



# Ohio Legislative Service Commission

## Final Analysis

Jennifer A. Parker, Megan Cummiskey,  
and other LSC staff

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**Reps.** Amstutz (By Request), Beck, Blair, Buchy, Combs, McClain, Sears, Sprague, Stebelton, Terhar, Wachtmann

**Sens.** Bacon, Coley, Eklund, Jones, Lehner, Niehaus

**Effective date:** June 11, 2012; certain provisions effective September 10, 2012; certain provisions effective other than those dates; contains item vetoes

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This analysis is arranged by state agency, beginning with the Department of Administrative Services and continuing in alphabetical order. Items that do not directly involve an agency are located under the agency that has regulatory authority over the item, or otherwise deals with the subject matter of the item. The analysis includes a Local Government category and ends with a Miscellaneous category.

Within each category, a summary of the items appears first (in the form of dot points), followed by a discussion of their content and operation. Items generally are presented in the order in which they appear in the Revised Code.

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## **DEPARTMENT OF ADMINISTRATIVE SERVICES (DAS)**

### **Ohio Facilities Construction Commission**

- Creates the Ohio Facilities Construction Commission to replace the Office of the State Architect and Engineer and the Office of Energy Services.
- Maintains the Ohio School Facilities Commission as an independent agency within the Ohio Facilities Construction Commission.
- Transfers the powers, duties, and obligations of the Office of the State Architect and Engineer to the Ohio Facilities Construction Commission, and requires the Ohio Facilities Construction Commission to continue the operations and management of the Office of the State Architect and Engineer as provided in continuing law or in any agreements relating to capital expenditures for construction operations functions to which the Office of the State Architect and Engineer is a party.
- Transfers several duties, including the planning, supervision of construction, keeping of records, and disposition of capital facilities, from the Department of Administrative Services (DAS) to the Ohio Facilities Construction Commission.
- Deems all statutory references to the Office of the State Architect and Engineer to be references to the Ohio Facilities Construction Commission.
- Specifies that the Ohio Facilities Construction Commission must complete any activities related to operations functions that are not completed by the Office of the



State Architect and Engineer on the date of transfer with the same effect as if completed by the Office of the State Architect and Engineer.

- Specifies that judicial and administrative actions will proceed with the Ohio Facilities Construction Commission being substituted as a party for the Office of State Architect and Engineer.
- Specifies that notwithstanding any provision of continuing law to the contrary, and if requested by the Commission, that the Director of Budget and Management is to make budget changes necessitated by the transfer, if any, including administrative organization, program transfers, the creation of new funds, the transfer of state funds, and the consolidation of funds.
- Appropriates established encumbrances plus any additional amounts determined to be necessary for the Ohio Facilities Construction Commission to perform the construction, energy, and capital funding operation functions of the Office of State Architect and Engineer.
- Requires, not later than 30 days after the transfer and consolidation of the construction, energy, and capital funding operations function of the Office of State Architect and Engineer to the Ohio Facilities Construction Commission, an authorized officer to certify to the Ohio Facilities Construction Commission the unexpended balance and location of any funds and accounts designated for building and facility operation and management functions, and the custody of the funds and accounts is to be transferred to the Commission.
- Requires the Ohio Facilities Construction Commission and the Department of Natural Resources (DNR) to cooperate in and, not later than December 31, 2012, complete a study to determine which operation functions, if any, of the DNR Division of Engineering should be integrated and consolidated into the Commission.
- Exempts Ohio Facilities Construction Commission employees from the Public Employees' Collective Bargaining Law, just as continuing law exempts Ohio School Facilities Commission employees, but specifies that any agreement entered into prior to July 1, 2012, between the Office of Collective Bargaining and the exclusive representative for employees of either commission will remain in effect.

### **Attorney General certification**

- Would have required any construction management contract with a construction manager at risk or any design-build contract with a design-build firm, and any accompanying bond, to be submitted to the Attorney General for approval (VETOED).



## **Civil service law**

- Amends civil service law so that certain provisions will be applicable only with respect to positions in the classified service of the state and not to service with the counties or other political subdivisions.
- Modifies the protocol for appointment to positions in the classified civil service of the state from eligible lists resulting from civil service examinations.
- Modifies state civil service law with respect to the official who is authorized to find that it is impracticable, for certain positions, to determine fitness by competitive examination.
- Authorizes the Director of DAS to appoint a designee to register applicants in the unskilled labor class.
- Clarifies civil service law with respect to the right of an employee in the unclassified service to resume a position in the classified service.
- Eliminates the authority of the Director to establish, modify, or rescind a job classification plan for county agencies that elect not to use the services of the county personnel department.
- Specifies that the right to request a job audit applies only to classified employees in the service of the state.
- Modifies the law with respect to the authority for county agencies to contract with DAS for human resources services.
- Requires a county, by statute rather than by rule, to adhere to merit system principles, and makes a county financially liable to the state for the loss of federal funding due to the action or inaction of the county personnel department.

## **Leases, easements, or licenses of unneeded state land**

- Retains the requirement for the Director of DAS to execute leases, easements, or licenses of unneeded state land, but removes the requirement that the Governor also execute these leases, easements, or licenses.
- Expressly provides that leases, easements, or licenses of unneeded state land may be made to any person or entity.
- Removes the restriction, applicable to federal agencies, political subdivisions, and taxing districts, against subleasing or assigning a lease of state-owned land.



## Miscellaneous

- Requires DAS, by itself or by contract, to establish, operate, and maintain a web site to serve as an online clearinghouse of information about joint purchasing programs between or among political subdivisions.

## Compressed Natural Gas Study

- Requires DAS to study the use of compressed natural gas in the state and political subdivision motor vehicle fleets and, not later than six months after the requirement takes effect, requires DAS to issue a report on its findings and recommendations on using compressed natural gas to fuel the state and political subdivision motor vehicle fleets, including any recommendation for funding the conversion to compressed natural gas.

## Creation of the Ohio Facilities Construction Commission and transfer of duties from other entities

(R.C. 121.04, 123.01, 123.011 (123.22), 123.024 (123.06), 123.04 (123.02), 123.07 (123.03), 123.08 (123.18), 123.09 (123.04), 123.10 (123.05), 123.101 (123.27), 123.11 (123.07), 123.13 (123.08), 123.14 (123.09), 123.15 (123.10), 123.152, 123.17 (123.24), 123.21 (123.11), 123.21 (enacted new), 123.23 (enacted), 123.25 (enacted), 123.26 (enacted), 123.46 (123.12), 123.47 (123.13), 123.48 (123.14), 123.49 (123.15), 123.77 (123.17), 126.14, 152.18, 152.24, 153.01, 153.011, 153.013, 153.02, 153.04, 153.06, 153.07, 153.08, 153.09, 153.11, 153.12, 153.14, 153.16, 153.17, 153.502, 153.503, 153.53, 1506.42, 3318.10, 3318.30, 3318.31, 3345.16, 3345.50, 3345.51, 3345.69, 3347.03, 3383.02, 3383.07, and 5120.105; Section 701.70.10)

The act creates the Ohio Facilities Construction Commission to administer the design and construction of improvements to public facilities of the state. The new Commission replaces the Office of the State Architect and Engineer and the Office of Energy Services, as well as taking over some duties from the Department of Administrative Services. The Ohio School Facilities Commission remains an independent agency within the Ohio Facilities Construction Commission. The act also requires the Ohio Facilities Construction Commission to cooperate in a study with the Department of National Resources (DNR) to determine whether the DNR Division of Engineering also should be consolidated into the Ohio Facilities Construction Commission.<sup>1</sup>

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<sup>1</sup> Section 701.70.10(G).



As is described below in detail, the act transfers the powers, duties, and programs of the Office of the State Architect and Engineer and the Office of Energy Services to the Ohio Facilities Construction Commission, and transfers several duties, including the planning, supervision of construction, keeping of records, and disposition of capital facilities, from the Department of Administrative Services to the Ohio Facilities Construction Commission.

The Ohio Facilities Construction Commission consists of three members: (a) the Director of Budget and Management, (b) the Director of Administrative Services, and (c) a member appointed by the Governor. The Governor must appoint the member within 60 days after September 10, 2012. The initial term of appointment ends three years after September 10, 2012. Subsequent terms are for three years.

The members of the Ohio Facilities Construction Commission must meet at least once each calendar year, must serve without compensation, and must file an annual report of the Commission's activities and finances with the Governor, the Speaker of the House of Representatives, the President of the Senate, and the chairpersons of the House and Senate Finance Committees. The Commission must adopt rules pursuant to the Administrative Procedure Act for the conduct of its internal business. The Ohio Facilities Construction Commission is exempt from review by the Sunset Review Committee.<sup>2</sup>

The Ohio Facilities Construction Commission must appoint and fix the compensation of an Executive Director, who is to serve at the pleasure of the Ohio Facilities Construction Commission. The Attorney General must serve as the legal representative for the Ohio Facilities Construction Commission, and the Attorney General may appoint other counsel as necessary for that purpose.<sup>3</sup>

### **Commission functions**

The Ohio Facilities Construction Commission may perform any actions necessary to fulfill its duties and to exercise its powers. The Ohio Facilities Construction Commission may do all of the following:

- Prepare, or contract with licensed architects or engineers to prepare, surveys, general and detailed plans, specifications, bills of materials, and estimates of cost for any projects, improvements, or public buildings to be constructed by state agencies that may be authorized by legislative appropriations or any other funds made available for the purpose,

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<sup>2</sup> R.C. 123.20.

<sup>3</sup> R.C. 123.21.



provided that the construction of the projects, improvements, or public buildings is a statutory duty of the Commission;

- Supervise the construction of any projects, improvements, or public buildings constructed for a state agency, and inspect materials prior to their incorporation into those projects, improvements, or public buildings;
- Make contracts for and supervise the design and construction of any projects and improvements or the construction and repair of buildings that are under the control of a state agency. All these contracts may be based in whole or in part on the unit price or maximum estimated cost, with payment computed and made upon actual quantities or units.
- Adopt, amend, and rescind rules for the administration of the Ohio Facilities Construction Commission programs that are authorized by law;
- Adopt, amend, and rescind rules pertaining to the administration of the construction of the public works of the state;
- Contract with, retain the services of, or designate, and fix the compensation of, any agents, accountants, consultants, advisers, and other independent contractors that are necessary or desirable to carry out the authorized programs of the Ohio Facilities Construction Commission, or authorize the Executive Director of the Ohio Facilities Construction Commission to do so;
- Receive and accept any gifts, grants, or donations to be used for the Ohio Facilities Construction Commission programs that are authorized by law;
- Make and enter into all contracts, commitments, and agreements, and execute all instruments, necessary or incidental to the performance of the Ohio Facilities Construction Commission's duties and the execution of its rights and powers, or authorize the Executive Director of the Ohio Facilities Construction Commission to perform the powers and duties;
- Debar a contractor.

The act specifies that these powers of the Commission do not affect or alter the powers of the Director of Transportation, and would have so specified with regard to the Director of Public Safety and the Superintendent of the State Highway Patrol. The Governor vetoed this provision insofar as it relates to the Director of Public Safety and the Superintendent of the State Highway Patrol.



## Ohio Facilities Construction Commission Fund

The Executive Director of the Ohio Facilities Construction Commission must set the rate of tolls to be collected on the construction or improvement of the public works of the state, and must collect all tolls, rents, fines, commissions, fees, and any other revenues that result from the construction or improvement of the public works of the state. Under prior law, the Director of Administrative Services set these rates and collected these revenues.

This money must be deposited into the Ohio Facilities Construction Commission Fund, along with any transfers of money that are authorized by the General Assembly and the amount of the investment earnings of the Administrative Building Fund that the Director of Budget and Management deems to be appropriate and in excess of the amounts required to meet federal arbitrage rebate requirements.

The Ohio Facilities Construction Commission may use the money in the Ohio Facilities Construction Commission Fund for the following purposes:

- To pay personnel and other administrative expenses of the Commission;
- To pay the cost of conducting evaluations of public works;
- To pay the cost of building design specifications;
- To pay the cost of providing project management services;
- To pay the cost of operating the Local Administration Competency Certification Program (which was administered by the Office of the State Architect and Engineer); and
- For any other purpose that the Executive Director of the Commission deems necessary for the Commission to execute its duties.<sup>4</sup>

In addition to the functions discussed above, the act transfers several specific duties and powers from the Office of the State Architect and Engineer, the Office of Energy Services, and the Department of Administrative Services to the Ohio Facilities Construction Commission. The act also retains the Ohio School Facilities Commission as an independent agency within the new Commission.

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<sup>4</sup> R.C. 123.26.



## Ohio School Facilities Commission

### Background

The Ohio School Facilities Commission administers the construction of the state's public primary and secondary schools and assists school districts in the planning, design, and renovation of public schools. The Ohio School Facilities Commission also administers several programs that provide state funding to school districts and community schools for the construction of classroom facilities. The main program, the Classroom Facilities Assistance Program (CFAP), is designed to provide each city, exempted village, and local school district with partial funding to address all of the district's classroom facilities needs. It is a graduated, cost-sharing program where a district's portion of the total cost of the project and priority for funding are based on the district's relative wealth. Districts are ranked by wealth into percentiles. The poorest districts are served first and receive a greater amount of state assistance than wealthier districts will receive when it is their turn to be served based on their respective wealth percentile. Joint vocational school districts are served by the Vocational School Facilities Assistance Program, which is similar to CFAP.

Other programs address the particular needs of certain types of districts. The Exceptional Needs School Facilities Assistance Program provides funding for districts in the 1st through 75th wealth percentiles, and districts with territories of more than 300 square miles, in advance of their districtwide CFAP projects to construct single buildings in order to address acute health and safety issues. The Expedited Local Partnership Program permits most school districts that have not been served under CFAP to apply the advance expenditure of *district* money on approved parts of their districtwide needs toward their shares of their CFAP projects when they become eligible for that program. The Accelerated Urban School Building Assistance Program allows certain Big-Eight school districts<sup>5</sup> to receive CFAP assistance earlier than otherwise permitted.

### Changes to the Ohio School Facilities Commission

The act retains the Ohio School Facilities Commission as an independent agency within the Ohio Facilities Construction Commission. The act allows the Ohio School Facilities Commission to share employees and facilities with the Ohio Facilities Construction Commission. The Ohio School Facilities Commission may request the

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<sup>5</sup> The program applies to Akron, Dayton, Cincinnati, Columbus, Cleveland, and Toledo. The other two Big-Eight districts, Canton and Youngstown, had received CFAP funding before the Accelerated Urban Program began.



Ohio Facilities Construction Commission, instead of the Director of Administrative Services, to debar a contractor.

The act clarifies that the Ohio School Facilities Commission may adopt, amend, and rescind rules pertaining to the administration of the construction of the school facilities of the state, and that the Executive Director of the Ohio School Facilities Commission may exercise all powers that the Ohio School Facilities Commission possesses.<sup>6</sup>

The act would have permitted the Ohio School Facilities Commission to engage in rulemaking under Chapter 119. of the Revised Code in addition to rulemaking under section 111.15 of the Revised Code, as it may do under continuing law. The Governor vetoed this provision of the act.<sup>7</sup>

The act also specifies that, in addition to the continuing procedures for the planning and construction of school facilities, a school district may, with the approval of the Ohio School Facilities Commission, utilize any otherwise lawful construction delivery method for the construction of a project.<sup>8</sup>

### **Office of the State Architect and Engineer**

The act eliminates the Office of the State Architect and Engineer, which existed within the Department of Administrative Services to oversee the design and construction of facilities for state agencies, boards, and commissions, and institutions of higher education. The Ohio Facilities Construction Commission assumes all of the functions of the Office of the State Architect and Engineer, including the duties to:

- Administer the Local Administration Competency Certification Program to certify institutions of higher education to administer capital facilities projects without the supervision, control, or approval of the Ohio Facilities Construction Commission;<sup>9</sup>
- Set standards to be followed by construction managers at risk (i.e., construction managers who provide the state agency a guaranteed maximum price for a project)<sup>10</sup> and by design-build firms when

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<sup>6</sup> R.C. 3318.30.

<sup>7</sup> R.C. 3318.31.

<sup>8</sup> R.C. 3318.10.

<sup>9</sup> R.C. 123.24.

<sup>10</sup> R.C. 9.33 (not in the act).



establishing prequalification criteria for prospective bidders on subcontracts to be performed under a construction management or design-build contract. Under prior law, the Office of the State Architect and Engineer worked with the Department to set the standards, while under the act, the Ohio Facilities Construction Commission independently sets the standards.<sup>11</sup>

- Contribute a voting member to the Ohio Cultural Facilities Commission, which provides for the development, performance, and presentation to the public of cultural events and professional sports and athletics.<sup>12</sup>

### **Office of Energy Services**

The act eliminates the Office of Energy Services, which previously existed within the Office of the State Architect and Engineer to provide state agencies with certain energy engineering and design services, as well as energy auditing and contracting opportunities to promote energy efficiency and conservation. The act transfers some of the functions of the Office of Energy Services to the Ohio Facilities Construction Commission, while the Department, which oversaw the Office of Energy Services, remains responsible for some other duties. The act transfers to the Ohio Facilities Construction Commission the duties to:

- Develop energy efficiency and conservation programs for new construction design and review, existing building audit and retrofit, energy-efficient procurement, and alternative fuel vehicles;<sup>13</sup>
- Adopt rules that specify cost-effective energy efficiency and conservation standards to govern the lease, design, construction, operation, and maintenance of all state-funded facilities, except facilities of state-funded institutions of higher education and facilities operated by a political subdivision;<sup>14</sup>

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<sup>11</sup> R.C. 153.502 and 153.503.

<sup>12</sup> R.C. 3383.02.

<sup>13</sup> R.C. 123.22(B).

<sup>14</sup> R.C. 123.22(D).



- Consult with a committee to develop guidelines for the board of trustees of each state institution of higher education to use to ensure energy efficiency and conservation in on- and off-campus buildings.<sup>15</sup>

The act transfers from the Office of Energy Services to the Department the duties to:

- Adopt rules, exchange information with other agencies, and monitor the performance of motor vehicles and other equipment, to ensure that energy efficiency and conservation are considered in the purchase of products and equipment by any state agency or institution;<sup>16</sup>
- Adopt rules prescribing a fleet average fuel economy, and ensure that all of the passenger vehicles state agencies and institutions acquire, except for emergency vehicles, meet the fleet average fuel economy rules.<sup>17</sup>

### **Duties transferred from the Department**

The act transfers from the Department to the Ohio Facilities Construction Commission the duties and powers to:

- Make rules and regulations that are necessary for the improvement of the public works of the state;<sup>18</sup>
- Regulate the rate of tolls to be collected on the *construction or improvement* of the public works of the state, fix all rentals, and collect all tolls, rents, fines, commissions, fees, and other revenues arising from any source in the *construction or improvement* of the public works of the state. The revenues collected under this provision are paid into the Ohio Facilities Construction Commission Fund.<sup>19</sup> The Director of Administrative Services retains the duty to regulate the rate of tolls to be collected on the public works of the state, to fix all rentals, and to collect all tolls, rents, fines, commissions, fees, and other revenues arising from any source in the public works, including the purchase or rental of property, except that

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<sup>15</sup> R.C. 3345.69.

<sup>16</sup> R.C. 123.01(A)(14) and (15) and 123.22(E).

<sup>17</sup> R.C. 123.01(A)(16) and 123.22(F).

<sup>18</sup> R.C. 123.04.

