

**MEMORANDUM**

TO: Joseph Kirk, Ohio Department of Public Safety

FROM: Christopher Smyke, Lt. Governor's Office

DATE: August 30, 2017

RE: **CSI Review – Motor Vehicle Dealers and Salespersons (OAC 4501:1-3-01 to 4501:1-3-38)**

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This rule package consists of twenty amended¹, one rescinded, two new, and eleven no-change rules submitted by the Ohio Department of Public Safety (DPS) for their statutorily required five-year review. It was submitted to the CSI Office on June 12, 2017 and the comment period closed on July 5, 2017. No comments were received during this time.

Ohio Administrative Code (OAC) Chapter 4501:1-3 covers all the rules that regulate motor vehicle dealers and salespersons. The rules outline the process for licensing and requirements for place of business (such as lot size, office space and appropriate signage), records retention and minimum net worth. They also detail the process by which licensees are subject to administrative discipline and how they may appeal a disciplinary action.

The amended rules cover a wide range of proposed changes, including non-substantive changes

¹ Ohio Administrative Code (OAC) 4501:1-3-07, -09, -11, -20, -22 and -23 are being amended to the extent that the Legislative Service Commission requires DPS to rescind the rule and replace it with a new rule of the same rule number.

such as language clarifications for consistency, reference updates and grammatical corrections. The amended rules also include more substantial changes such as adding deadlines for licensees to furnish records upon request and to notify the registrar of changes in posted business hours or contact information, exempt the barrier requirement for facilities that meet certain ownership requirements, and permits the motor vehicle dealers board to require a training course for licensees found in violation of state law or regulation. Six rules are proposed to be rescinded and replaced under the same rule numbers to accommodate reorganization and new content. The majority of these changes propose non-substantive title changes and clarification on administrative procedure. However, the rescission and replacement of OAC 4501:1-3-11 implements a new requirement for licensees to post a \$25,000 surety bond with the Ohio Attorney General's office in addition to the pre-existing \$75,000 net worth requirement; the replacement rule also establishes a disciplinary procedure for licensees found to be not in compliance with this rule and exempts entities from the surety bond requirement that hold a license in the year preceding implementation of the rule. OAC 4501:1-3-05 is proposed to be rescinded without replacement because it is duplicative of the statute. The new rules include an allowance for consent agreements in the administrative discipline process (OAC 4501:1-3-17) as well as the dates and availability of materials that are incorporated by reference (OAC 4501:1-3-38).

According to the BIA, the BMV Dealer Licensing Section held a stakeholder meeting on February 22, 2017 and notified all license holders by mail. At this initial stakeholder meeting, DPS conducted a review of OAC 4501:1-3 with representatives from the auto dealer associations, an industry representative, and license holders. A second stakeholder meeting was conducted on April 5, 2017 with the previously listed participants, as well as a representative of the Ohio Attorney General's office to discuss OAC 4501:1-3-11 covering the net worth and bond requirements. The BIA states that after thorough discussion of the rules in light of new legal interpretation by DPS and the Attorney General's office, all parties involved were supportive of the significant changes to the rules. No comments were received during the CSI public comment period.

The BIA identifies the impacted business community as all Ohio auto dealer licensees: 5,478 valid used motor vehicle dealers, 33 licensed auction owners, 1 construction equipment auction, 1,092 leasing dealers, and 1,648 franchised new motor vehicle dealers. First-time dealer applicants must incur the cost of a background check (Bureau of Criminal Investigations background checks range from \$35 to \$45). The BIA details the cost of the initial application fee and the costs of renewal for each type of dealer license. In addition, a first-time applicant for a used motor vehicle dealer license must complete a training, the cost of which is set by the authorized provider of the course. The new proposed requirement of a first-time used motor vehicle dealer to obtain a \$25,000 bond would vary based on the credit of the applicant, resulting in an annual cost of between \$188 and \$2,500. Any licensee found in violation of the rule would be subject to an administrative hearing and incur costs for travel and legal representation. The

BIA states that the addition of OAC 4501:1-3-38 is intended to reduce the impact on businesses by allowing licensees to waive their right to an administrative hearing by signing a consent agreement in order to deter unnecessary travel and legal expenses.

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, the CSI office does not have any recommendations for this rule package.

Conclusion

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

cc: Emily Kaylor, Lt. Governor's Office