



**OHIO SENATE
TRANSPORTATION, COMMERCE, AND WORKFORCE COMMITTEE
Occupational Licensure Review
Tuesday, November 17, 2020**

Good afternoon. My name is Carrie Kuruc, and I am the Director of the Common Sense Initiative in the office of Governor Mike DeWine and Lt. Governor Jon Husted. I appreciate the opportunity to address the committee under R.C. 101.64.

CSI keeps a watchful eye for situations where Ohio’s laws and rules might not have caught up with the speed of business and advancing technology. Burdensome regulation is not always a result of overly prescriptive administrative rules. Often, the lack of flexibility that businesses experience can be the result of restrictions that originate in statute.

Our rule review process is business-focused, calling on agencies to engage with businesses and stakeholders during the drafting process, and again when the proposed rules are filed to help CSI identify unreasonable adverse impacts that a proposed rule might have on business and job creation.

R.C. 101.64 requires the CSI office to offer any information it has collected over the past six years about the occupational licensing boards the committee is reviewing.

Ohio Athletic Commission

The Ohio Athletic Commission has filed two packages of rules with CSI totaling 127 rules. The licenses included in those rules are created by statute. CSI received no comments on any of the rules and made no recommendations.

Ohio Department of Natural Resources

CSI has reviewed 45 rule packages containing 415 proposed rules from the Department of Natural Resources and received comments from 52 stakeholders. Some of the draft rules were specific to occupational licensing of industrial minerals surface mining, fishing guides, bait dealers, commercial fishing, fishing guides, wildlife rehabilitators, and the mine blaster certification. Those licenses and certifications, and the rules that implement them, are required by statute.

Public input received during early stakeholder outreach and the comment period required by the CSI review process focused on improving the content of the rules. A good example of this is the commercial nuisance wild animal operator license rule, which received line-by-line commentary that

the Department incorporated into its draft rule from all levels of the wild animal control industry. Also, in rules proposed to eliminate the temporary mine foreperson certification, a conversation with stakeholders led the Department to leave the certification in place until a more robust conversation could happen.

More recently, CSI has reviewed several mine safety regulations. One of the rules set forth training, eligibility, and credential requirements for mine medical responders. The Department made changes after hearing early stakeholder input to make individuals with paramedic certification eligible for employment as mine medical responders.

Department of Commerce Division of Securities

In 2015, CSI reviewed three packages of rules related to registration, licensing, procedures, and prohibitions for securities dealers and salespersons, investment advisors and investment advisor representatives, state retirement system investment officers, and the Bureau of Workers' Compensation Chief Investment Officer. All the rules are required by statutes that establish the licenses and registrations and tracks federally required registration and licensing. The rules received no public comments.

Department of Commerce—Division of Industrial Compliance – Construction Industry Licenses

In 2015, the Ohio Construction Industry Licensing Board reorganized its 28 rules related to licensing of electrical, HVAC, hydronics, refrigeration, and plumbing commercial contractors for ease of understanding, and created a new rule recognizing veterans' military experience as part of licensure application review, and a new rule creating an incentive program for compliant licensees. This "compliant contractor program" permitted a continuing education hour reduction and a triennial license renewal schedule for those who demonstrate continued compliance with the rules. The Board sought CSI review again in 2017 to allow licensees to complete continuing education via online courses. The proposed changes were broadly supported by stakeholders. CSI currently has 25 rules from this Board under its review again, this time related to requirements of specialty trades and continuing education.

During the Ohio House of Representatives' 2019 review of the occupational licenses, the State and Local Government Committees recommended changes to renewal timelines for plumbing contractor and hydronics contractor licensees, renewal fees, continuing education hours, and experience requirements. They also recommended eliminating the refrigeration contractor license to avoid duplication of similar occupational licensing with the EPA. CSI has not received public comments related to duplication of this licensure across agencies.

Department of Commerce—Division of Real Estate and Professional Licensing – Home Inspector License

In September of 2019, the Department of Commerce, Division of Real Estate and Professional Licensing submitted 22 new rules that implement the home inspector license required by ORC Chapter 4764. The rules cover public notice and meetings, licensing fees, the application, continuing

education and experience requirements, standards of practice, code of ethics, and disciplinary actions. CSI did not receive any comments on these rules.