<sup>19</sup> R.C. 123.26.

the Director may not collect a commission or fee from a real estate broker or a private owner when real property is leased or rented to the state.<sup>20</sup>

- Receive mandatory reports from public entities about the completion of state-funded capital facilities projects, except from the Ohio School Facilities Commission, the Ohio Public Works Commission, the Ohio Cultural Facilities Commission, and for any project for which the Ohio Facilities Construction Commission has entered into a joint use agreement;
- Receive mandatory reports from the Attorney General about any mediation and litigation costs associated with capital facilities projects for which a judgment has been rendered;<sup>21</sup>
- Order the payment of claims against the state for the improvement of the public works of the state, including the salary and expenses of all employees engaged in the work;<sup>22</sup>
- Declare a public exigency when an injury or obstruction occurs in any public works of the state that materially impairs its immediate use or places in jeopardy property adjacent to it, when an immediate danger of such an injury or obstruction exists, or when an injury or obstruction, or the immediate danger of an injury or obstruction, occurs during the construction of any public works and immediately impairs its immediate use or places in jeopardy property adjacent to it. In the case of a public exigency, the Ohio Facilities Construction Commission may enter into the necessary contracts without competitive bidding or selection. The Executive Director of the Ohio Facilities Construction Commission must notify the Director of Budget and Management and the Controlling Board before any project may begin.<sup>23</sup> The Director of Administrative Services retains the power to declare a public exigency under the same standards and procedures for any public works that is maintained by the Director of Administrative Services. In that case, the Director of Administrative Services may request the Ohio Facilities Construction Commission to enter into the necessary contracts without competitive bidding or

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<sup>20</sup> R.C. 123.05.

<sup>21</sup> R.C. 123.27.

<sup>22</sup> R.C. 123.09.

<sup>23</sup> R.C. 123.23.



selection, but the Director may not independently enter into these contracts.<sup>24</sup>

- Construct, reconstruct, enlarge, improve, alter, repair, paint, or decorate for a state entity any capital facility that is financed by the Ohio Building Authority, but that the Ohio Building Authority has not constructed, reconstructed, rehabilitated, remodeled, renovated, enlarged, improved, altered, maintained, equipped, furnished, repaired, painted, or decorated. The Department, or with the consent of the Department, the state entity that is using the facility, is responsible to rehabilitate, remodel, renovate, maintain, equip, or furnish the facility.<sup>25</sup>
- Investigate alleged violations of the requirement that steel products used in constructing state-funded projects be made in the United States and refer violations to the Attorney General for a civil action;<sup>26</sup>
- Debar a contractor from contract awards for projects or public improvements, upon proof that the contractor has committed certain violations;<sup>27</sup>
- Prescribe the materials, forms, and procedures that contractors should use to prepare plans, details, bills of material, specifications of work, cost estimates, life-cycle cost analyses, bids, and other information;<sup>28</sup>
- Make orders regarding the form and phraseology of public notices of bidding for contracts, make orders determining in which newspapers or by what electronic means the notices must appear, and make rules regarding the electronic broadcast of public bid openings;<sup>29</sup>

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<sup>24</sup> R.C. 123.10.

<sup>25</sup> R.C. 152.18.

<sup>26</sup> R.C. 153.011.

<sup>27</sup> R.C. 153.02.

<sup>28</sup> R.C. 153.04 and 153.06.

<sup>29</sup> R.C. 153.06, 153.07, 153.08, and 153.09.



- Make copies of plans, details, estimates of cost, and specifications available for public inspection during the period of publication and bidding;<sup>30</sup>
- Establish alternative dispute resolution procedures to resolve disputes between contractors and the state regarding the terms of public improvement contracts or the breach of such a contract, before the contractor may bring an action in the Court of Claims;<sup>31</sup>
- Establish policy and procedure guidelines for contract documents in conjunction with the administration of public works contracts that the state or any state institution enters into;<sup>32</sup>
- Under certain circumstances, give permission to the owner of a project to employ additional workers or to obtain additional materials when a contractor neglects the project or does not meet the terms of the contract;<sup>33</sup>
- Authorize without Controlling Board approval the expenditure, for the purposes of completing a project, of any money gained because of the forfeiture of a surety bond when a contractor defaults on the project contract;<sup>34</sup>
- Adopt rules regarding the procedures and criteria for determining the best value selection of a design-build firm or a construction manager at risk; set standards to be followed by construction managers at risk and by design-build firms when establishing prequalification criteria for prospective bidders on subcontracts to be performed under the construction management or design-build contract; prescribe the form for contract documents to be used by a general contractor, a construction manager at risk, or a design-build firm when entering into a subcontract; and prescribe the form for contract documents to be used by a public

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<sup>30</sup> R.C. 153.07.

<sup>31</sup> R.C. 153.12.

<sup>32</sup> R.C. 153.16.

<sup>33</sup> R.C. 153.17(A).

<sup>34</sup> R.C. 153.17(B).

authority when entering into a contract with a design-build firm or a contract manager at risk;<sup>35</sup>

- Every five years, evaluate and adjust for inflation the monetary threshold for a project that triggers the necessity to commission an architect or engineer to draw up certain plans, details, specifications, cost estimates, and life-cycle cost analyses;<sup>36</sup>
- With the Director of Administrative Services, ensure that no capital money appropriated by the General Assembly for any purpose is expended unless the project for which the money was appropriated provides for an affirmative action program for the employment and effective utilization of persons who are disadvantaged because of their cultural, racial, or ethnic background or other similar causes, including their race, religion, sex, disability, military status, national origin, or ancestry;<sup>37</sup>
- With the Chancellor of the Ohio Board of Regents, develop criteria to determine whether a state university, state community college, or Northeast Ohio Medical University that is certified under the Local Administration Competency Certification Program and that meets other qualifications may administer, without the supervision, control, or approval of the Ohio Facilities Construction Commission, a capital facilities project for which the General Assembly has appropriated funds;<sup>38</sup>
- With the Chancellor of the Ohio Board of Regents, develop criteria for and approve requests for any state university, state community college, or Northeast Ohio Medical University that is not certified under the Local Administration Competency Certification Program to administer, without the supervision, control, or approval of the Ohio Facilities Construction Commission, capital facilities projects for which the General Assembly's appropriation does not exceed \$4 million;<sup>39</sup>

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<sup>35</sup> R.C. 153.502 and 153.503.

<sup>36</sup> R.C. 153.01 and 153.53.

<sup>37</sup> R.C. 153.59.

<sup>38</sup> R.C. 123.24 and 3345.51.

<sup>39</sup> R.C. 3345.50.



- Administer a capital facilities project when the Chancellor of the Ohio Board of Regents has revoked the institution's authority to administer the project;<sup>40</sup>
- Provide for the construction of cultural projects, except for projects administered by the Ohio Cultural Facilities Commission or its designee;<sup>41</sup>
- Provide for the construction of halfway house facilities, except that the Department of Rehabilitation and Correction may administer these projects.<sup>42</sup>

### **Collective bargaining for employees of the Ohio Facilities Construction Commission and the Ohio School Facilities Commission**

The act exempts Ohio Facilities Construction Commission employees from Ohio's Public Employees' Collective Bargaining Law. Continuing law already exempts Ohio School Facilities Commission employees from that law. However, under the act, any agreement entered into prior to July 1, 2012, between the Office of Collective Bargaining (which is within the Department of Administrative Services) and the exclusive representative for employees of either the Ohio School Facilities Commission or the Ohio Facilities Construction Commission is binding and continues in effect notwithstanding the fact that the employees are exempt from the Public Employees' Collective Bargaining Law.

### **Transitional provisions**

The act provides for the Ohio Facilities Construction Commission to assume the powers and obligations of, and to continue the operations and management of the Office of the State Architect and Engineer. Because the Office of Energy Services is a division within the Office of the State Architect and Engineer, the term "Office of the State Architect and Engineer" as it is used in these transitional provisions appears to include the Office of Energy Services.

All employees of the Office of the State Architect and Engineer are to be transferred to the Ohio Facilities Construction Commission as the Commission determines to be necessary.

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<sup>40</sup> R.C. 3345.51(E).

<sup>41</sup> R.C. 3383.07.

<sup>42</sup> R.C. 5120.105.



The act provides that all statutory references to the Office of the State Architect and Engineer are deemed to refer to the Ohio Facilities Construction Commission, and that all judicial and administrative actions will proceed with the Ohio Facilities Construction Commission being substituted as a party for the Office of the State Architect and Engineer. The Ohio Facilities Construction Commission must complete any activities related to operations functions that are not completed by the Office of the State Architect and Engineer on the date of transfer with the same effect as if completed by the Office of the State Architect and Engineer.

The act specifies that notwithstanding any provision of continuing law to the contrary, and if requested by the Commission, the Director of Budget and Management is to make budget changes necessitated by the transfer, if any, including administrative organization, program transfers, the creation of new funds, the transfer of state funds, and the consolidation of funds. The act appropriates established encumbrances plus any additional amounts determined to be necessary for the Ohio Facilities Construction Commission to perform the construction, energy, and capital funding operation functions of the Office of State Architect and Engineer.

The act also requires, not later than 30 days after the transfer and consolidation of the construction, energy, and capital funding operations function of the Office of State Architect and Engineer to the Ohio Facilities Construction Commission, an authorized officer to certify to the Ohio Facilities Construction Commission the unexpended balance and location of any funds and accounts designated for building and facility operation and management functions, and the custody of the funds and accounts is to be transferred to the Commission.

Finally, the act requires the Ohio Facilities Construction Commission and DNR to cooperate in a study to determine which operation functions, if any, of the DNR Division of Engineering should be integrated and consolidated into the Commission. The study must be completed not later than December 31, 2012.<sup>43</sup>

### **Other changes to facilities construction law**

The act requires that when a proposed change to the plans, details, bills of material, or specifications of a project are approved, accepted, and filed, the alterations are considered as being a part of the original contract, but the bond that the contractor executed for the purposes of the contract must be increased or decreased to cover the

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<sup>43</sup> Section 701.70.10.

change in the contract. Under prior law, the original bond was considered to cover the change in the contract.<sup>44</sup>

## **Attorney General certification for certain state construction contracts (VETOED)**

(R.C. 153.01)

The Governor vetoed a provision that would have prohibited the state from entering into a construction management contract with a construction manager at risk or a design-build contract with a design-build firm without first submitting the contract, and any accompanying bond, to the Attorney General for certification of approval.

## **Civil service law**

(R.C. 124.04, 124.06, 124.11, 124.12, 124.14, 124.231, 124.241, 124.25, 124.26, 124.27, 124.30, and 124.31)

The act modifies the authority of the Department of Administrative Services (DAS) with respect to certain provisions of civil service law. The modifications generally regard the authority over the examination for and classification of positions. The authority is modified to be applicable with respect only to positions in the classified service of the state.<sup>45</sup> Under prior law, DAS authority for these provisions extended to all positions in the classified state service, which, in addition to the state, included the counties and general health districts. The modified authorities concern:

- (1) Preparation, conduct, and grading of all competitive and noncompetitive examinations;
- (2) Preparation of eligible lists containing the names of persons who are qualified for appointment to positions;
- (3) Allocation, reallocation, and classification of positions;
- (4) Development and conduct of personnel recruitment services;

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<sup>44</sup> R.C. 153.11.

<sup>45</sup> "Service of the state" or "civil service of the state" includes all offices and positions of trust or employment with the government of the state. "Service of the state" and "civil service of the state" do not include offices and positions of trust or employment with state-supported colleges and universities, counties, cities, city health districts, city school districts, general health districts, or civil service townships of the state, or with JobsOhio (R.C. 124.01 (not in the act)).

(5) Development and conduct of personnel training programs;<sup>46</sup>

(6) The manner and means for appointment, removal, transfer, layoff, suspensions, reinstatements, promotions, or reductions of officers or employees;<sup>47</sup>

(7) Development of written descriptions of the nature of employment in the unclassified civil service;<sup>48</sup>

(8) Formal application requirements;<sup>49</sup>

(9) Preparation of eligible lists from the returns of examinations;<sup>50</sup>

(10) Protocols for appointments from an eligible list, and original and promotional appointments;<sup>51</sup>

(11) The requirement for special examinations to be administered to legally blind or legally deaf persons.<sup>52</sup>

The act modifies the applicability of a statutory protocol for filling civil service vacancies without competition.<sup>53</sup> An appointing authority for a position in the classified service,<sup>54</sup> which includes a civil service township, must follow the protocol prescribed in the Civil Service Law. The act specifies that an appointing authority for a classified position in the civil service<sup>55</sup> must follow the protocol, with the apparent effect that the protocol no longer applies to civil service townships.

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<sup>46</sup> R.C. 124.04.

<sup>47</sup> R.C. 124.06.

<sup>48</sup> R.C. 124.12(C).

<sup>49</sup> R.C. 124.25.

<sup>50</sup> R.C. 124.26.

<sup>51</sup> R.C. 124.27 and 124.31.

<sup>52</sup> R.C. 124.231.

<sup>53</sup> R.C. 124.30.

<sup>54</sup> "Classified service" means the competitive classified civil service of the state, the several counties, cities, city health districts, general health districts, and city school districts of the state, and civil service townships (RC 124.01(C)).

<sup>55</sup> "Civil service" includes all offices and positions of trust or employment in the service of the state and in the service of the counties, cities, city health districts, general health districts, and city school districts of the state (RC 124.01(A)).



Under continuing law, municipal civil service commissions must prepare, amend, and enforce rules that are not inconsistent with the Civil Service Act that applies to the state classified service.<sup>56</sup>

The act modifies state civil service law<sup>57</sup> with respect to the official who is authorized to find that it is impracticable, for certain positions, to determine fitness by competitive examination. Under continuing law, the Director of DAS must find it impracticable to determine by competitive examination the fitness for these positions. The act specifies that any appointing authority, rather than only the Director, possesses the authority to make such a determination. The positions effected by this change include bailiffs, constables, official stenographers, and commissioners of courts of record, deputies of clerks of the courts of common pleas who supervise or who handle public moneys or secured documents, officers and employees of courts of record and of deputies of clerks of the courts of common pleas.<sup>58</sup>

The act authorizes the Director to appoint a designee to register applicants in the unskilled labor class.<sup>59</sup> Under continuing law, the classified service consists of two classes, the competitive class and the unskilled labor class.

The act clarifies civil service law with respect the right of an employee in the unclassified service to resume a position in the classified service. Under continuing law, a person who holds a position in the classified service and who is appointed to a position in the unclassified service, retains the right to resume the position and status held by the person in the classified service immediately prior to the person's appointment to the position in the unclassified service. The employee's right to resume the position in the classified service may be exercised only when the appointing authority has demoted the employee to a pay range lower than the employee's current pay range or revoked the employee's appointment to the unclassified service. The act specifies also that the employee must have either held a certified position prior to July 1, 2007, in the classified service within the appointing authority's agency, or held a permanent position on or after July 1, 2007, in the classified service within the appointing authority's agency.<sup>60</sup>

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<sup>56</sup> R.C. 124.40 (not in the act).

<sup>57</sup> Chapter 124. of the Revised Code.

<sup>58</sup> R.C. 124.11(A)(10).

<sup>59</sup> R.C. 124.11(B)(2).

<sup>60</sup> R.C. 124.11(D).



The act eliminates the authority of the Director to establish, modify, or rescind a job classification plan for county agencies that elect not to use the services of the county personnel department. Under continuing law, the Director must establish, and may modify or rescind, a job classification plan for all positions, offices, and employments the salaries of which are paid in whole or in part by the state.<sup>61</sup>

The act modifies the law with respect to the right of a classified employee to request that the Director perform a job audit to review the classification of the employee's position. This right was available to any classified employee, which presumably includes employees in the competitive classified civil service of the state, the several counties, cities, city health districts, general health districts, and city school districts of the state, and civil service townships. The act specifies that the right to request a job audit applies to only classified employees in the service of the state.<sup>62</sup>

The act modifies the law with respect to the authority of county agencies to contract with DAS for human resources services. The act expressly authorizes county agencies to contract with DAS for any human resources services, including, but not limited to, establishment and modification of job classification plans, competitive testing services, and periodic audits and reviews to guarantee the county's uniform application of the powers, duties, and functions specified in state and county personnel law<sup>63</sup> with regard to employees in the service of the county.<sup>64</sup> The provisions of the act expressly do not modify the powers and duties of the State Personnel Board of Review with respect to employees in the service of a county or limit the right of any employee who possesses the right of appeal to the State Personnel Board of Review to continue to possess that right of appeal.

The act eliminates the authority of the Director, by rule, to require county personnel departments to adhere to merit system principles with regard to employees of certain county agencies so that there is no loss of federal funding. Instead, the act expressly requires a county to adhere to these principles, and makes the county financially liable to the state for the loss of federal funding due to the action or inaction of the county personnel department.<sup>65</sup>

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<sup>61</sup> R.C. 124.14(A)(5).

<sup>62</sup> R.C. 124.14(D)(2).

<sup>63</sup> Sections 124.01 to 124.64 and Chapter 325. of the Revised Code.

<sup>64</sup> R.C. 124.14(G)(2)(c) and (H).

<sup>65</sup> R.C. 124.14(G)(6).



## **Study teleconferencing and web conferencing for state government**

(Section 701.41)

The act requires the Department of Administrative Services to study optimizing the use of teleconferencing and web conferencing to reduce travel expenses in state government. The act specifies that the Department is to assess current teleconferencing capabilities within state government operations, research industry standards and best practices, and make recommendations that will optimize the use of these technologies. The Department must report its findings not later than December 31, 2012, to the Speaker and Minority Leader of the House of Representatives, the President and Minority Leader of the Senate, and the Governor.

## **Lease or easement or license of unneeded state land**

(R.C. 123.01(A)(5))

The act modifies the authority to lease or grant easements or licenses for unproductive and unused lands or other property under the control of a state agency by removing the requirement for the leases, easements, or licenses to be executed for the state by both the Director of Administrative Services (DAS) and the Governor. The act removes the requirement that the Governor execute these conveyances, but retains the requirement for the Director of DAS to do so. The act also removes the requirement that these conveyances be approved "as to form" by the Attorney General.

The act also expressly provides that these leases, easements, or licenses may be made to any person or entity.

The act removes the provision applicable to federal agencies, political subdivisions, and taxing districts, allowing for the federal agency, political subdivision, or taxing district to have the exclusive use of property without the right of sublease or assignment, for a period not longer than 15 years. Presumably, the effect is to remove the time limit and to allow the federal agencies, political subdivisions, and taxing authorities to have the right of sublease or assignment when leasing state-owned land.

## **Web site about joint purchasing programs**

(Section 701.33)

The act requires the Department of Administrative Services (DAS), by itself or by contract with another entity, to establish, operate, and maintain a state web site to serve as an online clearinghouse of information about joint purchasing programs between or among political subdivisions. In doing so, DAS must: (1) use a domain name for the



web site that will be easily recognized, remembered, and understood by users of the web site, (2) maintain the web site so it is fully accessible to and searchable by members of the public at all times, (3) not charge a fee to a person who accesses, searches, or otherwise uses the web site, (4) compile information provided by political subdivisions about joint purchasing arrangements they are involved in that the Department verifies, through meetings with various statewide associations and others, to have resulted in verifiable cost savings, and consolidate that information on the web site in a consistent manner, (5) enable political subdivisions to register and request inclusion of their submitted information on the web site, (6) enable information to be accessed by key word, by program name, by county, by type of product or service, and by other useful identifiers, (7) maintain adequate systemic security and back-up features, and develop and maintain a contingency plan for coping with and recovering from power outages, systemic failures, and other unforeseen difficulties that may affect the web site, and (8) maintain the web site in such a manner that it will not infringe legally protected interests, so that vulnerability of the web site to interruption because of litigation or the threat of litigation is reduced. DAS must bear the expense of establishing, operating, and maintaining the web site.

## **Compressed Natural Gas Study**

(Section 701.141)

The act requires the Department of Administrative Services to conduct a study of the use of compressed natural gas in the motor vehicle fleets of the state and political subdivisions (a county, township, municipal corporation, or any other body corporate and politic that is responsible for government activities in a geographic area smaller than that of the state).

The study must examine the feasibility, budgetary effect, and return on investment from using compressed natural gas in the motor vehicle fleets of the state and political subdivisions, including transit fleets. In examining the potential return on investment, the Department must consider the impact of converting all or part of the different motor vehicle fleets over a period of two to four years and also must develop various proposals for funding the conversion of the motor vehicle fleets. The Department may conduct public hearings and may consult experts and other persons considered necessary to fulfill its duties.

