbrokers are charging the legally permissible interest and fees set forth in the Pawnbroker Act, to protect consumers in pawnbroker transactions, to facilitate the return of stolen goods to the victims of theft, and to reduce crimes such as theft, money laundering and the fencing of stolen goods.

Regulatory Flexibility

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

The Division allows certain notifications to be made via email which saves time and postage.

16. 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?

The Division resolves first-time recordkeeping violations involving incorrect pawn or purchase tickets through the examination process and imposes no fines.

17. What resources are available to assist small businesses with compliance of the regulation?

Employees of the Division speak to the members of the Ohio Pawnbrokers Association periodically regarding compliance with the Pawnbroker Act and other laws and administrative rules affecting pawnbrokers. The Division employees, licensing staff, and all examiners are available via telephone and at on-site examinations to answer questions and promote compliance with the Pawnbroker Act and its rules.