As a result of the review, CSI recommended that the Division make several revisions to the proposed rules. The recommendations asked them to revisit examination requirements as the number of required exams appeared to be unnecessarily burdensome, to review their proposed fees, to consider consolidating rules to avoid repetition, and to streamline the application process for education providers to reduce the burden of required paperwork. Lastly, CSI recommended that language in the rules be amended for clarification of the Department's intent regarding compensation for unlicensed home inspector applicants.

As a result of CSI's recommendations, the Department eliminated three proposed rules to avoid unnecessary repetition and made additional revisions to eight of the proposed rules, including changes to exams and fees.

Department of Commerce—Division of Industrial Compliance – Ski Tramway and Historical Boilers Licenses

In June of 2014, CSI reviewed nine rules from the Department of Commerce related to ski tramways. R.C. 4169.02(B) requires the rules to align with established standards in the business of ski area operation; therefore, the rules contain safety requirements and mechanical operation maintenance standards for passenger tramways that mirror the American National Standard Institute standards. The fees charged for registration are prescribed by statute.

No significant comments or feedback was received on the rules, and the Business Impact Analysis stated that managers and operators of the state's ski resorts were supportive of the proposed amendments. Additional minor changes were proposed to the rules in 2019, and no comments were received during that review.

During the Ohio House of Representatives' review of occupational licenses in 2019, the State and Local Government Committee recommended eliminating the Ski Tramway Board and suggested that its duties be absorbed by the Division of Industrial Compliance. CSI has not received any public comments related to the Board or its regulations.

Also, in 2014 the Department of Commerce, Division of Industrial Compliance filed rules related to historical boiler operators with minor amendments. The rules were filed for review again in August of 2019, with some amendments regarding licensing requirements, required fees, and circumstances for the revocation of licensure or certification. No public comments were received on the rules during either review.

State Medical Board of Ohio

CSI has accepted public comments on licensure and scope of practice for physicians and limited branches of medicine, anesthesiologist and radiologist assistants, physician assistants, genetic counselors, and podiatric physicians. The process sought comments on issues such as youth sports

concussion standards, surgery standards, and criminal records checks, among others. Many of these public comment periods led to substantive changes in the Board's proposed rules.

Forty public comments were received during the comment period for the office-based opioid treatment rules in 2014. CSI coordinated a meeting between Board staff and its stakeholders, the Board reconvened its advisory panel and eventually proposed additional changes to the rules.

In 2016, the Board's telemedicine rules had a very active CSI public comment period that led to 12 changes in the proposed rules related to issues such as informed consent and the involvement of advanced practice registered nurses and physician assistants in telemedicine care. Comments came from organizations such as the Ohio Hospital Association, the Ohio State Medical Association, the State Board of Pharmacy, and the State Board of Nursing.

Statutory consolidation of the Board of Dietetics into the Medical Board in the 132nd General Assembly required changes to the rules for dietetics in Chapter 4759 of the OAC. To align the rules with the statutory changes to ORC Chapter 4759, the Medical Board worked closely with the Dietetics Advisory Council and worked through substantial stakeholder comment. Those rules are currently with CSI again.

In 2018, comments that the rules regarding the "One-Bite" program for impaired practitioners were overly prescriptive and went beyond the program's original structure led to rule changes. The Board, after meetings with CSI and stakeholders, revised the rules to implement stakeholder suggestions.

In 2019, CSI handled several filings from the State Medical Board that benefitted from the CSI review process. For example, rules related to cosmetic therapy and massage therapy continuing education sparked significant public comments and led to the Board reducing its required number of continuing education hours for both licenses to 12 from the originally required 25 for cosmetic therapists and 24 for massage therapists. In addition, the comments led the Board to increase the way in which licensees can obtain continuing education credit to include online classes. All those changes eased the adverse impact that the proposed rules had on licensees.

In November 2019, the State Medical Board submitted a rule package regarding respiratory care practitioner licensure. During the early stakeholder outreach process, concerns were raised by respiratory care professionals that the Board's rules could benefit from allowing physician assistants to make changes to continuing education in the same way that college credit for respiratory care is approved. The Board included this change in the rules and added the Ohio Association of Physician Assistants as an approved source of continuing medical education.

During the Ohio House of Representatives' 2019 review of the occupational licenses, the State and Local Government Committee recommended eliminating state licensure of cosmetic therapists, genetic counselors, acupuncturists, and oriental medicine practitioners. The Occupational License Review Report released by the Committee stated that these fields provide services based on personal preferences, not medical necessity, and are therefore more qualified to be licensed through a national licensing entity at their discretion. CSI has received significant input on rules related to cosmetic therapy by industry stakeholders. Many of the comments reflect industry concerns regarding the involvement of nurses and physician assistants in handling procedures that would otherwise be

handled by cosmetic therapists. CSI has not received comments from any of these impacted licensees that support the elimination of the licenses.