Not later than six months after the study requirements take effect, the Department must issue its findings and recommendations on using compressed natural gas to fuel the motor vehicle fleets, including any recommendation for funding the conversion to compressed natural gas. It must furnish copies of its report to the Governor, the Senate, and the House of Representatives.



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## DEPARTMENT OF AGING (AGE)

### Criminal records checks

- Revises the law governing criminal records checks for employment positions with the Office of the State Long-Term Care Ombudsperson Program.
- Permits the Director of Aging to adopt rules that require employees of the Office to undergo criminal records checks and database reviews.
- Creates a database review process regarding employment positions with the Office.
- Provides that a criminal records check for an employment position with the Office is not required for an applicant or employee found by a database review to be ineligible for the position.
- Revises the list of disqualifying offenses that may make an individual ineligible for an employment position with the Office.
- Revises the law governing criminal records checks for employment positions with community-based long-term care agencies.
- Permits the Director of Aging to adopt rules that require employees of community-based long-term care agencies to undergo criminal records and database reviews.
- Creates a database review process regarding employment positions with community-based long-term care agencies.
- Provides that a criminal records check for an employment position with a community-based long-term care agency is not required for an applicant or employee found by a database review to be ineligible for the position.
- Revises the list of disqualifying offenses that may make an individual ineligible for an employment position with a community-based long-term care agency.
- Provides that the criminal records check and database review requirements regarding community-based long-term care agencies do not apply to any individual who is subject to a database review or criminal records check under the law regarding home health agencies.
- Permits a community-based long-term care agency that also is a waiver agency providing home and community-based services under a Department of Job and Family Services-administered Medicaid waiver program to provide for its applicants and employees to undergo database reviews and criminal records checks in

accordance with the law regarding such waiver agencies rather than the law regarding community-based long-term care agencies.

### **Legal representation**

- Requires the Attorney General to provide legal counsel to the Office of the State Long-Term Care Ombudsperson Program and to represent any representative of the Office against whom any legal action is brought in connection with the representative's duties, in place of the prior law duties of the Department of Aging regarding legal counsel and representation.
- Requires the Attorney General to provide legal counsel to regional long-term care ombudsperson programs and to represent any representative of a regional program against whom any action is brought in connection with the representative's official duties.

### **PASSPORT**

- Limits to 90 days, rather than three months, the time an individual may participate in the state-funded component of the PASSPORT program on the basis that the individual's application for the Medicaid-funded component of PASSPORT (or the potential replacement program called the Unified Long-Term Services and Support Medicaid waiver program) is pending while a determination is being made of whether the individual meets the financial eligibility requirements.

### **Assisted Living**

- Limits to 90 days, rather than three months, the time an individual may participate in the state-funded component of the Assisted Living Program.
- Eliminates a provision under which an individual could potentially qualify for the Assisted Living Program's Home First component on the basis of residing in a residential care facility for at least six months before applying for the Assisted Living Program and being at risk of imminent admission to a nursing facility because the costs of residing in the residential care facility have depleted the individual's resources.

### **Aging in Place pilot program**

- Would have required the Department of Aging to establish the Aging in Place pilot program in Butler, Clermont, Hamilton, and Warren counties to provide for up to 180 eligible individuals to receive home repairs and modifications (VETOED).



## **State Long-Term Care Ombudsperson Program criminal records checks**

(R.C. 173.27 (primary), 109.57, and 109.572; Sections 751.31, 812.11, and 812.12)

The act revises the law governing criminal records checks for employment positions with the Office of the State Long-Term Care Ombudsperson Program. The act also establishes a database review process for such positions. These provisions take effect January 1, 2013.

### **Employees subject to database reviews and criminal records checks**

Before the act, the criminal records check requirement applied only to applicants. Under continuing law, an applicant is a person under final consideration for employment with the Office in a full-time, part-time, or temporary position that involves providing ombudsperson services to long-term care facility residents or community-based long-term care service recipients. A person applying to be the State Long-Term Care Ombudsperson or the head of a regional long-term care ombudsperson program also is an applicant. Volunteers are not included.

The act permits the Director of Aging to adopt rules that require employees also to undergo criminal records checks. The rules may require that employees also undergo database reviews (see "**Database reviews**," below). The act defines "employee" as a person employed by the Office in a full-time, part-time, or temporary position that involves providing ombudsperson services to long-term care facility residents or community-based long-term care service recipients. The person employed as the State Long-Term Care Ombudsperson and a person employed as the head of a regional long-term care ombudsperson program are considered employees. Volunteers are not considered employees.

The Director may exempt one or more classes of employees from the database review and criminal records check requirements. If the rules require employees to undergo database reviews and criminal records checks, the rules must specify the times at which the database reviews and criminal records checks are to be conducted.

Continuing law permits the Office to charge an applicant a fee regarding a criminal records check if the Office notifies the applicant of the fee at the time the applicant initially applies for employment. The fee may not exceed the amount that the Office pays to the Bureau of Criminal Identification and Investigation (BCII) for the criminal records check. The act does not authorize the Office to charge an employee a fee regarding a criminal records check.

The Office may not employ an applicant who fails to complete a BCII criminal records check form or to provide fingerprint impressions on a BCII standard impression



sheet. Under the act, the Office also is prohibited from continuing to employ an employee who fails to complete the form or provide the employee's fingerprint impressions on the BCII impression sheet.

### **Database reviews**

Under the act, an applicant is to undergo a database review as a condition of employment with the Office in a position that involves providing ombudsperson services to long-term care facility residents or community-based long-term care service recipients. If rules adopted by the Director of Aging so require, an employee is to undergo a database review as a condition of continuing employment with the Office in such a position. A database review is to determine whether an applicant or employee is included in any of the following:

(1) The excluded parties list system operated by the United States General Services Administration (GSA);

(2) The list of excluded individuals and entities operated by the Office of Inspector General (OIG) in the United States Department of Health and Human Services;

(3) The registry of MR/DD employees operated by the Department of Developmental Disabilities;

(4) The Internet-based sex offender and child-victim offender database operated by BCII;

(5) The Internet-based database of inmates operated by the Department of Rehabilitation and Correction (DRC);

(6) The state nurse aide registry operated by the Department of Health;

(7) Any other database, if any, the Director is permitted to specify in rules.

The act prohibits the Office from employing an applicant or continuing to employ an employee if a database review reveals any of the following:

(1) The applicant or employee is included in GSA's excluded parties list system, OIG's list of excluded individuals and entities, the registry of MR/DD employees, BCII's Internet-based sex offender and child-victim offender database, or DRC's Internet-based database of inmates;

(2) There is in the state nurse aide registry a statement detailing findings by the Director of Health that the applicant or employee neglected or abused a long-term care



facility or residential care facility resident or misappropriated property of such a resident;

(3) The applicant or employee is included in one or more of the other databases that the Director may specify in rules and the rules prohibit the Office from employing an applicant or employee included in such a database in a position that involves providing ombudsperson services to long-term care facility residents or community-based long-term care service recipients.

An applicant or employee is not required to undergo a criminal records check in addition to a database review if the applicant or employee is found by the database review to be ineligible for the position.

The State Long-Term Care Ombudsperson or the Ombudsperson's designee is required to inform each applicant that a database review will be conducted to determine whether the Office is prohibited from employing the applicant. The Ombudsperson or designee also must inform each applicant about the criminal records check requirement. The Director is to provide the information to an applicant for employment as the Ombudsperson.

The Office is permitted by continuing law to employ conditionally an applicant before obtaining the results of the applicant's criminal records check if the criminal records check is requested not later than five business days after the applicant begins conditional employment. The act limits this authority, however, by prohibiting the Office from conditionally employing an applicant who is found by a database review to be ineligible for the position.

### **Disqualifying offenses**

Prior law prohibited the Office from employing a person in a position that involved providing ombudsperson services to long-term care facility residents or community-based long-term care service recipients if the person had been convicted of or pleaded guilty to certain disqualifying offenses. However, the Office was permitted to employ such a person in such a position if the person met personal character standards set by the Director of Aging in rules. Under the act, the Office may not employ an applicant or continue to employ an employee in such a position if the applicant or employee is found by a criminal records check to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense unless the applicant or employee meets personal character standards specified in rules to be adopted by the Director.



The act revises the list of disqualifying offenses. The following table compares prior law's list of disqualifying offenses to the act's list of disqualifying offenses. The number preceding an offense is the Revised Code section that establishes the offense.

Prior Law	The Act
No provision.	959.13 (cruelty to animals)
No provision.	959.131 (cruelty against companion animal)
2903.01 (aggravated murder)	Same.
2903.02 (murder)	Same.
2903.03 (voluntary manslaughter)	Same.
2903.04 (involuntary manslaughter)	Same.
No provision.	2903.041 (reckless homicide)
2903.11 (felonious assault)	Same.
2903.12 (aggravated assault)	Same.
2903.13 (assault)	Same.
No provision.	2903.15 (permitting child abuse)
2903.16 (Failing to provide for a functionally impaired person)	Same.
2903.21 (aggravated menacing)	Same.
No provision.	2903.211 (menacing by stalking)
No provision.	2903.22 (menacing)
2903.34 (patient abuse or neglect)	Same.
No provision.	2903.341 (patient endangerment)
2905.01 (kidnapping)	Same.
2905.02 (abduction)	Same.
No provision.	A violation of former 2905.04 (child stealing) as it existed before July 1, 1996.
No provision.	2905.05 (criminal child enticement)
2905.11 (extortion)	Same.
2905.12 (coercion)	Same.
No provision.	2905.32 (trafficking in persons)
No provision.	2905.33 (unlawful conduct with respect to documents)
2907.02 (rape)	Same.
2907.03 (sexual battery)	Same.



Prior Law	The Act
No provision.	2907.04 (unlawful sexual conduct with a minor)
2907.05 (gross sexual imposition)	Same.
2907.06 (sexual imposition)	Same.
2907.07 (importuning)	Same.
2907.08 (voyeurism)	Same.
2907.09 (public indecency)	Same.
2907.12 [felonious sexual penetration (This offense was repealed on September 3, 1993.)]	Felonious sexual penetration in violation of former 2907.12.
No provision.	2907.21 (compelling prostitution)
No provision.	2907.22 (promoting prostitution)
No provision.	2907.23 (procuring)
No provision.	2907.24 (soliciting and solicitation after a positive HIV test)
2907.25 (prostitution and prostitution after a positive HIV test)	Same.
2907.31 (disseminating matter harmful to juveniles)	Same.
2907.32 (pandering obscenity)	Same.
2907.321 (pandering obscenity involving a minor)	Same.
2907.322 (pandering sexually oriented matter involving a minor)	Same.
2907.323 (illegal use of a minor in nudity-oriented material or performance)	Same.
No provision.	2907.33 (deception to obtain matter harmful to juveniles)
No provision.	2909.02 (aggravated arson)
No provision.	2909.03 (arson)
No provision.	2909.04 (disrupting public services)
No provision.	2909.22 (support of terrorism)
No provision.	2909.23 (terroristic threats)
No provision.	2909.24 (terrorism)
2911.01 (aggravated robbery)	Same.
2911.02 (robbery)	Same.
2911.11 (aggravated burglary)	Same.



Prior Law	The Act
2911.12 (burglary and trespass in a habitation when a person is present or likely to be present)	Same.
2911.13 (breaking and entering)	Same.
2913.02 (theft)	Same.
2913.03 (unauthorized use of a vehicle)	Same.
2913.04 (unauthorized use of property; unauthorized use of computer, cable, or telecommunication property; unauthorized use of LEADS; and unauthorized use of OHLEG)	Same.
No provision.	2913.05 (telecommunications fraud)
2913.11 (passing bad checks)	Same.
2913.21 (misuse of credit cards)	Same.
2913.31 (forgery and forging identification cards)	Same.
No provision.	2913.32 (criminal simulation)
2913.40 (Medicaid fraud)	Same.
No provision.	2913.41 (prima facie evidence of purpose to defraud [This is not an offense but rather specifies what constitutes prima facie evidence of purpose to defraud under certain circumstances.])
No provision.	2913.42 (tampering with records)
2913.43 (securing writing by deception)	Same.
No provision.	2913.44 (personating an officer)
No provision.	2913.441 (unauthorized display of emblems related to law enforcement on motor vehicles)
No provision.	2913.45 (defrauding creditors)
No provision.	2913.46 (illegal use of Supplemental Nutrition Assistance Program or WIC program benefits)
2913.47 (insurance fraud)	Same.
No provision.	2913.48 (Workers' Compensation fraud)
No provision.	2913.49 (identity fraud)
2913.51 (receiving stolen property)	Same.
No provision.	2917.01 (inciting to violence)



Prior Law	The Act
No provision.	2917.02 (aggravated riot)
No provision.	2917.03 (riot)
No provision.	2917.31 (inducing panic)
No provision.	2919.12 (unlawful abortion)
No provision.	2919.121 (unlawful abortion [on a minor])
No provision.	2919.123 (unlawful distribution of an abortion-inducing drug)
No provision.	2919.22 (endangering children)
No provision.	2919.23 (interference with custody)
No provision.	2919.24 (contributing to unruliness or delinquency)
2919.25 (domestic violence)	Same.
No provision.	2921.03 (intimidation)
No provision.	2921.11 (perjury)
No provision.	2921.12 (tampering with evidence)
No provision.	2921.13 (falsification)
No provision.	2921.21 (compounding a crime)
No provision.	2921.24 (disclosure of confidential information)
No provision.	2921.32 (obstructing justice)
No provision.	2921.321 (assaulting a police dog, horse, or assistance dog)
No provision.	2921.34 (escape)
No provision.	2921.35 (aiding escape or resistance to authority)
2921.36 (prohibited conveying of certain items onto property of state facilities)	Same.
No provision.	2921.51 (impersonation of certain officers)
No provision.	A violation of 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity) when the underlying offense that is the object of the conspiracy, attempt, or complicity is one of the offenses included in this list.
2923.12 (carrying concealed weapons)	Same.



Prior Law	The Act
No provision.	2923.122 (illegal conveyance or possession of a deadly weapon or dangerous ordnance in a school safety zone and illegal possession of an object indistinguishable from a firearm in a school safety zone)
No provision.	2923.123 (illegal conveyance of a deadly weapon or dangerous ordnance into a courthouse and illegal possession or control of a deadly weapon or dangerous ordnance in a courthouse)
2923.13 (having weapons while under disability)	Same.
2923.161 (improperly discharging firearm at or into habitation or school safety zone)	Same.
No provision.	2923.162 (discharge of firearm on or near prohibited premises)
No provision.	2923.21 (improperly furnishing firearms to a minor)
No provision.	2923.32 (engaging in a pattern of corrupt activity)
No provision.	2923.42 (criminal gang activity)
2925.02 (corrupting another with drugs)	Same.
2925.03 (trafficking offenses)	Same.
No provision.	2925.04 (illegal manufacture of drugs and cultivation of marihuana)
No provision.	2925.041 (illegal assembly or possession of chemicals for the manufacture of drugs)
No provision.	2925.05 (funding of drug or marihuana trafficking)
No provision.	2925.06 (illegal administration or distribution of anabolic steroids)
No provision.	2925.09 (sale or use of drugs not approved by U.S. Food and Drug Administration)
2925.11 (drug possession offenses)	Same.
2925.13 (permitting drug abuse)	Same.
No provision.	2925.14 (use, possession, or sale of drug paraphernalia)
2925.22 (deception to obtain a dangerous drug)	Same.



Prior Law	The Act
2925.23 (illegal processing of drug documents)	Same.
No provision.	2925.24 (tampering with drugs)
No provision.	2925.36 (illegal dispensing of sample drugs)
No provision.	2925.55 (unlawful purchase or receipt of pseudoephedrine product)
No provision.	2925.56 (unlawful sale of pseudoephedrine product)
No provision.	2927.12 (ethnic intimidation)
3716.11 (adulteration of food)	Same.
A violation of an existing or former law of this state, any other state, or the United States that is substantially equivalent to any of the offenses listed above.	Same, except that it also applies to an existing or former municipal ordinance of this or another state that is substantially equivalent to any of the offenses listed above.

### **Release of criminal records check report**

Continuing law provides that a criminal records check report is not a public record and may be released only to certain persons. The act provides that a report may be released to a court, hearing officer, or other necessary individual involved in a case dealing with a civil or criminal action regarding Medicaid or a program the Department of Aging administers.

### **Deadline for BCII to send results of criminal records check**

Under prior law, the BCII Superintendent was required to provide the results of a criminal records check regarding the Office not later than 30 days after the date the Superintendent received a request for the criminal records check. The act increases the deadline to 60 days.

### **Collaboration on rules**

The act requires the Director of Aging and the Directors of Developmental Disabilities, Health, and Job and Family Services to collaborate with each other when adopting the initial rules to be adopted for the purpose of implementing provisions of the act regarding criminal records checks. In the collaboration, the Directors must strive to (1) balance the risk mitigation that the database reviews and criminal records checks to be conducted under those provisions are expected to realize with the costs of conducting the database reviews and criminal records checks and (2) make the policies



established by the rules as similar as possible among the Departments of Aging, Developmental Disabilities, Health, and Job and Family Services.

### **Community-based long-term care agency criminal records checks**

(R.C. 173.394 (primary), 109.57, 109.572, and 173.391; Sections 610.10, 610.11, 751.20, 751.31, 812.11, and 812.12)

The act revises the law governing criminal records checks for employment positions with community-based long-term care agencies. The act also establishes a database review process for such positions. These provisions take effect January 1, 2013.

#### **Employees subject to database reviews and criminal records checks**

Before the act, the criminal records check requirement applied only to applicants. An applicant is a person under final consideration for employment with a community-based long-term care agency in a full-time, part-time, or temporary position that involves providing direct care to an individual. The act provides that the following is also an applicant: a person who is referred to a community-based long-term care agency by an employment service for a position that involves providing direct care to an individual. Continuing law provides that volunteers are not applicants and, therefore, are not subject to the criminal records check requirements.

The criminal records check requirement for applicants was initially established by Am. Sub. S.B. 160 of the 121st General Assembly with respect to PASSPORT agencies. It was subsequently expanded to community-based long-term care agencies by Am. Sub. H.B. 530 of the 126th General Assembly. S.B. 160 provided that the requirement applied only to persons seeking employment on or after January 27, 1997. The act eliminates this exemption and permits the Director of Aging to adopt rules that require employees to undergo criminal records checks. The rules may require that employees also undergo database reviews (see "**Database reviews**," below). The act defines "employee" as a person employed by a community-based long-term care agency in a full-time, part-time, or temporary position that involves providing direct care to an individual and a person who works in such a position due to being referred to an agency by an employment service. Volunteers are not included.

The Director may exempt one or more classes of employees from the database review and criminal records check requirements. If the rules require employees to undergo database reviews and criminal records checks, the rules must specify the times at which the database reviews and criminal records checks are to be conducted.



Continuing law permits a community-based long-term care agency to charge an applicant a fee regarding a criminal records check if the agency notifies the applicant of the fee at the time the applicant initially applies for employment and Medicaid does not reimburse the agency the fee it pays for the criminal records check. The fee may not exceed the amount that the agency pays to the Bureau of Criminal Identification and Investigation (BCII) for the criminal records check. The act does not authorize an agency to charge an employee a fee regarding a criminal records check.

Under continuing law, a community-based long-term care agency may not employ an applicant who fails to complete a BCII criminal records check form or to provide fingerprint impressions on a BCII standard impression sheet. Under the act, an agency also is prohibited from continuing to employ an employee who fails to complete the form or provide the employee's fingerprint impressions on the BCII impression sheet.

### **Database reviews**

Under the act, an applicant is to undergo a database review as a condition of employment with a community-based long-term care agency in a position that involves providing direct care to an individual. If rules adopted by the Director of Aging so require, an employee is to undergo a database review as a condition of continuing employment with an agency in such a position. A database review is to determine whether an applicant or employee is included in any of the following:

- (1) The excluded parties list system operated by the United States General Services Administration (GSA);
- (2) The list of excluded individuals and entities operated by Office of Inspector General (OIG) in the United States Department of Health and Human Services;
- (3) The registry of MR/DD employees operated by the Department of Developmental Disabilities;
- (4) The Internet-based sex offender and child-victim offender database operated by BCII;
- (5) The Internet-based database of inmates operated by Department of Rehabilitation and Correction (DRC);
- (6) The state nurse aide registry operated by the Department of Health;
- (7) Any other databases, if any, the Director is permitted to specify in rules.



