ACTION: Revised

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Common Sense Initiative

Mike DeWine, *Governor*
Jon Husted, *Lt. Governor*

Joseph Baker, *Director*

MEMORANDUM

TO: Emily Groseclose, Ohio Department of Commerce

FROM: Caleb White, Business Advocate

DATE: July 18, 2024

RE: **CSI Review – Ownership, Dispensary Security, and Operations (OAC 1301:18-1-01, 1301:18-3-01, 1301:18-3-03, 1301:18-3-04, 1301:18-3-05, 1301:18-3-06, 1301:18-3-07, 1301:18-3-08, 1301:18-3-15, 1301:18-3-16, 1301:18-7-01, 1301:18-7-02, 1301:18-7-03, 1301:18-7-05, 3796:2-2-03, 3796:3-1-05, 3796:3-2-03, 3796:6-2-01, 3796:6-2-02, 3796:6-2-11, 3796:6-2-12, 3796:6-3-02, 3796:6-3-03, 3796:6-3-05, 3796:6-3-14, and 3796:6-3-16)**

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 Department as provided for in ORC 107.54.

Analysis

This rule package consists of thirteen new rules, twelve rescinded rules, and one amended rule proposed by the Ohio Department of Commerce, Division of Cannabis Control (Department) as a part of the statutory five-year review process. This rule package was submitted to the CSI Office on April 3, 2024, and the public comment period was held open through April 17, 2024. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on April 3, 2024.

The rules in this package contain thirteen new rules which are intended to replace the twelve rescinded rules also contained in this package. While these new rules contain largely similar content to the rescinded rules, the new rules have different Ohio Administrative Code (OAC) numbers and are updated to apply to both medical and non-medical cannabis rather than only medical cannabis as the rescinded rules do in addition to relocating, reformatting, and generally updating language. The

rescinded rules address topics such as cultivator financial responsibility, cannabis waste disposal requirements, application to operate procedures, requirements surrounding medical marijuana licensing bonds, requirements surrounding the change in ownership of a dispensary, dispensary facility requirements, dispensary hours of operation, requirements surrounding the designated representatives of dispensaries, as well as dispensary security and surveillance requirements.

As previously stated, the new rules address similar topics to that of the rescinded rules. OAC 1301:18-3-01 prohibits a cannabis facility from being located withing 500 feet of a prohibited facility such as a public park or school. OAC1301:18-3-03 establishes requirements surrounding the ownership, financial interest, and control of cultivators, processors, dispensaries, and testing laboratories. OAC 1301:18-3-04 requires license applicants to obtain approval from the Department regarding their ownership, who has a financial interest in the applicant, and control over the applicant. OAC 1301:18-3-05 requires the licensee to notify the Department prior entering into agreements to create modify certain documents. OAC 1301:18-3-06 establishes requirements surrounding the change in ownership of a licensee. OAC 1301:18-3-07 requires a licensee to obtain approval from the Department and complete an application prior to changing its name. OAC 1301:18-3-08 establishes requirements surrounding the establishment of financial responsibility for cultivators, processors, testing laboratories, and dispensaries through bond or escrow. OAC 1301:18-3-15 contains requirements for those visiting the facility of a licensed entity. OAC 1301:18-3-16 contains requirements surrounding the disposal of cannabis waste. OAC 1301:18-7-01 establishes the scope, requirements, and duration of a dispensary certificate of operation. OAC 1301:18-7-02 establishes requirements related to the daily operating procedures of dispensaries including facility requirements hours of operation, sales, and distribution methods.

OAC 1301:18-7-03 requires dispensaries to designate one to three responsible parties to manage the facility's operations and requires one of these parties to be present at the facility a minimum of twenty hours a week. OAC 301:18-7-05 establishes security and surveillance requirements for dispensaries. In addition to the updates previously outlined in the rules, these new rules also extend the permitted operating hours of a dispensary by two hours, increase the ownership threshold for licensees to ten percent, update what is considered cannabis waste, update curbside pickup and drive-through window requirements surveillance requirements, allow additional responsible parties, and update the management of dispensary floorplans. In addition to the rescinded and new rules, this package also contains one amended rule. The amended rule, OAC 1301:18-1-01, establishes definitions related to medical and non-medical cannabis. This rule is amended to add definitions for "church," "control," "facility visitor," "financial interest," "ownership," "person," "prohibited facility," "public library," "public park," "public playground," and "school."

During early stakeholder outreach, the Department included all current medical marijuana licensees in the development of the rules and posted the rules on the Department's website. The Department

included various provisions that have been requested by current medical marijuana licensees over the past few years such as granting dispensaries the ability to manage their floorplans, improving curbside pickup, expanding the allowed hours of operation, allowing additional designated responsible parties, and updating the threshold of what constitutes ownership. After the early stakeholder outreach period, the Department made changes to the rules to allow photographs and videos of secure limited access areas under certain circumstances and current modified drive-through window language to explicitly ensure that a drive-through area is acceptable for a dispensary if the dispensary has express written consent of the property owner. During the CSI public comment period the Department received twenty-nine comments. These comments addressed among other things topics such as only requiring attestation from the dispensary owner for drive-up windows and curbside pickup, changes to language surrounding warnings of noncompliance, notices of intent to change ownership or business trade name, camera image resolution requirements, possession limits, facility visitor requirements, the bond amounts required to establish financial responsibility, Tetrahydrocannabinol (THC) caps, ordering kiosks, liability insurance, the distance facilities are required to maintain from prohibited facilities, the number of licenses that will be issued, and when the non-medical cannabis program will be operational. In response to these comments the Department made changes to the rules regarding warnings of noncompliance, security camera image resolution requirements, and facility visitor requirements. The Department also responded to other commenters by either clarifying the rules, clarifying the necessity of certain provisions, clarifying that the requested change is outside its scope to implement, or clarifying that the requested change is outside the scope of the rules.

The business community impacted by the rules includes current medical marijuana licensees, businesses eligible to participate in the non-medical cannabis market, and future licensees for both the medical and non-medical cannabis markets. The adverse impacts created by the rules include the costs associated with completing an application to request approval for the change in ownership which includes a fee ($1,000 for medical marijuana testing labs, cultivators, and processors, as well as $5,000 for dispensaries), the time required for licensees to complete an application to change the legal entity name or tradename, the requirement for a licensee to establish financial responsibility through bond or establishing an escrow account with the required amount of money ($750,000 for Level I cultivators, $75,000 for Level II cultivators and testing laboratories, $250,000 for processors, and $50,000 for dispensaries), notification requirements, security and surveillance requirements, and operating procedure requirements. The Department notes that certain changes such as the elimination of certain requirements surrounding mantraps and delivery bays, the increasing of ownership thresholds, expanding allowed hours of operation, and updating what is considered cannabis waste will reduce the adverse impacts of the rules. The Department states that the adverse impacts to business are justified to balance fair regulations of the cannabis industry while protecting public health and safety.

Recommendations

Based on the information above, the CSI Office has no recommendations on this rule package.

Conclusion

The CSI Office concludes that the Department should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.