



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

MEMORANDUM

TO: Joe Kirk, Ohio Department of Public Safety

FROM: Emily Groseclose, Senior Policy and Business Advocate

DATE: June 24, 2020

RE: **CSI Review – Licenses/Registration for Private Investigators and Security Guard Services (OAC 4501:7-1-01, 4501:7-1-02, 4501:7-1-03, 4501:7-1-04, 4501:7-1-05, 4501:7-1-06, 4501:7-1-07, 4501:7-1-08, 4501:7-1-09, 4501:7-1-10, 4501:7-1-11, 4501:7-1-12, 4501:7-1-13, 4501:7-1-14, 4501:7-1-15, 4501:7-1-16, 4501:7-1-17, 4501:7-1-18, 4501:7-1-19, 4501:7-1-20, 4501:7-1-21, 4501:7-1-22, and 4501:7-1-23)**

On behalf of Lt. Governor Jon Husted, 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This rule package contains 18 amended, one no change, two new, and four rescinded rules submitted by the Ohio Department of Public Safety (Department) as part of the statutorily required five-year review process. The package was submitted to CSI on March 12, 2020, and the public comment period was held open through March 27, 2020. Two comments were received during that time. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI office on March 12, 2020.

The rules establish licensing requirements for private investigators and security guards. Specifically, the rules define key terms used throughout the Chapter, establish standards and qualifications an applicant must meet for licensure and offenses that are disqualifying, prescribe information and documentation that must be provided with an application, require licensees to maintain records, prohibit certain words or phrases from being used on uniforms, vehicles, and publications, prescribe

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fees, require applicants to be enrolled in the retained fingerprint database, and require that licensees who wish to carry a firearm submit an application and evidence of training. The rules also establish processes for the Department to track, monitor, prioritize, and expedite licensure for active duty military members, veterans, and their spouses; however, the rules as proposed do not address reciprocity for military members and their spouses with out-of-state licenses, as is required by Senate Bill 7 (133rd General Assembly). The Department indicated to CSI that it plans to draft rules to implement the requirements of Senate Bill 7 soon.

Substantive amendments to the rules include the addition of language allowing the Department to consider whether or not an applicant has committed any act “in another state or jurisdiction that, if committed in Ohio, would constitute a violation” under Ohio’s laws or rules, and whether or not the applicant has previously defaulted on other discipline issued by the Department. The Department removed requirements for a new license to be issued when there’s a change in the form of the business organization or to the legal name of the licensee, and removed requirements that licensees submit quarterly reports to the Department that lists registered employees. The Department added discretion for the director to allow an applicant to take an exam out of state and changes to process more payments and applications online. The Department also proposes to add the following to the list of disqualifying offenses: menacing by stalking, menacing, telecommunications harassment, inducing panic, making false alarms, and criminal mischief. Lastly, the Department proposes to remove language stating how an individual may obtain notice of meetings through request, which it stated was an outdated means of notice.

OAC 4501:7-1-11 is being rescinded and adopted as a new rule with the same number, due to the extent of proposed changes. The new rule specifies the records that licensees must keep and have available for inspection upon request of the Department. OAC 4501:7-1-12, 4501:7-1-13, and 4501:7-1-14 are being rescinded and adopted as a combined new rule with the number OAC 4501:7-1-12.

As part of early stakeholder outreach, the Department shared the rules via email with all licensed private investigators and security guard companies in Ohio, as well as other subscribers to its email list. Two comments were received that expressed support for the changes, and two commenters expressed opposition to several provisions of the current rules as well as some of the proposed changes. The Department replied by explaining in detail its reasoning for each of the points raised, and no changes were made as a result of the comments.

Two comments were received during the CSI public comment period. One commenter, who provides security for a private corporation, requested that the Department provide an exception to licensing requirements for people who provide security to large areas but do not contract with or

receive compensation from anyone other than the company that employs them. In response, the Department stated that ORC Chapter 4749 requires that individuals be licensed/registered to provide security and that the requested change cannot be addressed through administrative rules.

The second commenter is the Chief Executive of a private security and investigations company. He voiced several concerns with provisions in the rules and proposed amendments, including: the definition of “working hours,” disqualifying offenses and reputation for integrity, reporting and record keeping requirements, license renewals, fingerprint retention, processing of military applications, required experience/recognition of experience, examinations, prohibited words and phrases, uniform and badge requirements, notice of meetings, and firearm bearer requirements. The Department responded explaining statutory requirements and its justification for the issues raised. The commenter specifically had concerns that language seeking to allow the Department to consider violations against laws of another state when determining an applicant’s good reputation for integrity appeared as though the rule was attempting to impose upon other states’ jurisdictions. In response, the Department amended the rule for clarification.

The rules impact 867 licensed private investigator and security guard companies, 23,000 individuals employed by those companies, and applicants for license and registration. Businesses are required to apply and pay a fee for their main office and each branch office that they operate, designate at least one person to serve as a Qualifying Agency (QA), register each employee, notify the Department with 10 days of employee separation, and maintain general liability insurance. Additionally, applicants for QA licensure must successfully complete an exam, provide proof of experience in private investigation and/or security services, provide five letters of reference, and submit to a criminal records check. A QA or employee who carries a firearm in the course of their duties must submit a separate firearm bearer application, which includes a fee and 20-hour training course provided by the Ohio Peace Officer Training Academy (OPOTA). Licenses and registrations must be renewed annually. A violation of the rules could result in the denial, suspension, or revocation of a license, criminal charges, and/or civil penalties.

The rules contain several fees associated with obtaining licensure, including: \$375 for new business applicants, \$25 QA examination fee, \$5 retained applicant fingerprint database enrollment fee, background check fee ranging from \$22-\$40, \$100 application fee for each branch office, annual renewal fee of \$275 for the main office, a \$40 fee for each registered employee, and an estimated \$10-\$15 for a photo. The costs to be registered as a firearm bearer include a fee of \$15 paid to the Department, the price of obtaining a Federal Bureau of Investigation background check, and \$200 for the OPOTA training.

The Department noted that the adverse impacts created by the rules are derived from statute,

including many of the fees, and background check, experience and training requirements. The Department asserted that the laws and rules are necessary to ensure that security and investigative services are provided by qualified individuals that have the requisite training and experience, proper background, and adhere to the practices and standards established by law.

Recommendations

For the reasons described above, the CSI office has no recommendations on this rule package.

Conclusion

Based on its review of the proposed rule package, the CSI office recommends that the Department of Public Safety proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.