The act prohibits an agency from employing an applicant or continuing to employ an employee if a database review reveals any of the following:

(1) The applicant or employee is included in GSA's excluded parties list system, OIG's list of excluded individuals and entities, the registry of MR/DD employees, BCII's Internet-based sex offender and child-victim offender database, or DRC's Internet-based database of inmates;

(2) There is in the state nurse aide registry a statement detailing findings by the Director of Health that the applicant or employee neglected or abused a long-term care facility or residential care facility resident or misappropriated property of such a resident;

(3) The applicant or employee is included in one or more of the other databases that the Director may specify in rules and the rules prohibit an agency from employing an applicant or employee included in such a database in a position that involves providing direct care to an individual.

An applicant or employee is not required to undergo a criminal records check in addition to a database review if the applicant or employee is found by the database review to be ineligible for the position.

The chief administrator of a community-based long-term care agency is required to inform each applicant that a database review will be conducted to determine whether the agency is prohibited from employing the applicant. The chief administrator also must inform each applicant about the criminal records check requirement. However, the notification requirement may not apply if the applicant is referred by an employment service (see "**Referrals by an employment service**," below).

A community-based long-term care agency is permitted by continuing law to employ conditionally an applicant before obtaining the results of the applicant's criminal records check if the criminal records check is requested not later than five business days after the applicant begins conditional employment. The act limits this authority, however, by prohibiting an agency from conditionally employing an applicant who is found by a database review to be ineligible for the position.

### **Referrals by an employment service**

The act maintains provisions of law regarding applicants who are referred to community-based long-term care agencies by employment services and applies the provisions to database reviews and employees who work at agencies due to being referred by employment services. Under these provisions, an agency is not required to subject an applicant or employee to a database review or criminal records check if the



applicant or employee is referred to the agency by an employment service and both of the following apply:

(1) The agency's chief administrator receives from the employment service confirmation that a database review was conducted of the applicant or employee;

(2) The chief administrator receives from the employment service, applicant, or employee a report of the results of a criminal records check of the applicant or employee that has been conducted by BCII within the one-year period immediately preceding the following:

(a) In the case of an applicant, the date of the applicant's referral by the employment service to the agency;

(b) In the case of an employee, the date by which the agency would otherwise have to request a criminal records check of the employee.

### **Disqualifying offenses**

Prior law prohibited a community-based long-term care agency from employing a person in a position that involved providing direct care to an individual if the person had been convicted of or pleaded guilty to certain disqualifying offenses. However, an agency was permitted to employ such a person in such a position if the person met personal character standards set by the Director of Aging in rules. Under the act, an agency may not employ an applicant or continue to employ an employee in such a position if the applicant or employee is found by a criminal records check to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense unless the applicant or employee meets personal character standards specified in rules to be adopted by the Director.

The act revises the list of disqualifying offenses. The following table compares prior law's list of disqualifying offenses to the act's list of disqualifying offenses. The number preceding an offense is the Revised Code section that establishes the offense.

<b>Prior Law</b>	<b>The Act</b>
No provision.	959.13 (cruelty to animals)
No provision.	959.131 (cruelty against companion animal)
2903.01 (aggravated murder)	Same.
2903.02 (murder)	Same.
2903.03 (voluntary manslaughter)	Same.
2903.04 (involuntary manslaughter)	Same.



Prior Law	The Act
No provision.	2903.041 (reckless homicide)
2903.11 (felonious assault)	Same.
2903.12 (aggravated assault)	Same.
2903.13 (assault)	Same.
No provision.	2903.15 (permitting child abuse)
2903.16 (Failing to provide for a functionally impaired person)	Same.
2903.21 (aggravated menacing)	Same.
No provision.	2903.211 (menacing by stalking)
No provision.	2903.22 (menacing)
2903.34 (patient abuse or neglect)	Same.
No provision.	2903.341 (patient endangerment)
2905.01 (kidnapping)	Same.
2905.02 (abduction)	Same.
No provision.	A violation of former 2905.04 (child stealing) as it existed before July 1, 1996.
No provision.	2905.05 (criminal child enticement)
2905.11 (extortion)	Same.
2905.12 (coercion)	Same.
No provision.	2905.32 (trafficking in persons)
No provision.	2905.33 (unlawful conduct with respect to documents)
2907.02 (rape)	Same.
2907.03 (sexual battery)	Same.
No provision.	2907.04 (unlawful sexual conduct with a minor)
2907.05 (gross sexual imposition)	Same.
2907.06 (sexual imposition)	Same.
2907.07 (importuning)	Same.
2907.08 (voyeurism)	Same.
2907.09 (public indecency)	Same.
2907.12 [felonious sexual penetration (This offense was repealed on September 3, 1993.)]	Felonious sexual penetration in violation of former 2907.12.
No provision.	2907.21 (compelling prostitution)



Prior Law	The Act
No provision.	2907.22 (promoting prostitution)
No provision.	2907.23 (procuring)
No provision.	2907.24 (soliciting and solicitation after a positive HIV test)
2907.25 (prostitution and prostitution after a positive HIV test)	Same.
2907.31 (disseminating matter harmful to juveniles)	Same.
2907.32 (pandering obscenity)	Same.
2907.321 (pandering obscenity involving a minor)	Same.
2907.322 (pandering sexually oriented matter involving a minor)	Same.
2907.323 (illegal use of a minor in nudity-oriented material or performance)	Same.
No provision.	2907.33 (deception to obtain matter harmful to juveniles)
No provision.	2909.02 (aggravated arson)
No provision.	2909.03 (arson)
No provision.	2909.04 (disrupting public services)
No provision.	2909.22 (support of terrorism)
No provision.	2909.23 (terroristic threats)
No provision.	2909.24 (terrorism)
2911.01 (aggravated robbery)	Same.
2911.02 (robbery)	Same.
2911.11 (aggravated burglary)	Same.
2911.12 (burglary and trespass in a habitation when a person is present or likely to be present)	Same.
2911.13 (breaking and entering)	Same.
2913.02 (theft)	Same.
2913.03 (unauthorized use of a vehicle)	Same.
2913.04 (unauthorized use of property; unauthorized use of computer, cable, or telecommunication property; unauthorized use of LEADS; and unauthorized use of OHLEG)	Same.



Prior Law	The Act
No provision.	2913.05 (telecommunications fraud)
2913.11 (passing bad checks)	Same.
2913.21 (misuse of credit cards)	Same.
2913.31 (forgery and forging identification cards)	Same.
No provision.	2913.32 (criminal simulation)
2913.40 (Medicaid fraud)	Same.
No provision.	2913.41 (prima facie evidence of purpose to defraud [This is not an offense but rather specifies what constitutes prima facie evidence of purpose to defraud under certain circumstances.])
No provision.	2913.42 (tampering with records)
2913.43 (securing writing by deception)	Same.
No provision.	2913.44 (personating an officer)
No provision.	2913.441 (unauthorized display of emblems related to law enforcement on motor vehicles)
No provision.	2913.45 (defrauding creditors)
No provision.	2913.46 (illegal use of Supplemental Nutrition Assistance Program or WIC program benefits)
2913.47 (insurance fraud)	Same.
No provision.	2913.48 (Workers' Compensation fraud)
No provision.	2913.49 (identity fraud)
2913.51 (receiving stolen property)	Same.
No provision.	2917.01 (inciting to violence)
No provision.	2917.02 (aggravated riot)
No provision.	2917.03 (riot)
No provision.	2917.31 (inducing panic)
No provision.	2919.12 (unlawful abortion)
No provision.	2919.121 (unlawful abortion [on a minor])
No provision.	2919.123 (unlawful distribution of an abortion-inducing drug)
No provision.	2919.22 (endangering children)
No provision.	2919.23 (interference with custody)



Prior Law	The Act
No provision.	2919.24 (contributing to unruliness or delinquency)
2919.25 (domestic violence)	Same.
No provision.	2921.03 (intimidation)
No provision.	2921.11 (perjury)
No provision.	2921.12 (tampering with evidence)
No provision.	2921.13 (falsification)
No provision.	2921.21 (compounding a crime)
No provision.	2921.24 (disclosure of confidential information)
No provision.	2921.32 (obstructing justice)
No provision.	2921.321 (assaulting a police dog, horse, or assistance dog)
No provision.	2921.34 (escape)
No provision.	2921.35 (aiding escape or resistance to authority)
2921.36 (prohibited conveying of certain items onto property of state facilities)	Same.
No provision.	2921.51 (impersonation of certain officers)
No provision.	A violation of 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity) when the underlying offense that is the object of the conspiracy, attempt, or complicity is one of the offenses included in this list.
2923.12 (carrying concealed weapons)	Same.
No provision.	2923.122 (illegal conveyance or possession of a deadly weapon or dangerous ordnance in a school safety zone and illegal possession of an object indistinguishable from a firearm in a school safety zone)
No provision.	2923.123 (illegal conveyance of a deadly weapon or dangerous ordnance into a courthouse and illegal possession or control of a deadly weapon or dangerous ordnance in a courthouse)
2923.13 (having weapons while under disability)	Same.



Prior Law	The Act
2923.161 (improperly discharging firearm at or into habitation or school safety zone)	Same.
No provision.	2923.162 (discharge of firearm on or near prohibited premises)
No provision.	2923.21 (improperly furnishing firearms to a minor)
No provision.	2923.32 (engaging in a pattern of corrupt activity)
No provision.	2923.42 (criminal gang activity)
2925.02 (corrupting another with drugs)	Same.
2925.03 (trafficking offenses)	Same.
No provision.	2925.04 (illegal manufacture of drugs and cultivation of marihuana)
No provision.	2925.041 (illegal assembly or possession of chemicals for the manufacture of drugs)
No provision.	2925.05 (funding of drug or marihuana trafficking)
No provision.	2925.06 (illegal administration or distribution of anabolic steroids)
No provision.	2925.09 (sale or use of drugs not approved by U.S. Food and Drug Administration)
2925.11 (drug possession offenses)	Same.
2925.13 (permitting drug abuse)	Same.
No provision.	2925.14 (use, possession, or sale of drug paraphernalia)
2925.22 (deception to obtain a dangerous drug)	Same.
2925.23 (illegal processing of drug documents)	Same.
No provision.	2925.24 (tampering with drugs)
No provision.	2925.36 (illegal dispensing of sample drugs)
No provision.	2925.55 (unlawful purchase or receipt of pseudoephedrine product)
No provision.	2925.56 (unlawful sale of pseudoephedrine product)
No provision.	2927.12 (ethnic intimidation)
3716.11 (adulteration of food)	Same.



Prior Law	The Act
A violation of an existing or former law of this state, any other state, or the United States that is substantially equivalent to any of the offenses listed above.	Same, except that it also applies to an existing or former municipal ordinance of this or another state that is substantially equivalent to any of the offenses listed above.

**Release of criminal records check report**

Continuing law provides that a criminal records check report is not a public record and may be released only to certain persons. The act expands the list of persons to whom a criminal records check report may be released by permitting the following to receive a report:

(1) The Director of Job and Family Services and the staff of the Department of Job and Family Services who are involved in the administration of the Medicaid program if (a) the community-based long-term care agency that requested the criminal records check also is a waiver agency providing home and community-based services under a Medicaid waiver program administered by the Department of Job and Family Services or (b) the criminal records check is for an applicant or employee who an employment service refers to a community-based long-term care agency that also is such a waiver agency;

(2) A court, hearing officer, or other necessary individual involved in a case dealing with a civil or criminal action regarding Medicaid or a program the Department of Aging administers.

**Exemptions**

The act provides that the criminal records check and database review requirements regarding community-based long-term care agencies do not apply to any individual who is subject to a database review or criminal records check under the law regarding home health agencies. The act also provides that a community-based long-term care agency that also is a waiver agency providing home and community-based services under a Medicaid waiver program administered by the Department of Job and Family Services may provide for its applicants and employees to undergo database reviews and criminal records checks in accordance with the law regarding such waiver agencies rather than the law regarding community-based long-term care agencies.

**Deadline for BCII to send results of criminal records check**

Under prior law, the BCII Superintendent was required to provide the results of a criminal records check regarding community-based long-term care agencies not later



than 30 days after the date the Superintendent received a request for the criminal records check. The act increases the deadline to 60 days.

### **Collaboration on rules**

The act requires the Directors of Aging, Developmental Disabilities, Health, and Job and Family Services to collaborate with each other when adopting the initial rules to be adopted for the purpose of implementing provisions of the act regarding criminal records checks. In the collaboration, the Directors must strive to (1) balance the risk mitigation that the database reviews and criminal records checks to be conducted under those provisions are expected to realize with the costs of conducting the database reviews and criminal records checks and (2) make the policies established by the rules as similar as possible among the Departments of Aging, Developmental Disabilities, Health, and Job and Family Services.

### **Legal representation for long-term care ombudsperson programs**

(R.C. 173.23)

The act requires the Attorney General to provide legal counsel to the Office of the State Long-Term Care Ombudsperson Program and to represent any representative of the Office against whom any legal action is brought in connection with the representative's duties. Under prior law, the Department of Aging was required to ensure that this legal counsel was available for advice and consultation and that this legal representation was provided.

The act also requires the Attorney General to provide legal counsel to the regional long-term care ombudsperson programs and to represent any representative of a regional program against whom any action is brought in connection with the representative's official duties. Prior law did not require this legal counsel and representation to be provided.

### **State-funded component of PASSPORT**

(R.C. 173.40)

The act revises the period of time that an individual may participate in the state-funded component of the PASSPORT<sup>66</sup> program on the basis that the individual's application for the Medicaid-funded component of PASSPORT (or the potential replacement program called the Unified Long-Term Services and Support Medicaid

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<sup>66</sup> PASSPORT is an acronym for the Preadmission Screening System Providing Options and Resources Today Program.



waiver program) is pending while a determination is being made of whether the individual meets the financial eligibility requirements. Under the act, an individual may participate in the state-funded component on that basis for 90 days rather than three months.

### **State-funded component of the Assisted Living Program**

(R.C. 5111.89)

The act revises the period of time that an individual may participate in the state-funded component of the Assisted Living Program. Under the act, an individual who is eligible for the state-funded component may participate in the component for not more than 90 days rather than three months.

### **Assisted Living Program's Home First component**

(R.C. 5111.894)

The act revises the eligibility requirements for the Assisted Living Program's Home First component. The Home First process enables individuals meeting certain requirements to be enrolled in the Assisted Living Program ahead of others.

To qualify for the Assisted Living Program's Home First component, an individual must have been determined to be eligible for the Medicaid-funded component of the Assisted Living Program and must be in at least one of a number of specified circumstances. The act eliminates one of the circumstances with the result that an individual must be in one of four circumstances. Under the eliminated circumstance, an individual was required to have resided in a residential care facility for at least six months immediately before applying for the Assisted Living Program and had to be at risk of imminent admission to a nursing facility because the costs of residing in the residential care facility had depleted the individual's resources such that the individual was unable to continue to afford the cost of residing in a residential care facility.

### **Aging in Place pilot program (VETOED)**

(Section 751.15)

The Governor vetoed a provision that would have required the Department of Aging to establish the Aging in Place pilot program in Butler, Clermont, Hamilton, and Warren counties. Up to 180 individuals could have enrolled in the pilot program to receive home repairs and modifications. The services covered by the program were to be specified in rules adopted by the Director of Aging. The program would have been operated for two years.



## **Eligibility**

To be eligible for the pilot program, an individual would have had to meet all of the following requirements:

- (1) Be at least 50 years of age or a veteran of any age;
- (2) Reside in one of the pilot program counties;
- (3) Reside in a private residence other than a nursing home, residential care facility, residential facility for persons with mental illness, residential facility for persons with mental retardation or developmental disabilities, or other facility regulated by a state or local government agency;
- (4) Own the private residence or have a household member who was the owner;
- (5) Be at risk of moving to a nursing home or residential care facility due to a medical condition;
- (6) Reside in a private residence in need of a repair or modification covered by the pilot program;
- (7) Meet any other requirements specified in rules the Director of Aging would have been required to adopt.

## **Administrator**

The Department of Aging would have been required to contract with an organization to administer the pilot program. To qualify, an organization was to (1) be founded not later than 1975, (2) provide professional and critical home repair and modification services to low-income, elderly, or disabled individuals in the pilot program counties, and (3) be exempt from federal income taxation as a 501(c)(3) organization.

The administrator would have been permitted to help coordinate the pilot program's home repairs and modifications with home health services that individuals enrolled in the pilot program received under Medicaid or other programs.

## **Funding**

The administrator would have been required to seek nongovernmental funds to help pay the costs of the pilot program.



The Department of Job and Family Services would have been required to apply for a federal Medicaid waiver to make the pilot program a component of Medicaid. If the waiver had been granted, the Department would have had to enter into an interagency agreement to have the Department of Aging establish the pilot program as a Medicaid component. If the waiver had not been granted, the Department of Aging was to establish the pilot program as a non-Medicaid program.

### **Rules**

The Director of Aging would have been required to adopt rules as necessary to implement the pilot program. If the program had been established as a Medicaid component, the Director of Job and Family Services would have been required to adopt any rules necessary to enable the Director of Aging to adopt rules for the program.

### **Report**

The Department of Aging would have been required to prepare a report regarding the pilot program, not later than 90 days after its termination, and submit it to the Governor, President and Minority Leader of the Senate, Speaker and Minority Leader of the House of Representatives, and Director of the Legislative Service Commission. The report was to include the Department's findings regarding all of the following:

- (1) The number of individuals in Ohio who would benefit from the services covered by the pilot program if the services were made available statewide;
- (2) How governmental and nongovernmental resources can be leveraged most efficiently to make the services available statewide;
- (3) The costs, if any, that Medicaid and other governmental health care programs would incur if the services were available statewide;
- (4) The impact that the services would have on the quality of patient care and treatment;
- (5) The impact that the services would have on the communities in which they would be provided;
- (6) The overall costs and benefits to the state that the services would have.

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## DEPARTMENT OF AGRICULTURE (AGR)

- States that with regard to fire prevention and safety, agriculture and agricultural structures are subject only to the State Fire Code and not to any other requirements governing fire prevention and safety.
- Eliminates various agriculture funds, including the Pilot Farmland Preservation Fund, and transfers any cash in those funds to the Indirect Cost Fund.
- Requires all members appointed by the Director of Agriculture to the continuing Ohio Grape Industries Committee to be Ohio residents.
- Eliminates the requirement that one member of the Committee appointed by the Director be a person the major portion of whose income was from the production of grape products other than wine such as juice, jams, or jellies.
- Retains the requirement that the Director appoint five members to the Committee, revises in part the qualifications of the members who must receive income from the production of grapes or wine, and allows the Director partial discretion in determining how many of the appointed members must receive income from either grapes or wine.
- Provides for the transition of members of the Committee to conform with the act's requirements.
- Exempts the operation of a micro market from the licensure requirements for retail food establishments, food service operations, and vending machine locations established under the Retail Food Establishments and Food Service Operations Law until the Director of Agriculture adopts rules under that Law governing the licensure of micro markets, and defines "micro market."
- Requires the operator of a micro market, not later than 60 days following the adoption of the rules, to apply for a license.

### **Fire prevention and safety regarding agriculture and agricultural structures**

(R.C. 901.53)

The act states that, with regard to fire prevention and safety, agriculture and agricultural structures are subject only to the State Fire Code and not to any other requirements governing fire prevention and safety. Under the act, an agricultural



structure is any building or structure that is used in production, growing, harvesting, or housing for the purposes of agriculture. The general statutory definition of "agriculture" applies.

### **Elimination of various agriculture funds**

(R.C. 901.54; Section 211.10 of Am. Sub. H.B. 153 of the 129th General Assembly)

The act eliminates the statutory creation of the Pilot Farmland Preservation Fund. The Fund consisted of money received by the Office of Farmland Preservation in the Department of Agriculture and was used to leverage or match other farmland preservation funds provided from federal, local, or private sources. The act provides for the transfer of any cash from the Fund to the Indirect Cost Fund.

