

**MEMORANDUM**

**TO:** Matthew Walker, Ohio Department of Commerce

**FROM:** Christopher Smyke, Regulatory Policy Advocate

**DATE:** June 1, 2018

**RE:** **CSI Review – Precious Metal Dealer Act Rules 2017 (OAC 1301:8-6-01 through 1301:8-6-06)**

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

**Analysis**

On January 29, 2018 the Ohio Department of Commerce (ODC) submitted a draft rule package consisting of six no-change rules to the CSI Office as part of the five-year rule review requirement contained in Ohio statute. The official public comment period closed on February 12, 2018 with no comments submitted. A revised BIA along with an amended rule was submitted to CSI on May 23, 2018.

This rule package contains all six rules in Ohio Administrative Code (OAC) Chapter 1301:8-6, addressing precious metal dealers in Ohio. The rules implement the Precious Metal Dealers Act, which is codified in ORC 4728, and outline requirements regarding licenses, temporary permits, and posted notices. Five of the rules are proposed with no changes, whereas OAC 1301:8-6-03, which governs bookkeeping requirements, is proposed with amended language. A recent decision by the United States Court of Appeals for the Sixth Circuit in *Liberty Coins v. Goodman* held the first sentence of OAC 1301:8-6-03(D) to be unconstitutional. Thus, ODC submitted a revised BIA on May 23, 2018 with the corresponding rule language removed.

Prior to filing the rules with CSI, ODC sent a copy of the proposed no-change rules to all licensed precious metal dealers, as well as a supplemental list of stakeholders for review and comment.

Aside from a single comment of support of the rules from a licensee, ODC did not receive any input during this period of early stakeholder outreach. Likewise, no comments were received during the CSI public comment period.

The impacted business community includes the 107 precious metal dealers that are subject to licensure by the Ohio Division of Financial Institutions. The requirements stipulated in the rules are generally minor, including providing notice when a dealer changes its address, records retention (which the BIA notes, is a standard business practice anyway), posting a conspicuous sign regarding stolen property, and posting business hours. Many of the more substantive impacts are the result of requirements in statute, such as the \$200 licensing fee under ORC 4728.03. The BIA justifies the existing rules as necessary safeguards against crimes such as theft, money laundering, and fencing of stolen goods.

Following review of the draft rules and BIA, it has been determined that the standards espoused by the CSI Office have been met, and the adverse impacts of the draft rules are justified.

### **Recommendations**

For the reasons discussed 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 Commerce 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