The Occupational License Review Report also recommended that the number of continuing education hours earned by physicians for providing volunteer medical services be increased from three to ten. CSI just reviewed a rule package submitted by the Medical Board related to physician continuing education that, in response to changes in Ohio statute, decreases the total required continuing education hours for physicians from 100 to 50, which represents a significant shift towards reducing the burden on physicians to retain licensure.

Over the years, the State Medical Board has embraced the CSI process and has taken the comments that it generates seriously. The Board has considered alternative regulations to ease compliance and adverse impacts on business when its statutory mandate permits. As a result, CSI's stakeholder-driven review process has significantly influenced the Board's regulations.

Ohio Department of Health

CSI has reviewed hundreds of rules from the Department of Health, including occupational licensure rules relating to radiation, lead hazard abatement, food service operation, radon mitigation, laboratory certifications, and sanitarian registrations. In many instances, the CSI review process led to substantive changes in the proposed rules.

For example, in 2015 public comment on rules related to radiation expert certification and radioactive handling licenses led to additional changes to the rules before they were submitted for legislative review. Proposed rules concerning lead risk assessors in 2017 raised confusion among licensees and led the Department to clarify the definition of "public health lead risk assessment" to better reflect the intended requirements.

In 2018, the Department's early stakeholder outreach elicited substantive input that affected the requirements for manager certification in food service operations. Feedback regarding burdensome reporting led the Department to increase the timeline for providers to submit enrollment reports. During the CSI public comment period, stakeholders raised concerns about the "person in charge" certification, which the Department eventually removed.

CSI recently reviewed rules relating to lead hazard abatement licenses, including clearance technicians, lead inspectors, and lead risk assessors. Significant stakeholder input during the CSI public comment period prompted amendments. Stakeholders submitted comments that suggested technical changes to the rule, such as using definitions that would clarify the procedure for determining lead contamination. The agency made changes to the rules that would ease the burden on industry professionals and reflected stakeholder feedback, including clarifying rule requirements aligning lead contamination standards to those issued by Ohio Environmental Protection Agency to ensure that the procedures regulating lead abatement licensees are clear.

The 2019 Occupational Licensure Review Report issued by the House State and Local Government Committee recommended eliminating licenses for radon testers, radon mitigation contractors, and clearance technicians. The report stated that the duties of these licenses can be handled by other

existing licensees, namely radon mitigation specialists, lead inspectors, and lead risk assessors. CSI has not received stakeholder feedback in favor of or opposed to the elimination of these licenses.

Ohio Environmental Protection Agency

CSI has reviewed Ohio EPA's licensing rules in each of the past six years, including rules for certified professionals under the voluntary action program, asbestos hazard abatement contractors, specialists, project designers, and other professionals. EPA's rule development process has always included robust stakeholder engagement, and every time the agency files rules for CSI review, their content reflects substantive stakeholder input.

For example, in a 2015 filing, stakeholders requested exemptions from staffing requirements for public water system professional licenses in certain circumstances, and the agency changed the proposed rules to accommodate that request. A 2017 filing related to similar public water systems operators' licenses prompted concerns that the rules recognized lab experience as a license qualification, but lab experience did not equate to operating experience. The agency took those seriously and adjusted the proposed rule to clarify the appropriate experience required for licensure.

During the House of Representatives' 2019 review of the occupational licenses, the State and Local Government Committee recommended eliminating state licensure of water quality professionals and certified engineers. The report stated that the licenses were never implemented by EPA and are unnecessary. In 2019, Ohio EPA filed a rule package with CSI that concerns implementation of the water quality professional certification. The rule package is currently on hold while the agency reviews stakeholder feedback. Comments from stakeholders suggested that the proposed license and renewal fees are too expensive, training requirements are too burdensome for applicants, and that the program would result in a lack of state oversight regarding decisions reached by the certificate holders. CSI has not received stakeholder comments regarding the licensure of certified engineers.

Over the past six years, the Ohio EPA has embraced the CSI process, incorporated it into its existing stakeholder input processes, and taken the comments that both generate seriously. The agency considers alternative regulations to ease compliance and adverse impacts on business when its federal and state statutory mandates permit.