In addition, the act eliminates the following funds and provides for the transfer of any cash balances in them to the Indirect Cost Fund: (1) Federal Grants Fund, (2) Specialty Crops Support Fund, (3) Fruits and Vegetables Fund, (4) Dairy Fund, (5) Animal Industry Fund, (6) Scale Certification Fund, (7) Weights and Measures Permits Fund, (8) Food Policy Council Fund, (9) Sustainable Agriculture Fund, (10) Farm Service Electronic Filing Fund, and (11) Seed Fund.

### **Ohio Grape Industries Committee**

(R.C. 924.51; Section 709.11)

The act makes several changes regarding the membership of the continuing Ohio Grape Industries Committee. First, it requires the five members appointed by the Director of Agriculture to be Ohio residents. It eliminates the requirement that one of those members be a person the major portion of whose income was from the production of grape products other than wine such as juice, jams, or jellies. It then provides that with regard to the five members that are appointed by the Director, all of the following apply:

(1) Not less than two, but not more than three members must be persons who receive income from the production of grapes or grape products;

(2) Not less than two, but not more than three members must be persons who receive income from the production of wine from raw grape or fruit products in either raw fruit or fresh juice form; and

(3) At no time may the Director appoint more than five members to the Committee.



The act provides for the transition to the above membership requirements by requiring the appointment of a member for a new term in accordance with those requirements upon the expiration of the term of a member who is serving on the Committee immediately preceding September 10, 2012. Finally, it states that a member must continue in office subsequent to the expiration date of that member's term until that member's successor takes office or until a period of 180 days, rather than 60 days as in former law, has elapsed, whichever occurs first.

Under former law, two members appointed to the Committee by the Director had to be persons who received the major portion of their income from the production of grapes. Two had to be persons who received the major portion of their income from the production of wine from raw grape or fruit products in either raw fruit or fresh juice form.

### **Exemption of micro markets from licensure under Retail Food Establishments and Food Service Operations Law**

(Section 737.40)

The act exempts the operation of a micro market from the licensure requirements for retail food establishments, food service operations, and vending machine locations established under the Retail Food Establishments and Food Service Operations Law until the Director of Agriculture adopts rules under that Law governing the licensure of micro markets. The exemption applies to a micro market that the Director has exempted under continuing law from being licensed as a retail food establishment. Not later than 60 days following the adoption of rules by the Director governing the licensure of micro markets, the operator of a micro market must apply for a license in accordance with those rules.

Under the act, a micro market is an area or room that has displays of not more than 250 linear feet that offer either of the following:

- (1) Prepackaged foods that are not time- or temperature-controlled for food safety purposes; or
- (2) Prepackaged foods that are refrigerated or frozen and time- or temperature-controlled for food safety purposes and that are stored in equipment that complies with rules adopted under the Retail Food Establishments and Food Service Operations Law.



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## DEPARTMENT OF ALCOHOL AND DRUG ADDICTION SERVICES (ADA)

- Requires the Ohio Department of Drug and Alcohol Addiction Services (ODADAS) to develop, administer, and revise as necessary a comprehensive statewide gambling addiction services plan.
- Renames the Council on Alcohol and Drug Addiction Services the "Council on Alcohol, Drug, and Gambling Addiction Services" and adds the following members: (1) an individual who has received or is receiving gambling addiction services, and (2) the executive directors of the Casino Control Commission, the Lottery Commission, and the State Racing Commission.
- Includes veterans among the other examples of underserved groups to be addressed when ODADAS fulfills its duty to develop a comprehensive statewide alcohol and drug addiction services plan.
- Would have required ODADAS to conduct a pilot program to provide to certain opioid-, alcohol-, or opioid- and alcohol-dependent offenders within the criminal justice system treatment that includes nonabusable and nondependency forming medication to prevent relapse (VETOED).
- Would have established the Biometric Enrollment and Verification System Pilot Project to reduce activities known as "drug diversion" and "doctor shopping" (VETOED).

### **Gambling addiction services planning**

#### **Comprehensive statewide gambling addiction services plan**

(R.C. 3793.041)

The act requires the Ohio Department of Alcohol and Drug Addiction Services (ODADAS) to develop, administer, and revise as necessary a comprehensive statewide gambling addiction services plan. The requirement is similar to ODADAS's continuing duty to develop, administer, and revise as necessary a comprehensive statewide alcohol and drug addiction services plan.

The gambling addiction services plan must provide for allocation and distribution of funds from the Problem Casino Gambling and Addictions Fund, which



is described in the Ohio Constitution,<sup>67</sup> and any funding to be distributed by ODADAS for problem gambling. The plan must specify the methodology that ODADAS will use for determining how the funds will be allocated and distributed. A portion of the funds must be allocated on the basis of the ratio of the population of each alcohol, drug addiction, and mental health service district to Ohio's total population as determined from the most recent federal census or the most recent official estimate made by the U.S. Census Bureau.

The plan must ensure that gambling addiction services of a high quality are accessible to, and responsive to the needs of, all persons, especially those who are members of underserved groups, including African Americans, Hispanics, Native Americans, Asians, juvenile and adult offenders, women, veterans, and persons with special services needs due to age or disability. The plan must include a program to promote and protect the rights of those who receive services.

To aid in formulating the plan and in evaluating the effectiveness and results of gambling addiction services, ODADAS, in consultation with the Department of Mental Health, must establish and maintain one or more information systems. ODADAS must specify the information that has to be provided by boards of alcohol, drug addiction, and mental health services and by gambling addiction programs for inclusion in an information system. ODADAS is prohibited from collecting any personal information from the boards except as required or permitted by state or federal law for purposes related to payment, health care operations, program and service evaluation, reporting activities, research, system administration, and oversight.

In consultation with boards, programs, and persons receiving services, ODADAS must establish guidelines for the use of funds allocated and distributed as described above.

### **Council on Alcohol, Drug, and Gambling Addiction Services**

(R.C. 3793.09)

The act renames the Council on Alcohol and Drug Addiction Services as the "Council on Alcohol, Drug, and Gambling Addiction Services." The act requires the Council to advise ODADAS in the development and implementation of the statewide plan for gambling addiction services and retains the Council's duty to advise ODADAS regarding the statewide plan for alcohol and drug addiction services.

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<sup>67</sup> Ohio Const., Art. XV, Sec. 6(C)(3)(g).



The act expands the Council's membership by four members. Specifically, the act increases to 14 (from 13) the number of members appointed by the Governor. This additional member must be an individual who has received or is receiving gambling addiction services. The act also increases to 13 (from 10) the members who are public officials. These additional members are the executive directors of the Casino Control Commission, the Lottery Commission, and the State Racing Commission.

### **Comprehensive statewide alcohol and drug addiction services plan**

(R.C. 3793.04)

Similar to the act's provisions regarding a statewide plan for gambling addiction services, continuing law requires ODADAS's comprehensive statewide alcohol and drug addiction services plan to ensure that high-quality services are accessible to, and responsive to the needs of, all persons, especially underserved groups. The act includes veterans among the groups listed in statute as examples of underserved groups.

### **Pilot program for opioid and alcohol dependent offenders (VETOED)**

(Section 737.70)

The Governor vetoed a provision that would have required ODADAS to conduct a pilot program to provide to certain opioid-dependent, alcohol-dependent, or opioid- and alcohol-dependent offenders within the criminal justice system treatment to prevent relapse into dependency, including medication-assisted treatment. The medication-assisted treatment was to be provided by using one or more long-acting antagonist therapy drugs meeting all of the following conditions:

- (1) No potential for abuse by the recipient or through diversion to others;
- (2) No potential for addiction or dependency;
- (3) Federally approved to prevent relapse into opioid dependency, alcohol dependency, or opioid and alcohol dependency.

#### **Location and collaboration**

ODADAS would have been required to conduct the program in Franklin and Scioto counties and could have conducted the program in one or more other counties. ODADAS was to collaborate with the boards of alcohol, drug addiction, and mental health services serving the counties in the program; the Departments of Mental Health, Job and Family Services, and Health; and with any other state agency that ODADAS determined could be of assistance in accomplishing the program's objectives.



## **Participants**

The program would have served not more than 150 opioid-dependent or alcohol-dependent offenders selected by ODADAS. Each offender selected was to have met all of the following criteria:

- (1) Was either being released from a community-based correctional facility or being diverted from prosecution by a county drug court or municipal court;
- (2) Was transitioning to community-based programs as prescribed by the court;
- (3) Was opioid or alcohol dependent (or both) at the time of committing the offense for which the offender was most recently sentenced;
- (4) Was residing in Ohio and in the offender's own court-approved residence or court-approved transitional housing.

A program participant would have been required to do both of the following: (1) commit to participate in the program for 12 months and comply with all program requirements, including testing, counseling, medication therapies, and reporting requirements, and (2) attend any on-site programming specified by the sentencing court or treatment provider.

## **Treatment**

Treatment under the program would have been provided by an alcohol and drug addiction program certified by ODADAS. Treatment was to be based on an integrated service delivery model. The treatment provider was to do all of the following:

- (1) Conduct a professional, comprehensive substance abuse and mental health diagnostic assessment of each potential program participant to determine whether the person was opioid or alcohol dependent (or both) and would benefit from substance abuse treatment and monitoring;
- (2) Determine treatment needs for each program participant based on the diagnostic assessment;
- (3) Develop for each program participant individualized goals and objectives following guidelines provided by ODADAS;
- (4) Provide initial treatment to each program participant by persons professionally qualified to provide substance abuse counseling or treatment;

(5) Provide substance abuse and co-occurring disorder treatment including psychosocial therapies and monthly medication-assisted treatment;

(6) Provide access to long-acting antagonist therapies to the same extent that access may be provided to any other medication-assisted treatment approved by the federal Food and Drug Administration;

(7) Monitor program compliance through regular urinalysis drug testing.

## **Report**

Kent State University would have been required to prepare a report of the findings obtained from the program, along with any recommendations. The report, which would have been due not later than three months after the program ended, was to include data derived from the drug testing performed under the program. In preparing the report, the University was to obtain assistance from ODADAS. The completed report was to be submitted to the Governor; President of the Senate; Speaker of the House of Representatives; Departments of Mental Health, Job and Family Services, and Health; and any other agency ODADAS collaborated with in conducting the program.

## **Biometric Enrollment and Verification System Pilot Project (VETOED)**

(Section 729.20)

The Governor vetoed a provision that would have established the Biometric Enrollment and Verification System Pilot Project. The project was to be established for the purpose of reducing the occurrence of activities known as "drug diversion" and "doctor shopping."

Not later than June 1, 2012, ODADAS was to enter into a contract with a hospital in Gallia County to administer the project. Not later than June 27, 2012, the hospital was to enter into a contract with a vendor to implement the project. Not later than July 1, 2012, the vendor was to implement the project in one or more of the following counties, as selected by the vendor: Athens, Gallia, Jackson, Lawrence, Meigs, Scioto, or Vinton.

The vendor was to develop a system under which a prescriber could use biometric authentication to compare health records from multiple sources to confirm the eligibility of a patient to receive a prescription. The vendor was to establish a real-time patient registration and verification process with unique identifiers, including photographic images of individuals and images of their fingerprints. The system was to



be developed so that a prescriber could compare the identity of a patient seeking a prescription with the unique identifiers included in the system.

Not later than December 31, 2012, the vendor was to prepare a report on the project, including an analysis of the efficacy of the project and recommendations for the establishment of a Medicaid billing code for use in a statewide system based on the system used in the pilot project. The report was to be submitted to the Governor, President and Minority Leader of the Senate, Speaker and Minority Leader of the House of Representatives, ODADAS, and Director of the Legislative Service Commission.

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## **ATTORNEY GENERAL (AGO)**

- Eliminates requirements that: (1) a law enforcement agency that has any seized or forfeited property during any calendar year prepare and send to the Attorney General an annual report with respect to the agency's acquisition and disposition of that property, and (2) the Attorney General send a notice to the President of the Senate and Speaker of the House of Representatives of the Attorney General's receipt of the reports described in clause (1) and of the access to and availability of those reports.
- Changes the date by which the Attorney General is required to report on the Attorney General's operations with regard to Consumer Sales Practices Act, and on violations of that Act, to the Governor and the General Assembly from January 1 to January 31 of each year.

### **Law enforcement agency reports – seized or forfeited property**

(R.C. 2981.11)

#### **Formerly**

The preexisting Forfeiture Law in R.C. Chapter 2981., unchanged by the act except for the provisions described in (1) and (2), below, generally applies to and governs both criminal and civil asset forfeitures to the state or a political subdivision relating to any act or omission that could be charged as a criminal offense or a delinquent act, whether or not a formal prosecution or delinquency proceeding began when a forfeiture is initiated. The Law does not apply to forfeitures under the Motor Vehicle Law or with respect to a few other specified types of property. The categories of property that are subject to forfeiture under the Law are contraband involved in an



offense, proceeds derived from or acquired through the commission of an offense, or an instrumentality used in or intended to be used in the commission or facilitation of specified category of offense when the use or intended use, consistent with specified factors, is sufficient to warrant forfeiture under the Law. The specified categories of offenses with respect to which the "instrumentality" provision applies are felonies, misdemeanors when forfeiture is specifically authorized by statute or ordinance, and attempts or conspiracies to commit or complicity in committing either of the prior specified categories.

R.C. 2981.11 generally governs the custody and disposition of forfeited property and other specified types of property. Under the section, any property that has been lost, abandoned, stolen, seized pursuant to a search warrant, or otherwise lawfully seized or forfeited and that is in the custody of a law enforcement agency must be kept safely by the agency, pending the time it no longer is needed as evidence or for another lawful purpose, and must be disposed of in a specified manner. Also under the section, each law enforcement agency with custody of any property that is subject to the section must adopt and comply with a written internal control policy that provides for keeping detailed records as to the amount of property the agency acquired, the date the property was acquired, and the disposition of the property.

The records regarding disposition must specify the manner in which the property was disposed, the date of disposition, detailed financial records concerning any property sold, the name of any person who received the property, the general types of expenditures made with amounts gained from the sale of the property and retained by the agency, and the specific amount expended on each general type of expenditure. The records kept under the internal control policy are open to public inspection during the agency's regular business hours.

Formerly, R.C. 2981.11 also provided as follows:

(1) Each law enforcement agency that during any calendar year had any seized or forfeited property covered by the section in its custody, including amounts distributed to its law enforcement trust fund or a similar fund created for the State Highway Patrol, Department of Public Safety, Department of Taxation, or State Board of Pharmacy, was required to prepare a report covering the calendar year that cumulated all of the information contained in all of the public records the agency kept pursuant to the section for that calendar year. The agency was required to send a copy of the cumulative report to the Attorney General not later than March 1 of the calendar year following the calendar year covered by the report. Each report received by the Attorney General was a public record open for inspection under the state's Public Records Law.



(2) Not later than April 15 of each calendar year in which reports were sent to the Attorney General as described above in (1), the Attorney General was required to send to the Senate President and the Speaker of the House of Representatives a written notice that indicated that the Attorney General received reports that covered the previous calendar year, that the reports were open for inspection under the state's Public Records Law, and that the Attorney General would provide a copy of any or all of the reports to the President or Speaker upon request.

### **Operation of the act**

The act repeals the provisions described above in (1) and (2) under "**Formerly.**" Under the act, law enforcement agencies will not have to prepare the cumulative reports described above in (1) or send them to the Attorney General, and the Attorney General will not have to send the written notices described above in (2) to the Senate President and the Speaker of the House of Representatives.

### **Consumer Sales Practices Act annual report date change**

(R.C. 1345.05)

The act changes the date by which the Attorney General is required to report on the Attorney General's operations with regard to the Consumer Sales Practices Act, and on violations of that Act, to the Governor and the General Assembly from January 1 to January 31 of each year.

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## **AUDITOR OF STATE (AUD)**

- Requires the officers of a regional council of governments to notify the Auditor of State of its existence within ten business days after its formation, and the officers of an existing regional council of governments to notify the Auditor of State of its existence within 30 business days after the requirement takes effect.
- Requires the Auditor of State to issue a report to the Governor and the General Assembly regarding the number of regional councils of governments and their effectiveness.
- Requires the Auditor of State to establish, operate, and maintain one or more web sites to serve as an online clearinghouse of information about streamlining government operations, collaboration, and shared services to reduce the cost of government in Ohio.



## **Notice of formation of a regional council of governments; report**

(R.C. 167.04(D); Section 701.60)

The act requires the officers of a regional council of governments to notify the Auditor of State of its existence within ten business days after its formation and to provide on a form prescribed by the Auditor of State information regarding the regional council that the Auditor of State considers necessary.

Any regional council of governments that was formed and was operating before June 11, 2012, must notify the Auditor of State of its existence within 30 business days after that date and must provide on the Auditor of State's form the necessary information. The Auditor of State must review the information provided and, not later than June 11, 2013, issue a report to the Governor and the General Assembly. The report must address how many regional councils of governments are operating, whether those regional councils continue to meet the objectives for which they were first authorized in 1967, and whether regional councils are an efficient and effective way for local governments to share services or to participate in cooperative arrangements.

For purposes of these provisions, a "business day" means a day of the week, excluding Saturday, Sunday, or a legal holiday.

## **Auditor of State web site about streamlining government operations**

(Section 701.23)

The act requires the Auditor of State to establish, operate, and maintain one or more state web sites to serve as an online clearinghouse of information about streamlining government operations, collaboration, and shared services to reduce the cost of government in Ohio. The web site may be developed by the Auditor of State or through the use of outside vendors. Web sites already in existence may be used if their content conforms to the requirements of the provision.

In establishing, maintaining, and operating the online clearinghouse web site, the Auditor of State is required to: (1) use a domain name that will be easily recognized, remembered, and understood by users of the web site, (2) maintain the web site so it is fully accessible to and searchable by members of the public at all times, (3) not charge a fee to a person who accesses, searches, or otherwise uses the web site, (4) enable information to be accessed by key word or other useful identifiers, (5) compile information provided by political subdivisions that includes savings recommendations from performance audits, examples of shared services among communities, shared services agreements to use as templates, and other tools developed independently by the Auditor of State or requested by political subdivisions and agreed to by the Auditor



of State, (6) enable political subdivisions to register and request inclusion of their submitted information on the web site, as well as to report state and local barriers to collaboration, (7) enable information to be accessed by key word or other useful identifiers, (8) maintain adequate systemic security and back-up features, and develop and maintain a contingency plan for coping with and recovering from power outages, systemic failures, and other unforeseen difficulties that may affect the web site, and (9) maintain the web site in such a manner that it will not infringe legally protected interests, so that vulnerability of the web site to interruption because of litigation or the threat of litigation is reduced.

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## **OFFICE OF BUDGET AND MANAGEMENT (OBM)**

- Repeals a requirement that the Office of Internal Auditing in the Office of Budget and Management submit a report regarding the effectiveness and expenditure of federal stimulus funds to legislative leaders on August 1, 2012, February 1, 2013, and August 1, 2013.

### **Oversight of federal stimulus funds**

(Sections 601.40 and 601.41 [amending 521.70 of Am. Sub. H.B. 153 of the 129th General Assembly])

The act modifies a requirement that the Office of Internal Auditing in the Office of Budget and Management submit semi-annual reports to legislative leaders regarding (1) the effectiveness of federal stimulus funds allocated to Ohio under the American Recovery and Reinvestment Act of 2009 and (2) how stimulus funds are spent by each state agency. The Office was to submit each semi-annual report by February 1, 2012, August 1, 2012, February 1, 2013, and August 1, 2013. The act repeals the requirement that the Office submit the latter three reports.

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## **CAPITOL SQUARE REVIEW AND ADVISORY BOARD (CSR)**

- Reduces membership on the Capitol Square Review and Advisory Board from 13 to 12 by removing the member who represents the Ohio Building Authority.
- Creates a custodial fund to be used by the Capital Square Review and Advisory Board to purchase the ATM quality dollar bills needed for operation of the parking garage automated equipment.



