

**MEMORANDUM**

TO: Kimberley Wells, Counsel – Division of Real Estate and Professional Licensing,
Ohio Department of Commerce

FROM: Todd Colquitt, Director of Business Advocacy – CSI

DATE: November 21, 2018

RE: **CSI Review – Ohio Department of Commerce – Division of Real Estate and Professional Licensing Rules Five-Year Review**

On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (O.R.C.) 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 O.R.C. 107.54.

Analysis

This rule package is being proposed by the Ohio Department of Commerce (Department) for review as part of the statutory five-year rule review requirement. It consists of fifty-nine (59) rules in total, comprising seven (7) new rules, thirty-eight (38) amended rules, twelve (12) rules with no changes, and two (2) rules being rescinded. The rule package was submitted to the CSI Office on October 1, 2018, with a public comment period end date of October 16, 2018. The Department conducted extensive and open-ended early stakeholder outreach prior to the public comment period. No comments were received during the public comment period.

The fifty-nine rules are scattered across five chapters of Ohio Administrative Code (O.A.C.) division 1301:5 – specifically chapters 1301:5-1, 1301:5-3, 1301:5-5, 1301:5-6, and 1301:5-7 – and constitute the bulk of rules setting forth the standards for licensure and practice of real estate professionals and providers of real estate education. The proposed changes also include those

necessitated by the enactment of House Bill 532 (HB 532) of the 131st General Assembly. The legislation made numerous changes to pre- and post-licensure education requirements, created and established a hierarchy of three subcategories of real estate brokers, and permitted brokerages to apply for and use more than one trade name. Adverse impacts identified by the Department in its Business Impact Analysis (BIA) include: various application fees; compliance time associated with filling and submitting various forms; the time and financial costs of mandatory post-licensure education and continuing education; and potential enforcement fines and penalties.

In addition to the underlying statutory mandates, the Department's BIA notes that real estate professionals assist members of the public in conducting transactions which are, for many persons, the largest financial transactions engaged in during a lifetime. Further, real estate professionals routinely handle the money of consumers received in a fiduciary capacity via earnest money deposits, rents, and security deposits. The rules help ensure that consumers are fully informed throughout transactions and that their moneys are properly handled and protected.

During early stakeholder outreach, the Department circulated draft proposals to stakeholders for review and feedback and held multiple in-person meetings and telephone discussions. Additionally, the Ohio Real Estate Commission reviewed the draft rules at a special public meeting it held earlier this year in May. The Department states that stakeholders were supportive of a majority of the proposed changes and made suggestions to improve others. For instance, as originally proposed by the Department one rule would have required a licensee advertising under any of its authorized trade names to include the underlying license number in the advertisement. Stakeholders raised concerns about the cost of doing so. Accordingly, the proposed rule was modified to reflect that a licensee advertising with a trade name other than that directly associated with the underlying license number could do so provided that the trade name was not misleading and registered with the Department.

The purpose of a CSI recommendation memo is not to catalogue in detail each rule in all its subparts, but rather to weigh the rule package on the whole in whether stakeholders were included and their input considered, whether the appropriate balance has been struck, and whether the agency has adequately articulated the necessity for the adverse business impact. After reviewing the proposed rules and BIA, the CSI Office has determined that the rule package as a whole satisfactorily meets the standards espoused by the CSI Office and the purpose of the rule package justifies the adverse impacts identified in the BIA.

Recommendations

For the reasons described above, the CSI Office has no recommendations regarding 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, Director of Regulatory Policy – CSI