## **Membership**

(R.C. 105.41(A))

The act reduces the total membership on the Capitol Square Review and Advisory Board from 13 members to 12 members by removing from the Board the representative of the Ohio Building Authority.

## **Custodial fund for purposes of the parking garage automated equipment**

(R.C. 105.41(G))

The act creates the Parking Garage Automated Equipment Fund, which is in the custody of the Treasurer of State but not part of the state treasury. Money in the Fund is to be used to purchase the ATM quality dollar bills needed for operation of the parking garage automated equipment. The Fund is to consist of fees, receipts, or revenues received by the Capital Square Review and Advisory Board from the state underground parking garage; provided, however, that the total amount deposited into the Fund at any one time cannot exceed \$10,000. All investment earnings of the Fund are to be credited to the Fund.

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## **DEPARTMENT OF COMMERCE (COM)**

### **Renaming the Division of Labor**

- Renames the Division of Labor, under the Department of Commerce, to be the Division of Industrial Compliance.

### **Debt cancellation or debt suspension products in retail installment contracts**

- Defines "debt cancellation or debt suspension product" as a contractual agreement in which a retail seller, or its assignee, agrees for a separate charge to cancel or waive all or part of amounts due on a retail buyer's retail installment contract in the event of a total physical damage loss or unrecovered theft of the motor vehicle that is the subject of the contract.
- Provides that a debt cancellation or debt suspension product must be considered part of a related retail installment contract.
- Requires that the purchase price and terms of the debt cancellation or debt suspension product be disclosed to the buyer in writing.



- Requires the charge for a debt cancellation or debt suspension product to be listed as a specific good in a retail installment contract.
- Prohibits the extension of credit on the terms of a related motor vehicle sale or lease to be made contingent on the purchase of a debt cancellation or debt suspension product.

### **Securities Law changes**

- Eliminates the \$50 filing fee for registration of securities by description for an offering of \$50,000 or less.
- Provides that the penalty for failure to submit required filings regarding certain sales of securities to the Division of Securities due to excusable neglect is equal to the greater of the required filing fee or \$100, rather than equal to the amount of the filing fee.

### **Liquor funds and regulatory changes**

- Requires that 45% of the money in the continuing Undivided Liquor Permit Fund be distributed to the State Liquor Regulatory Fund created by the act rather than to the General Revenue Fund as in former law, and requires the new Fund to be used to pay the operating expenses of the Division of Liquor Control and the Liquor Control Commission.
- Requires the Director of Budget and Management, whenever in the Director's judgment the amount of money in the State Liquor Regulatory Fund is in excess of the amount that is needed to pay those operating expenses, to credit the excess to the General Revenue Fund.
- Generally requires all B-2a and S liquor permit fees to be credited to the State Liquor Regulatory Fund rather than the continuing Liquor Control Fund.
- Requires payments from JobsOhio for the Division's operation of the spirituous liquor merchandising operations to be credited to the Liquor Operating Services Fund created by the act rather than the Liquor Control Fund as in former law.
- Authorizes the D-5l liquor permit to be issued only to the owner or operator of a retail food establishment or a food service operation licensed under the Retail Food Establishments and Food Service Operations Law rather than to any business establishment as in former law.



- Adds a restriction that provides that a D-5l permit may only be issued to a premises that has gross annual receipts from the sale of food and meals that constitute not less than 75% of its total gross annual receipts.
- Extends the hours that a D-5g liquor permit holder may sell beer or intoxicating liquor for consumption on the premises.

### **Attorney exemption from Credit Services Organization Law**

- Exempts from the law governing credit services organizations an attorney admitted to practice law in Ohio who offers, provides, or performs legal services if those services do not involve obtaining the extension of credit for a client or changing a client's identity to avoid the client's credit record, history, or rating.

### **Real Estate Brokers Law**

- Removes the option for a person licensed under the Real Estate Brokers Law to place the person's license in voluntary hold status and provides procedures for a licensee whose license is in voluntary hold status on September 10, 2012.
- Specifies that placing a license in resigned status means that the license is permanently surrendered and may not be reactivated or renewed.
- Requires a licensee to notify the Superintendent of the Division of Real Estate and Professional Licensing of a change in personal residence address, instead of the Ohio Real Estate Commission.
- Makes technical and corrective changes to the Law.

### **Renaming the Division of Labor**

(R.C. 121.04, 121.08, 121.083, 121.084, 124.11, 3301.55, 3703.01, 3703.03 to 3703.08, 3703.10, 3703.21, 3703.99, 3713.01 to 3713.10, 3721.071, 3743.04, 3743.25, 3781.03, 3781.102, 3781.11, 3783.05, 3719.02, 3791.04, 3791.05, 3791.07, 4104.01, 4104.02, 4104.06 to 4104.101, 4104.12, 4104.15 to 4104.19, 4104.21, 4104.33, 4104.42, 4104.43, 4104.44, 4104.48, 4105.01, 4105.02 to 4105.06, 4105.09, 4105.11 to 4105.13, 4105.15 to 4105.17, 4105.191 to 4105.21, 4115.10, 4115.101, 4169.02 to 4169.04, 4171.04, 4740.03, 4740.11, 4740.14, 5104.051, 5119.71 (repealed), 5119.73 (repealed), and 5119.731 (repealed); Section 701.70.20)

The act changes the name of the Division of Labor, under the Department of Commerce, to the Division of Industrial Compliance. To effect the change, all powers,



appropriations, real and personal property, duties, obligations, and rules of the Superintendent and Division of Labor are transferred to the Superintendent and Division of Industrial Compliance.

### **Debt cancellation or debt suspension products in retail installment contracts**

(R.C. 1317.05)

Under the act a "debt cancellation or debt suspension product" is a contractual agreement in which a retail seller, or its assignee, agrees for a separate charge to cancel or waive all or part of amounts due on a retail buyer's retail installment contract in the event of a total physical damage loss or unrecovered theft of the motor vehicle that is the subject of the contract. In other words, in the event that a retail buyer's car is involved in a total loss accident or is stolen, a debt cancellation or debt suspension product would relieve the retail buyer from all or part of the buyer's remaining loan balance, pursuant to the terms of the buyer's contract. Debt cancellation or debt suspension products also include products such as guaranteed asset protection waivers, guaranteed auto protection waivers, or other similarly named agreements. However, a debt cancellation or debt suspension product is not considered insurance.

The act requires that any debt cancellation or debt suspension product must be considered a part of the retail installment contract, and remain a part of the contract if the contract is assigned, sold, or transferred. Additionally, the purchase price and terms of the debt cancellation or debt suspension product must be disclosed to the buyer in writing, and the charge for that product must be listed as a specific good in the contract.

Lastly, the act prohibits a retail seller from conditioning the extension of credit, the terms of the credit, or the terms of the related motor vehicle sale or lease, on the purchase of a debt cancellation or debt suspension product.

### **Securities Law changes**

#### **Elimination of filing fee for certain registration of securities by description**

(R.C. 1707.08)

The act eliminates the \$50 filing fee for the registration of securities by description for an offering of \$50,000 or less. Under continuing law, securities are required to be registered prior to being sold by one of three means: description, qualification, or coordination.



## **Penalty fee for failing to submit filings regarding the sale of securities**

(R.C. 1707.391)

The act modifies the penalty fee charged for failure to timely or properly submit filings regarding sales of securities made in reliance on the Securities Law where the failure is due to excusable neglect. Under the act, the penalty fee is equal to the greater of the required filing fee or \$100. The act also clarifies that the penalty fee must be paid in addition to any applicable fee, such as a filing fee, that has not already been paid, but only if such fee is required.

## **Liquor control funds**

(R.C. 4301.30 and 4313.02)

### **Undivided Liquor Permit and State Liquor Regulatory Fund**

Formerly, 45% of the Undivided Liquor Permit Fund, which consists of fees collected by the Division of Liquor Control, had to be disbursed to the General Revenue Fund. The act instead requires the 45% to be distributed to a new State Liquor Regulatory Fund created by the act in the state treasury. The State Liquor Regulatory Fund must be used to pay the operating expenses of the Division in administering and enforcing the liquor control laws and the operating expenses of the Liquor Control Commission. Investment earnings of the Fund must be credited to the Fund. Whenever, in the judgment of the Director of Budget and Management, the amount of money in the State Liquor Regulatory Fund is in excess of the amount that is needed to pay the operating expenses of the Division and the Commission, the Director must credit the excess amount to the General Revenue Fund.

The act generally requires all B-2a and S liquor permit fees to be credited to the State Liquor Regulatory Fund rather than the continuing Liquor Control Fund as in prior law. It retains the requirement that, once during each fiscal year, an amount equal to 50% of the fees so collected be paid into the General Revenue Fund.

### **Liquor Services Operating Fund**

The act requires payments from JobsOhio for the Division's operation of the spirituous liquor merchandising operations to be credited to the Liquor Operating Services Fund, which is created by the act in the state treasury. Under former law, those payments were credited to the Liquor Control Fund. The new Fund is to be used to pay for that operation.



## **D-5l liquor permits**

(R.C. 4303.181)

The act revises certain provisions governing the issuance of D-5l liquor permits. It authorizes the D-5l permit, which under continuing law may be issued only in revitalization districts, to be issued only to the owner or operator of a retail food establishment or a food service operation licensed under the Retail Food Establishments and Food Service Operations Law rather than to any business establishment as in former law. Additionally, it restricts the issuance of a D-5l permit to a premises that has gross annual receipts from the sale of food and meals that constitute not less than 75% of its total gross annual receipts.

Under law retained by the act, the D-5l permit authorizes a permit holder to sell beer and intoxicating liquor for on- and off-premises consumption. In addition to limiting its issuance to revitalization districts, continuing law establishes other parameters for its issuance based on the number of D-5 permits issued in a specified area and on county population.

A revitalization district may be designated under law unchanged by the act for bounded areas located in municipal corporations or unincorporated areas of townships that meet certain population requirements. The bounded areas may include a combination of entertainment, retail, educational, sporting, social, cultural, or arts establishments within close proximity to certain establishments such as restaurants, sports facilities, and convention facilities.

## **D-5g liquor permits**

(R.C. 4303.181)

The act extends to 2:30 a.m. the hours that a D-5g liquor permit holder may sell beer or intoxicating liquor. Under former law, those permit holders had to cease sales at 1:00 a.m. Under continuing law, the D-5g permit may be issued to a nonprofit corporation that is either the owner or the operator of a national professional sports museum. The holder of a D-5g permit may sell beer and any intoxicating liquor for consumption on the premises where sold.

## **Attorney exemption from Credit Services Organization Law**

(R.C. 4712.01)

The act exempts from continuing law governing credit services organizations an attorney at law admitted to the practice of law in Ohio who offers, provides, or



performs a legal service that is privileged by reason of the attorney-client relationship, if the service does not involve obtaining the extension of credit for a client or changing a client's identity to avoid the client's credit record, history, or rating.

Under continuing law, each credit services organization must be registered with the Division of Financial Institutions before conducting business in Ohio.<sup>68</sup> A "credit services organization" means any person that, in return for the payment of money or other valuable consideration readily convertible into money for the following services, sells, provides, or performs, or represents that the person can or will sell, provide, or perform, one or more of the following services:

- (1) Improving a buyer's credit record, history, or rating;
- (2) Obtaining an extension of credit by others for a buyer;
- (3) Providing advice or assistance to a buyer in connection with (1) and (2) (above);
- (4) Removing adverse credit information that is accurate and not obsolete from the buyer's credit record, history, or rating;
- (5) Altering the buyer's identification to prevent the display of the buyer's credit record, history, or rating.

### **Real Estate Brokers Law**

(R.C. 4735.01, 4735.052, 4735.14, 4735.142, and Sections 747.31 and 812.11; conforming, technical, and conforming and technical changes in R.C. 4735.02, 4735.052, 4735.10, 4735.13, 4735.141, 4735.142, and 4735.74)

The act removes the option for a person licensed under the Real Estate Brokers Law to place the person's license in voluntary hold. Former law defined "voluntary hold" as the license status in which a license was in the possession of the Division of Real Estate and Professional Licensing for a period of not more than 12 months, was not renewed in accordance with the requirements specified in the Real Estate Brokers Law or the rules adopted pursuant to it, and was not associated with a real estate broker.

The act provides that a licensee whose license is in a voluntary hold status on September 10, 2012, may, within 90 days of that date, apply to the Superintendent of the Division of Real Estate and Professional Licensing for reactivation of the license in accordance with rules adopted by the Ohio Real Estate Commission or may place the

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<sup>68</sup> R.C. 4712.02 (not in the act).



license in resigned status. The license of a licensee who does not reactivate or resign a license that is in voluntary hold status within that period of time will be automatically suspended. The act provides that a suspended license may be reactivated within 12 months of the date of suspension, provided that the renewal fee plus a penalty fee of 50% of the renewal fee is paid to the Superintendent. If the suspended license is not reactivated within 12 months, the license will be automatically revoked without the Superintendent taking any action.

The act specifies that a license in "resigned" status is voluntarily and permanently surrendered and may not be renewed or reactivated.

The act requires each licensee to notify the Superintendent of a change in personal residence address, as opposed to former law's requirement that a licensee notify the Ohio Real Estate Commission.

The act clarifies that, at a hearing relating to certain violations of the Real Estate Brokers Law, the Commission must hear the testimony of the complainant or the parties *upon request*.

The act makes technical and corrective changes to the Law and provides that the amendments to the Law will take effect on December 10, 2012.

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## **CONTROLLING BOARD (CEB)**

- Would have required a state agency, as part of a request to approve the making of a purchase, to provide to the Controlling Board certain information about a proposed supplier, or proposed subcontractor of that supplier, that is not headquartered in Ohio (VETOED).
- Would have required a state agency to contact each Ohio entity the agency approached to fulfill a purchase or to whom the agency sent a request for proposals but failed to respond to determine why the entity failed to respond and requires the agency to report that information to the Controlling Board (VETOED).



## **Information to be provided to the Controlling Board regarding purchases from out-of-state suppliers (VETOED)**

(R.C. 127.163 and 127.164)

The Governor vetoed a provision that would have required a state agency to provide certain information about a potential supplier to the Controlling Board at the time the agency submits a request to the Board to approve the making of a purchase, if the proposed supplier is not headquartered in this state, but has a presence in the state. The agency would have been required to include in the request the following information:

- The address or addresses of the supplier's places of business in this state;
- The total number of employees the supplier employs in each of its places of business in this state;
- The percentage of the requested purchase to be completed by employees of the supplier located in this state;
- A list of any suppliers, subcontractors, or other entities the supplier intends to use to fulfill the requested purchase that includes the address or addresses of the places of business in this state of each potential supplier, subcontractor, or entity; the number of employees that each potential supplier, subcontractor, or entity employs in each of its places of business in this state; and the percentage of the requested purchase to be completed by employees of the potential supplier, subcontractor, or entity located in this state.

Additionally, the Governor vetoed a provision that would have required an agency, prior to submitting a request to approve the making of a purchase to the Controlling Board, to contact any entity headquartered in this state that the agency approached related to the proposed purchase or to whom the agency sent a request for proposals but who did not respond to the request for proposals and ascertain why the entity did not respond. The agency would have been required to include this information as part of its request to the Board to approve the making of a purchase.



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## COURT OF CLAIMS OF OHIO (CLA)

### Wrongful imprisonment

- Provides that a determination that a person is a wrongfully imprisoned individual must be made in a separate civil action in the court of common pleas in the county where the underlying criminal action was initiated and requires that the Attorney General be served with a copy of the complaint and be heard.
- Provides that the court of common pleas in the county where the underlying criminal action was initiated has exclusive, original jurisdiction to hear and determine a civil action commenced by an individual seeking a determination that the individual satisfies the criteria to be considered a wrongfully imprisoned individual.

### Civil action thresholds

- Increases the threshold below which the state is barred from filing a third-party complaint or counterclaim in a civil action that is filed in the Court of Claims from \$2,500 to \$10,000.
- Increases the threshold below which a civil action against the state must be determined administratively by the Clerk of the Court of Claims from \$2,500 to \$10,000.

### Wrongful imprisonment

(R.C. 2305.02 and 2743.48)

#### **Civil action to determine if individual is a wrongfully imprisoned individual**

Under prior law, when a court of common pleas determined, on or after September 24, 1986, that a person was a wrongfully imprisoned individual, the court was required to provide the person with a copy of R.C. 2743.48 and orally inform the person and the person's attorney of the person's rights under that section to commence a civil action against the state in the Court of Claims because of the person's wrongful imprisonment and to be represented in that civil action by counsel of the person's own choice. Under the act, in order to be declared a wrongfully imprisoned individual, a person may file a civil action in the court of common pleas in the county where the underlying criminal action was initiated. That civil action must be separate from the underlying finding of guilt by the court of common pleas. Upon the filing of a civil



action to be determined to be a wrongfully imprisoned individual, the Attorney General must be served with a copy of the complaint and must be heard. When the court of common pleas in the county where the underlying criminal action was initiated determines in a separate civil action that a person is a wrongfully imprisoned individual, the court must provide the person a copy of R.C. 2743.48 and orally inform the person and the person's attorney of the person's rights under that section to commence a civil action against the state in the Court of Claims because of the person's wrongful imprisonment and to be represented in that action by counsel of the person's own choice.

Former law provided that a court of common pleas had exclusive, original jurisdiction to hear and determine an action or proceeding that was commenced by an individual who satisfied R.C. 2743.48(A)(1) to (4) (criteria to be considered a wrongfully imprisoned individual) and that sought a determination by the court that the offense of which the individual was found guilty, including all lesser-included offenses, either was not committed by the individual or was not committed by any person. If the court entered the requested determination, it was required to comply with R.C. 2743.48(B). The act modifies the first sentence above by providing that *the court of common pleas in the county where the underlying criminal action was initiated* has exclusive, original jurisdiction to hear and determine *a civil action or proceeding* that is commenced by an individual who *seeks a determination by that court that the individual* satisfies R.C. 2743.48(A)(1) to (5), as modified by the act.

Under prior law, within 60 days after the date of the entry of a court of common pleas determination that a person is a wrongfully imprisoned individual, the clerk of the Court of Claims was required to forward a preliminary judgment to the President of the Controlling Board requesting the payment of 50% of the amount the wrongfully imprisoned individual was entitled to receive under Ohio law to the wrongfully imprisoned individual. The act instead requires the clerk to forward the preliminary judgment within 60 days after the date of the entry of the determination by the *court of common pleas in the county where the underlying criminal action was initiated* that a person is a wrongfully imprisoned individual.

### **Civil action in the Court of Claims**

Former law provided that in a civil action filed in the Court of Claims to recover a sum of money because of the individual's wrongful imprisonment, the complainant may establish that the claimant is a wrongfully imprisoned individual by submitting to the Court of Claims a certified copy of the judgment entry of the court of common pleas associated with the claimant's conviction and sentencing, and a certified copy of the entry of determination of a court of common pleas that the claimant is a wrongfully imprisoned individual. The act specifies that the certified copy of the entry of



determination is from the court of common pleas under R.C. 2743.48(B)(2) (i.e., in the county where the underlying criminal action was initiated that determined that the claimant is a wrongfully imprisoned individual).

### **Eligibility to recover**

One of the requirements under prior law for a person to be eligible to recover a sum of money because of wrongful imprisonment was that the wrongfully imprisoned individual had to commence a civil action in the Court of Claims no later than two years after the date of the entry of the determination of a court of common pleas that the individual was a wrongfully imprisoned individual. The act specifies that the entry of determination must be from the court of common pleas in the county where the underlying criminal action was initiated that made the determination that the individual is a wrongfully imprisoned individual.

### **Criteria to be considered a wrongfully imprisoned individual**

Under former law, a "wrongfully imprisoned individual" meant an individual who satisfied, each of the following:

(1) The individual was charged with a violation of a section of the Revised Code by an indictment or information prior to, or on or after, September 24, 1986, and the violation charged was an aggravated felony or felony.

(2) The individual was found guilty of, but did not plead guilty to, the particular charge or a lesser-included offense by the court or jury involved, and the offense of which the individual was found guilty was an aggravated felony or felony.

(3) The individual was sentenced to an indefinite or definite term of imprisonment in a state correctional institution for the offense of which the individual was found guilty.

(4) The individual's conviction was vacated or was dismissed, or reversed on appeal, the prosecuting attorney in the case cannot or will not seek any further appeal of right or upon leave of court, and no criminal proceeding is pending, can be brought, or will be brought by any prosecuting attorney, city director of law, village solicitor, or other chief legal officer of a municipal corporation against the individual for any act associated with that conviction.

(5) Subsequent to sentencing and during or subsequent to imprisonment, an error in procedure resulted in the individual's release, or it was determined by a court of common pleas that the offense of which the individual was found guilty, including



all lesser-included offenses, either was not committed by the individual or was not committed by any person.

The act modifies the provisions described in (1) and (5) above. It removes the requirement in (1) above that the individual was charged with a violation of the Revised Code by an indictment or information *prior to, or on or after, September 24, 1986*. In the provision described in (5) above, the act specifies *that the court of common pleas in the county where the underlying criminal action was initiated* is the court that determines that the *charged* offense, including all lesser-included offenses, either was not committed by the individual or was not committed by any person.

### **Civil action thresholds**

(R.C. 2743.02 and 2743.10)

#### **Third-party complaints or counterclaims**

Under prior law, the state could file a third-party complaint or counterclaim in any civil action that was filed in the Court of Claims except a civil action for \$2,500 or less. The act increases the threshold from \$2,500 to \$10,000.

#### **Administrative determination of civil actions against the state**

Under prior law, civil actions against the state for \$2,500 or less had to be determined administratively by the Clerk of the Court of Claims. The act increases from \$2,500 to \$10,000 the threshold below which civil actions against the state must be determined administratively by the Clerk of the Court of Claims.

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## **DEPARTMENT OF DEVELOPMENT (DEV)**

- Authorizes the Department to enter into cooperative or contractual agreements with any individual, organization, or business to create, administer, or otherwise be involved with Ohio tourism-related promotional programs.
- Creates the Economic Development Support Fund in the state treasury to be used to carry out economic development activities, and specifies that the Fund is to consist of excess liquor profits transferred to it.
- Requires approval by the Director of Development for duties and functions regarding project funding that are carried out by the Ohio Coal Development Office and its director.



- Requires a metropolitan housing authority (MHA) to make publicly available an annual report of an accurate account of its activities, receipts, and expenditures.
- Removes the requirement that an MHA make an annual report of its activities, receipts, and expenditures directly to the Director.
- Provides that the Ohio Housing Study Committee will be abolished on December 31, 2012.

### **Contractual agreements for tourism promotion**

(R.C. 122.07)

The act permits the Department of Development to enter into cooperative or contractual agreements, through the Director of Development, with any individual, organization, or business to create, administer, or otherwise be involved with Ohio tourism-related promotional programs. Compensation under the agreements is to be determined by the Director and may include deferred compensation. Amounts due under an agreement is payable from the Travel and Tourism Cooperative Projects Fund. "Excess" revenue generated under an agreement must be remitted to the Fund to be reinvested in ongoing tourism marketing initiatives.

### **Economic Development Support Fund**

(R.C. 166.35; Section 601.40)

The act creates in the state treasury the Economic Development Support Fund. The Fund is to consist of excess money received by the state representing gross profit on the sale of spirituous liquor that is credited or transferred to it. Money in the Fund is to be used to carry out economic development activities.

The Director of Budget and Management is permitted to transfer up to \$30 million of excess liquor profits from the Liquor Control Fund to the Economic Development Support Fund if, as a result of a delay in the transfer of the liquor enterprise authorized under Am. Sub. H.B. 153 of the 129th General Assembly, the Director considers it necessary.

## **Ohio Coal Development Office**

(R.C. 1551.33, 1555.02, 1555.03, 1555.04, 1555.05, and 1555.06)

The act requires the approval of the Director of Development for the exercise of the duties and functions of the Ohio Coal Development Office and its director regarding project funding. Those duties and functions include making and guaranteeing loans and making grants from the Coal Research and Development Fund; requesting the issuance of coal research and development general obligations; entering into necessary agreements and contracts; and applying to the Controlling Board for funds for surveys or studies by the Office of any proposed coal research and development project subject to repayment.

Under law revised in part by the act, the director of the Office may exercise any powers and duties that the director considers appropriate or desirable to achieve the Office's purposes, including powers and duties of the Director of Development specified in the statutes governing the Office. The act requires the approval of the Director of Development for the exercise of such powers and duties by the director of the Office and also requires the Director of Development to identify which powers and duties are to be exercised by the director of the Office.

## **Metropolitan housing authority annual reports**

(R.C. 3735.37)

The act requires a metropolitan housing authority to make publicly available the annual report consisting of an accurate account of all its activities and of all receipts and expenditures that is required by continuing law. The act removes former law's requirement that the annual report be made to the Director of Development.

## **Ohio Housing Study Committee**

(Section 701.40 of Am. Sub. H.B. 153 of the 129th General Assembly; Sections 601.40 and 601.41)

The act provides for the Ohio Housing Study Committee to be abolished on December 31, 2012. Former law was silent on the date of abolition. Continuing law provides that the Committee's purpose is to review the policies, programs, and partnerships of the Ohio Housing Finance Agency.



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## DEPARTMENT OF DEVELOPMENTAL DISABILITIES (DDD)

### Criminal records checks

- Revises the law governing criminal records checks for employment positions with the Ohio Department of Developmental Disabilities (ODODD), county boards of developmental disabilities (county DD boards), and providers of specialized services.
- Requires a subcontractor that contracts with a provider or another subcontractor to comply with the criminal records checks requirements if the subcontractor employs a person in a direct services position.
- Permits the ODODD Director to adopt rules requiring employees to undergo criminal records checks and requiring ODODD, county DD boards, providers, and subcontractors to obtain the driving records of employees.
- Revises the list of disqualifying offenses for which a criminal records check is to search.
- Requires ODODD, county DD boards, providers, and subcontractors to request certain applicants' and (if rules so require) employees' driving records from the Bureau of Motor Vehicles.
- Establishes criminal records check requirements for the chief executive officers of businesses and independent providers seeking initial or renewed supported living certificates.

### Registry of MR/DD employees

- Expands the list of offenses for which an MR/DD employee is to be included in the registry of MR/DD employees pertaining to abuse, neglect, or misappropriation of property.
- Provides that independent providers of supported living are MR/DD employees for the purpose of the law governing the registry.
- Requires ODODD or a county DD board to provide to an MR/DD employee who is an independent provider an annual notice regarding the conduct for which an MR/DD employee may be included in the registry.



## **Ineligibility for board membership**

- Prohibits a former employee of a county board from serving as a member of the same county DD board within four years of the date that employment ceases.
- Prohibits a former county DD board employee from serving as a member of another county DD board within two years of the date that employment ceases.
- Modifies and clarifies other provisions of the law governing ineligibility to serve as a county DD board member based on having certain familial relationships or being a current or former employee.

## **Employment-related provisions**

- Transfers to superintendents of county DD boards the responsibility, held under prior law by the ODODD Director, for certification or registration of persons to be employed, either by a county DD board or an entity contracting with a county DD board, in positions serving individuals with mental retardation or developmental disabilities.
- Maintains the ODODD Director's responsibility to take such actions relative to county DD board superintendents and investigative agents.
- Permits a county DD board superintendent to contract with another entity to carry out all or part of the superintendent's responsibilities for certification and registration of employees.
- Eliminates most of the statutory provisions establishing standards and procedures for the certification or registration of employees and requires the standards and procedures to be established in rules adopted by the ODODD Director.
- Permits a county DD board superintendent to charge application fees to cover the costs of the board's certification and registration program.
- Eliminates a requirement that a county DD board reemploy a management employee for one year if the board superintendent fails to give 90 days' notice that the board does not intend to rehire the employee.
- Eliminates a provision specifying that a management employee's benefits include sick leave, vacation leave, holiday pay, and other benefits.
- Eliminates a provision prohibiting a teacher, professional employee, or management employee from terminating an employment contract with a county DD board without either receiving the board's consent or giving 30 days' notice.



- Eliminates provisions specifying (1) that an employee of a county DD board may be a member of the governing board of either a political subdivision, including a board of education, or an agency that does not provide specialized services to persons with developmental disabilities, and (2) that the county DD board may contract with that governing board even though its membership includes a county DD board employee.
- Eliminates a requirement that a service and support administrator employed by a county DD board ensure that each recipient of services have a designated person responsible for providing continuous representation, advocacy, advice, and assistance regarding the daily coordination of services.
- Eliminates a provision requiring ODODD, when directed to do so by a county DD board that is part of a regional council of governments, to distribute funds for that county DD board to the regional council's fiscal officer.

### **Licensure of ICFs/MR**

- Repeals a law that made an ICF/MR subject to licensure by the Department of Health as a nursing home rather than subject to licensure by ODODD as a residential facility if the ICF/MR was certified before June 30, 1987, or had an application to convert intermediate care facility beds to ICF/MR beds pending on that date.
- Requires a person or government agency that is operating an ICF/MR pursuant to a nursing home license, as a condition of continuing to operate the ICF/MR on and after July 1, 2013, to apply to the ODODD Director for a residential facility license not later than February 1, 2013, and to obtain the license not later than July 1, 2013.

### **Lists and choice of providers of ODODD programs**

- Eliminates a requirement that county DD boards with Medicaid local administrative authority create lists of all persons and government entities eligible to provide habilitation, vocational, or community employment services under a Medicaid waiver administered by ODODD.
- Eliminates a requirement that ODODD monthly create a list of all persons and government entities eligible to provide residential services and supported living.
- Requires ODODD to make available on its web site an up-to-date list of all providers of home and community-based services available under a Medicaid waiver administered by ODODD and all providers of non-Medicaid residential services and non-Medicaid supported living.

- Revises the law governing the rights of individuals with mental retardation and developmental disabilities to choose providers of services by providing that (1) an individual who is eligible for home and community-based services provided under an ODODD-administered Medicaid waiver has, except as otherwise provided by a federal Medicaid regulation, the right to obtain the services from a qualified and willing provider and (2) an individual who is eligible for non-Medicaid residential services or supported living has the right to obtain the residential services or supported living from any qualified and willing provider.

### **Retention of institutional records**

- Permits records kept by ODODD on residents of institutions to be deposited (after a period of time determined by ODODD) with the Ohio Historical Society.
- Generally prohibits the records or information in them from being disclosed by the Historical Society, except to the resident's closest living relative on the relative's request.

### **Other provisions**

- Prohibits ODODD from charging a county DD board a fee for Medicaid paid claims for home and community-based services provided under the Transitions Developmental Disabilities Waiver.
- Eliminates a provision authorizing only the guardian of an individual with mental retardation or another developmental disability who has been adjudicated incompetent to make decisions regarding the individual's receipt of services from a county DD board.
- Establishes the following decision-making procedures regarding an individual's receipt of services or participation in a program provided for or funded by a county DD board or ODODD: (1) permits the individual to make such decisions unless a guardian has been appointed for the individual, (2) permits the individual to seek support and guidance from an adult family member or other person, (3) permits the individual to authorize (in writing) an adult to make such decisions so long as the adult does not have a financial interest in the decisions, and (4) requires an adult or guardian who makes such decisions to make them in the best interests of the individual and consistent with the individual's needs, desires, and preferences.
- Eliminates the role of county DD boards regarding recommendations for plans to develop residential services for persons with mental retardation or developmental disabilities.

- Revises the law governing a county DD board's responsibility under certain circumstances to pay the nonfederal share of Medicaid expenditures for an individual's care in a state-operated intermediate care facility for the mentally retarded by (1) giving ODODD the option of collecting the amount the county DD board owes by submitting an invoice for payment of that amount to the county DD board rather than using funds otherwise allocated to the county DD board and (2) authorizing the ODODD Director to grant to a county DD board a waiver that exempts the county DD board from responsibility for the nonfederal share in an individual's case.

### **ODODD, county DD board, provider, and subcontractor criminal records checks**

(R.C. 5123.081 (primary), 109.57, 109.572, 5123.033, 5123.082, 5123.542, 5126.0221, 5126.0222, 5126.25, 5126.28 (repealed), and 5126.281 (repealed); Sections 620.10, 620.11, 751.20, 751.31, 812.11, and 812.12)

The act revises the law that (1) requires the Director of the Ohio Department of Developmental Disabilities (ODODD) and the superintendent of a county board of developmental disabilities (county DD board) to request that the Bureau of Criminal Identification and Investigation (BCII) conduct a criminal records check of an applicant for appointment or employment with ODODD or the county DD board and (2) requires an entity providing specialized services to individuals with mental retardation or developmental disabilities pursuant to a contract with a county DD board to request that BCII conduct a criminal records check of an applicant for employment with the contracting entity in a position in which the applicant would have physical contact with, the opportunity to be alone with, or exercise supervision or control over individuals with mental retardation or developmental disabilities. The revisions take effect January 1, 2013.

#### **Defined terms**

The provisions discussed below use certain terms that are given specific meanings. These terms, as continued or modified by the act, are defined as follows:

**Applicant** – The following are applicants: (1) persons under final consideration for appointment to or employment with ODODD or a county DD board, (2) persons being transferred to ODODD or a county DD board, (3) employees being recalled to or reemployed by ODODD or a county DD board after layoffs, and (4) persons under final consideration for direct services positions with a provider or a subcontractor. Neither

of the following is an applicant: (1) a person employed by a responsible entity in a position for which a criminal records check is required and either is being considered for a different position with the responsible entity or is returning after a leave of absence or seasonal break in employment, unless the responsible entity has reason to believe that the person has committed a disqualifying offense and (2) a person who is to provide only respite care under a family support services program if a family member of the individual with mental retardation or a developmental disability who is to receive the respite care selects the person.

**Direct services position** – A direct services position is an employment position in which the employee has the opportunity to be alone with or exercises supervision or control over one or more individuals with mental retardation or a developmental disability.

**Employee** – Both of the following are employees: (1) persons appointed to or employed by ODODD or a county DD board and (2) persons employed in a direct services position by a provider or subcontractor. A person is not an employee if the person provides only respite care under a family support services program if a family member of the individual with mental retardation or a developmental disability who receives the respite care selected the person.

**Provider** – A provider is a person that provides specialized services to individuals with mental retardation or developmental disabilities and employs one or more persons in direct services positions.

**Responsible entity** – The following are responsible entities:

(1) ODODD in the case of (a) a person who is an applicant because the person is under final consideration for appointment to or employment with ODODD, being transferred to ODODD, or being recalled to or reemployed by ODODD after a layoff and (b) a person who is an employee because the person is appointed to or employed by ODODD.

(2) A county DD board in the case of (a) a person who is an applicant because the person is under final consideration for appointment to or employment with the county DD board, being transferred to the county DD board, or being recalled to or reemployed by the county DD board after a layoff and (b) a person who is an employee because the person is appointed to or employed by the county DD board.

(3) A provider in the case of (a) a person who is an applicant because the person is under final consideration for a direct services position by the provider and (b) a



person who is an employee because the person is employed in a direct services position by the provider.

(4) A subcontractor in the case of (a) a person who is an applicant because the person is under final consideration for a direct services position by the subcontractor and (b) a person who is an employee because the person is employed in a direct services position by the subcontractor.

**Specialized services** – A service is a specialized service if it is a program or service designed and operated to serve primarily individuals with mental retardation or developmental disabilities, including a program or service provided by an entity licensed or certified by ODODD. If there is a question as to whether a provider or subcontractor is providing specialized services, the provider or subcontractor is permitted to request that the ODODD Director make a determination. The ODODD Director's determination is final.

**Subcontractor** – A person is a subcontractor if the person employs one or more persons in direct services positions and has either (1) a subcontract with a provider to provide specialized services included in the contract between the provider and ODODD or a county DD board or (2) a subcontract with another subcontractor to provide specialized services included in a subcontract between the other subcontractor and a provider or other subcontractor.

### **Statement regarding criminal record**

Before employing an applicant in a position for which a criminal records check is required, ODODD, a county DD board, a provider, or a subcontractor, whichever is the responsible entity, must require the applicant to submit a statement with the applicant's signature attesting that the applicant has not been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense. The responsible entity also must require the applicant to sign an agreement under which the applicant agrees to notify the responsible entity within 14 calendar days if, while employed by the responsible entity, the applicant is formally charged with, is convicted of, pleads guilty to, or is found eligible for intervention in lieu of conviction for a disqualifying offense. The agreement must provide that the applicant's failure to provide the notification may result in termination of the applicant's employment.

### **Criminal records check**

As a condition of employing any applicant in a position for which a criminal records check is required, a responsible entity must request BCII to conduct a criminal records check of the applicant. If the ODODD Director adopts rules requiring an employee to undergo a criminal records check, a responsible entity must request BCII to



conduct a criminal records check of the employee at times specified in the rules as a condition of continuing to employ the employee in a position for which a criminal records check is required.

A responsible entity must (1) provide to each applicant and employee required to undergo a criminal records check a copy of the BCII-prescribed form for requesting a criminal records check and the BCII standard fingerprint impression sheet, (2) obtain the completed form and impression sheet from the applicant or employee, and (3) forward them to BCII at the time the criminal records check is requested. An applicant or employee who receives the BCII form and impression sheet and is requested to complete the form and provide a set of the applicant's or employee's fingerprint impressions must complete the form or provide all the information necessary to complete the form and provide the applicant's or employee's fingerprint impressions on the impression sheet. A responsible entity may not employ an applicant or continue to employ an employee if the applicant or employee fails to comply with these requirements.

### **Disqualifying offenses**

Except as provided in rules adopted by the ODODD Director, a responsible entity may not employ an applicant or continue to employ an employee if the applicant or employee is found by a criminal records check to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense.

The following table compares prior law's list of disqualifying offenses to the act's list of disqualifying offenses. The number preceding an offense is the Revised Code section that establishes the offense.

<b>Prior Law</b>	<b>The Act</b>
No provision.	959.13 (cruelty to animals)
No provision.	959.131 (cruelty against companion animal)
2903.01 (aggravated murder)	Same.
2903.02 (murder)	Same.
2903.03 (voluntary manslaughter)	Same.
2903.04 (involuntary manslaughter)	Same.
No provision.	2903.041 (reckless homicide)
2903.11 (felonious assault)	Same.
2903.12 (aggravated assault)	Same.



Prior Law	The Act
2903.13 (assault)	Same.
No provision.	2903.15 (permitting child abuse)
2903.16 (failing to provide for a functionally impaired person)	Same.
2903.21 (aggravated menacing)	Same.
No provision.	2903.211 (menacing by stalking)
No provision.	2903.22 (menacing)
2903.34 (patient abuse or neglect)	Same.
2903.341 (patient endangerment)	Same.
2905.01 (kidnapping)	Same.
2905.02 (abduction)	Same.
A violation of former 2905.04 (child stealing) as it existed before July 1, 1996.	Same.
2905.05 (criminal child enticement)	Same.
No provision.	2905.11 (extortion)
No provision.	2905.12 (coercion)
No provision.	2905.32 (trafficking in persons)
No provision.	2905.33 (unlawful conduct with respect to documents)
2907.02 (rape)	Same.
2907.03 (sexual battery)	Same.
2907.04 (unlawful sexual conduct with a minor)	Same.
2907.05 (gross sexual imposition)	Same.
2907.06 (sexual imposition)	Same.
2907.07 (importuning)	Same.
2907.08 (voyeurism)	Same.
2907.09 (public indecency)	Same.
Felonious sexual penetration in violation of former 2907.12.	Same.
2907.21 (compelling prostitution)	Same.
2907.22 (promoting prostitution)	Same.
2907.23 (procuring)	Same.
No provision.	2907.24 (soliciting and solicitation after a positive HIV test)



Prior Law	The Act
2907.25 (prostitution and prostitution after a positive HIV test)	Same.
2907.31 (disseminating matter harmful to juveniles)	Same.
2907.32 (pandering obscenity)	Same.
2907.321 (pandering obscenity involving a minor)	Same.
2907.322 (pandering sexually oriented matter involving a minor)	Same.
2907.323 (illegal use of a minor in nudity-oriented material or performance)	Same.
No provision.	2907.33 (deception to obtain matter harmful to juveniles)
No provision.	2909.02 (aggravated arson)
No provision.	2909.03 (arson)
No provision.	2909.04 (disrupting public services)
No provision.	2909.22 (support of terrorism)
No provision.	2909.23 (terroristic threats)
No provision.	2909.24 (terrorism)
2911.01 (aggravated robbery)	Same.
2911.02 (robbery)	Same.
2911.11 (aggravated burglary)	Same.
2911.12 (burglary and trespass in a habitation when a person is present or likely to be present)	Same.
No provision.	2911.13 (breaking and entering)
No provision.	2913.02 (theft)
No provision.	2913.03 (unauthorized use of a vehicle)
No provision.	2913.04 (unauthorized use of property; unauthorized use of computer, cable, or telecommunication property; unauthorized use of LEADS; and unauthorized use of OHLEG)
No provision.	2913.05 (telecommunications fraud)
No provision.	2913.11 (passing bad checks)
No provision.	2913.21 (misuse of credit cards)



Prior Law	The Act
No provision.	2913.31 (forgery and forging identification cards)
No provision.	2913.32 (criminal simulation)
No provision.	2913.40 (Medicaid fraud)
No provision.	2913.41 (prima facie evidence of purpose to defraud [This is not an offense but rather specifies what constitutes prima facie evidence of purpose to defraud under certain circumstances.])
No provision.	2913.42 (tampering with records)
No provision.	2913.43 (securing writing by deception)
No provision.	2913.44 (personating an officer)
No provision.	2913.441 (unauthorized display of emblems related to law enforcement on motor vehicles)
No provision.	2913.45 (defrauding creditors)
No provision.	2913.46 (illegal use of Supplemental Nutrition Assistance Program or WIC program benefits)
No provision.	2913.47 (insurance fraud)
No provision.	2913.48 (Workers' Compensation fraud)
No provision.	2913.49 (identity fraud)
No provision.	2913.51 (receiving stolen property)
No provision.	2917.01 (inciting to violence)
No provision.	2917.02 (aggravated riot)
No provision.	2917.03 (riot)
No provision.	2917.31 (inducing panic)
2919.12 (unlawful abortion)	Same.
No provision.	2919.121 (unlawful abortion [on a minor])
No provision.	2919.123 (unlawful distribution of an abortion-inducing drug)
2919.22 (endangering children)	Same.
A violation of 2919.23 (interference with custody) that would have been a violation of 2905.04 (child stealing) as it existed before July 1, 1996, had the violation been committed before that date.	2919.23 (interference with custody)



Prior Law	The Act
2919.24 (contributing to unruliness or delinquency)	Same.
2919.25 (domestic violence)	Same.
No provision.	2921.03 (intimidation)
No provision.	2921.11 (perjury)
No provision.	2921.12 (tampering with evidence)
No provision.	2921.13 (falsification)
No provision.	2921.21 (compounding a crime)
No provision.	2921.24 (disclosure of confidential information)
No provision.	2921.32 (obstructing justice)
No provision.	2921.321 (assaulting a police dog, horse, or assistance dog)
No provision.	2921.34 (escape)
No provision.	2921.35 (aiding escape or resistance to authority)
No provision.	2921.36 (prohibited conveying of certain items onto property of state facilities)
No provision.	2921.51 (impersonation of certain officers)
No provision.	A violation of 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity) when the underlying offense that is the object of the conspiracy, attempt, or complicity is one of the offenses included in this list.
2923.12 (carrying concealed weapons)	Same.
No provision.	2923.122 (illegal conveyance or possession of a deadly weapon or dangerous ordnance in a school safety zone and illegal possession of an object indistinguishable from a firearm in a school safety zone)
No provision.	2923.123 (illegal conveyance of a deadly weapon or dangerous ordnance into a courthouse and illegal possession or control of a deadly weapon or dangerous ordnance in a courthouse)
2923.13 (having weapons while under disability)	Same.



Prior Law	The Act
2923.161 (improperly discharging firearm at or into habitation or school safety zone)	Same.
No provision.	2923.162 (discharge of firearm on or near prohibited premises)
No provision.	2923.21 (improperly furnishing firearms to a minor)
No provision.	2923.32 (engaging in a pattern of corrupt activity)
No provision.	2923.42 (criminal gang activity)
2925.02 (corrupting another with drugs)	Same.
2925.03 (trafficking offenses)	Same.
2925.04 (illegal manufacture of drugs and cultivation of marihuana)	Same.
No provision.	2925.041 (illegal assembly or possession of chemicals for the manufacture of drugs)
2925.05 (funding of drug or marihuana trafficking)	Same.
2925.06 (illegal administration or distribution of anabolic steroids)	Same.
No provision.	2925.09 (sale or use of drugs not approved by U.S. Food and Drug Administration)
A violation of 2925.11 (drug possession offenses) that is not a minor drug possession offense.	2925.11 (drug possession offenses)
No provision.	2925.13 (permitting drug abuse)
No provision.	2925.14 (use, possession, or sale of drug paraphernalia)
No provision.	2925.22 (deception to obtain a dangerous drug)
No provision.	2925.23 (illegal processing of drug documents)
No provision.	2925.24 (tampering with drugs)
No provision.	2925.36 (illegal dispensing of sample drugs)
No provision.	2925.55 (unlawful purchase or receipt of pseudoephedrine product)
No provision.	2925.56 (unlawful sale of pseudoephedrine product)



Prior Law	The Act
No provision.	2927.12 (ethnic intimidation)
3716.11 (adulteration of food)	Same.
A felony in the Revised Code that is not one of the offenses included in this list that bears a direct and substantial relationship to the duties and responsibilities of the position being filled.	No provision.
An offense in the Revised Code that constitutes a misdemeanor of the first degree on the first offense and a felony on a subsequent offense and bears a direct and substantial relationship to the position being filled and the nature of the services provided by ODODD or a county DD board.	No provision.
A violation of an existing or former municipal ordinance or law of this state, any other state, or the United States that is substantially equivalent to any of the offenses listed above.	Same.

### Other criminal record reports

A responsible entity is permitted to request any other state or federal agency to supply the responsible entity with a written report regarding the criminal record of an applicant or employee. If an employee holds an occupational or professional license or other credentials, the responsible entity may request that the state or federal agency that regulates the employee's occupation or profession supply the responsible entity with a written report of any information pertaining to the employee's criminal record that the agency obtains in the course of conducting an investigation or in the process of renewing the employee's license or other credentials. The responsible entity is permitted to consider the reports when determining whether to employ the applicant or to continue to employ the employee.

### Driving record

As a condition of employing an applicant in a position for which a criminal records check is required and that involves transporting individuals with mental retardation or developmental disabilities or operating a responsible entity's vehicles for any purpose, the responsible entity must obtain the applicant's driving record from the Bureau of Motor Vehicles. If rules the ODODD Director adopts so require, the responsible entity must obtain an employee's driving record from the Bureau at times



specified in the rules as a condition of continuing to employ the employee. The responsible entity may consider the applicant's or employee's driving record when determining whether to employ the applicant or continue to employ the employee.

### **Conditional employment**

A responsible entity is permitted to employ an applicant conditionally pending receipt of a report regarding the applicant requested under the provisions discussed above. The responsible entity must terminate the applicant's employment if it is determined from a report that the applicant failed to inform the responsible entity that the applicant had been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense.

### **Applicants charged a fee**

A responsible entity is permitted to charge an applicant a fee for costs the responsible entity incurs in obtaining a report regarding the applicant under the provisions discussed above if the responsible entity notifies the applicant of the amount of the fee at the time of the applicant's initial application for employment and that, unless the fee is paid, the responsible entity will not consider the applicant for employment. The fee is not to exceed the amount of the fee, if any, the responsible entity pays for the report. A responsible entity is not authorized to charge the fee to an employee.

### **Release of reports**

A report obtained under the provisions discussed above is not a public record and is not to be made available to anyone except the following:

- (1) The applicant or employee who is the subject of the report or the applicant's or employee's representative;
- (2) The responsible entity that requested the report or its representative;
- (3) ODODD if a county DD board, provider, or subcontractor is the responsible entity that requested the report and ODODD requests the responsible entity to provide a copy of the report to ODODD;
- (4) A county DD board if a provider or subcontractor is the responsible entity that requested the report and the county DD board requests the responsible entity to provide a copy of the report to the county DD board;
- (5) Any court, hearing officer, or other necessary individual involved in a case dealing with any of the following:



--The denial of employment to the applicant or employee;

--The denial, suspension, or revocation of a supported living certificate; a certificate for MR/DD personnel to administer prescribed medications, perform health-related activities, and perform tube feedings; or a certificate for a registered nurse to provide MR/DD personnel training courses;

--A civil or criminal action regarding Medicaid or a program ODODD administers.

An applicant or employee for whom a responsible entity has obtained a report may request the responsible entity to have copies of the reports sent to any state agency, entity of local government, or private entity. The applicant or employee is to specify in the request the agencies or entities to which the copies are to be sent. On receiving the request, the responsible entity must send copies of the reports to the agencies or entities so specified.

A responsible entity is permitted to request that a state agency, local government entity, or private entity send copies to the responsible entity of any report regarding a records check or criminal records check that the agency or entity possesses, if the responsible entity obtains the written consent of the individual who is the subject of the report.

A responsible entity must provide each applicant or employee with a copy of any report obtained about the applicant or employee under the provisions discussed above.

## **Rules**

The ODODD Director is to adopt rules to implement the provisions discussed above.

The rules may do any of the following:

- (1) Require employees to undergo criminal records checks;
- (2) Require responsible entities to obtain the driving records of employees;
- (3) Exempt one or more classes of employees from the requirements described in (1) and (2), above, if the rules establish either or both of those requirements.

The rules must do both of the following:



(1) If either or both of the requirements described in (1) and (2) above are established, specify the times at which the criminal records checks are to be conducted and the driving records are to be obtained;

(2) Specify circumstances under which a responsible entity may employ an applicant or employee who is found by a criminal records check to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense but meets standards in regard to rehabilitation set by the Director.

### **Collaboration on rules**

The act requires the ODODD Director and the Directors of Aging, Health, and Job and Family Services to collaborate with each other when adopting the initial rules to be adopted for the purpose of implementing provisions of the act regarding criminal records checks. In the collaboration, the Directors must strive to (1) balance the risk mitigation that the database reviews and criminal records checks to be conducted under those provisions are expected to realize with the costs of conducting the database reviews and criminal records checks and (2) make the policies established by the rules as similar as possible among ODODD and the Departments of Aging, Health, and Job and Family Services.

### **Supported living criminal records checks**

(R.C. 5123.169 (primary), 109.57, 109.572, 5123.16, 5123.161, 5123.162, 5123.163, 5123.164, 5123.166, and 5123.1610; Sections 751.31, 812.11, and 812.12)

Continuing law prohibits any person or government entity from providing supported living without a valid supported living certificate issued by the ODODD Director. The act establishes new conditions that the chief executive officer of a business and an independent provider must meet to obtain an initial or renewed supported living certificate. The new conditions take effect January 1, 2013.

"Business" is defined as (1) an association, corporation, nonprofit organization, partnership, trust, or other group of persons or (2) an individual who employs, directly or through contract, one or more other individuals to provide supported living.

"Independent provider" is defined as a provider who provides supported living on a self-employed basis and does not employ, directly or through contract, another individual to provide the supported living.

### **Statement regarding criminal record**

Before issuing a supported living certificate to an applicant who is the chief executive officer of a business or who seeks to be an independent provider or before



renewing such an applicant's certificate, the ODODD Director must require the applicant to submit a statement with the applicant's signature attesting that the applicant has not been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense. The Director also must require the applicant to sign an agreement under which the applicant agrees to notify the Director within 14 calendar days if, while holding a supported living certificate, the applicant is formally charged with, is convicted of, pleads guilty to, or is found eligible for intervention in lieu of conviction for a disqualifying offense. The agreement is to provide that the applicant's failure to provide the notification may result in the Director taking action against the applicant's certificate.

### **Criminal records check**

As a condition of receiving a supported living certificate or having a certificate renewed, an applicant must request BCII to conduct a criminal records check of the applicant. If an applicant does not present proof to the ODODD Director that the applicant has been a resident of Ohio for the five-year period immediately before the date that the applicant applies for issuance or renewal of the certificate, the Director must require the applicant to request that BCII obtain information from the Federal Bureau of Investigation (FBI) as part of the criminal records check. If the applicant provides proof of residency, the Director may require the applicant to request that BCII include information from the FBI in the criminal records check. An applicant may provide the proof of residency by presenting, with a notarized statement asserting that the applicant has been an Ohio resident for the five-year period, a valid driver's license, notification of registration as an elector, a copy of an officially filed federal or state tax form identifying the applicant's permanent residence, or any other document the Director considers acceptable.

Each applicant is required to do all of the following:

- (1) Obtain a copy of the BCII-prescribed form for requesting a criminal records check and the BCII standard fingerprint impression sheet;
- (2) Complete the form and provide the applicant's fingerprint impressions on the impression sheet;
- (3) Forward the completed form and impression sheet to BCII at the time the criminal records check is requested;
- (4) Instruct BCII to submit the results of the criminal records check directly to the ODODD Director;
- (5) Pay to BCII the fee charged for conducting the criminal records check.



The ODODD Director is prohibited from issuing or renewing a supported living certificate if the applicant fails to comply with these requirements.

### **Disqualifying offenses**

Except as provided in rules adopted by the ODODD Director, the Director may not issue or renew a supported living certificate if the applicant is found by a criminal records check to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense. The rules are to specify circumstances under which the Director may issue or renew the certificate despite the conviction, guilty plea, or eligibility for intervention in lieu of conviction if the applicant meets standards regarding rehabilitation.

The following are the disqualifying offenses:

(1) Cruelty to animals (R.C. 959.13); cruelty against a companion animal (R.C. 959.131); aggravated murder (R.C. 2903.01); murder (R.C. 2903.02); voluntary manslaughter (R.C. 2903.03); involuntary manslaughter (R.C. 2903.04); reckless homicide (R.C. 2903.041); felonious assault (R.C. 2903.11); aggravated assault (R.C. 2903.12); assault (R.C. 2903.13); permitting child abuse (R.C. 2903.15); failing to provide for a functionally impaired person (R.C. 2903.16); aggravated menacing (R.C. 2903.21); menacing by stalking (R.C. 2903.211); menacing (R.C. 2903.22); patient abuse or neglect (R.C. 2903.34); patient endangerment (R.C. 2903.341); kidnapping (R.C. 2905.01); abduction (R.C. 2905.02); criminal child enticement (R.C. 2905.05); extortion (R.C. 2905.11); coercion (R.C. 2905.12); trafficking in persons (R.C. 2905.32); unlawful conduct with respect to documents (R.C. 2905.33); rape (R.C. 2907.02); sexual battery (R.C. 2907.03); unlawful sexual conduct with a minor (R.C. 2907.04); gross sexual imposition (R.C. 2907.05); sexual imposition (R.C. 2907.06); importuning (R.C. 2907.07); voyeurism (R.C. 2907.08); public indecency (R.C. 2907.09); compelling prostitution (R.C. 2907.21); promoting prostitution (R.C. 2907.22); procuring (R.C. 2907.23); soliciting or soliciting after a positive HIV test (R.C. 2907.24); prostitution or prostitution after a positive HIV test (R.C. 2907.25); disseminating matter harmful to juveniles (R.C. 2907.31); pandering obscenity (R.C. 2907.32); pandering obscenity involving a minor (R.C. 2907.321); pandering sexually oriented matter involving a minor (R.C. 2907.322); illegal use of a minor in nudity-oriented material or performance (R.C. 2907.323); deception to obtain matter harmful to juveniles (R.C. 2907.33); aggravated arson (R.C. 2909.02); arson (R.C. 2909.03); disrupting public service (R.C. 2909.04); support of terrorism (R.C. 2909.22); terroristic threats (R.C. 2909.23); terrorism (R.C. 2909.24); aggravated robbery (R.C. 2911.01); robbery (R.C. 2911.02); aggravated burglary (R.C. 2911.11); burglary or trespass in a habitation when a person is present or likely to be present (R.C. 2911.12); breaking and entering (R.C. 2911.13); theft (R.C. 2913.02); unauthorized use of a vehicle (R.C. 2913.03); unauthorized use of property; unauthorized use of computer, cable, or



telecommunication property; unauthorized use of LEADS; or unauthorized use of OHLEG (R.C. 2913.04); telecommunications fraud (R.C. 2913.05); passing bad checks (R.C. 2913.11); misuse of credit cards (R.C. 2913.21); forgery or forging identification cards (R.C. 2913.31); criminal simulation (R.C. 2913.32); Medicaid fraud (R.C. 2913.40); acts constituting prima-facie evidence of purpose to defraud (R.C. 2913.41); tampering with records (R.C. 2913.42); securing writings by deception (R.C. 2913.43); personating an officer (R.C. 2913.44); unauthorized display of emblems related to law enforcement on motor vehicles (R.C. 2913.441); defrauding creditors (R.C. 2913.45); illegal use of Supplemental Nutrition Assistance Program benefits or WIC program benefits (R.C. 2913.46); insurance fraud (R.C. 2913.47); Workers' Compensation fraud (R.C. 2913.48); identity fraud (R.C. 2913.49); receiving stolen property (R.C. 2913.51); inciting to violence (R.C. 2917.01); aggravated riot (R.C. 2917.02); riot (R.C. 2917.03); inducing panic (R.C. 2917.31); unlawful abortion (R.C. 2919.12); unlawful abortion (on a minor) (R.C. 2919.121); unlawful distribution of an abortion-inducing drug (R.C. 2919.123); endangering children (R.C. 2919.22); interference with custody (R.C. 2919.23); contributing to unruliness or delinquency (R.C. 2919.24); domestic violence (R.C. 2919.25); intimidation (R.C. 2921.03); perjury (R.C. 2921.11); tampering with evidence (R.C. 2921.12); falsification (R.C. 2921.13); compounding a crime (R.C. 2921.21); disclosure of confidential information (R.C. 2921.24); obstructing justice (R.C. 2921.32); assaulting a police dog, horse, or assistance dog (R.C. 2921.321); escape (R.C. 2921.34); aiding escape or resistance to authority (R.C. 2921.35); prohibited conveying of certain items onto property of state facilities (R.C. 2921.36); impersonation of certain officers (R.C. 2921.51); carrying concealed weapons (R.C. 2923.12); illegal conveyance or possession of a deadly weapon or dangerous ordnance in school safety zone or illegal possession of an object indistinguishable from a firearm in a school safety zone (R.C. 2923.122); illegal conveyance, possession, or control of a deadly weapon or dangerous ordnance in a courthouse (R.C. 2923.123); having weapons while under disability (R.C. 2923.13); improperly discharging firearm at or into habitation or school safety zone (R.C. 2923.161); discharge of firearm on or near prohibited premises (R.C. 2923.162); improperly furnishing firearms to a minor (R.C. 2923.21); engaging in a pattern of corrupt activity (R.C. 2923.32); criminal gang activity (R.C. 2923.42); corrupting another with drugs (R.C. 2925.02); trafficking (R.C. 2925.03); illegal manufacture of drugs or cultivation of marihuana (R.C. 2925.04); illegal assembly or possession of chemicals used to manufacture a controlled substance (R.C. 2925.041); funding of drug or marihuana trafficking (R.C. 2925.05); illegal administration or distribution of anabolic steroids (R.C. 2925.06); sale or use of drugs not approved by the U.S. Food and Drug Administration (R.C. 2925.09); drug possession (R.C. 2925.11); permitting drug abuse (R.C. 2925.13); use, possession, or sale of drug paraphernalia (R.C. 2925.14); deception to obtain a dangerous drug (R.C. 2925.22); illegal processing of drug documents (R.C. 2925.23); tampering with drugs (R.C. 2925.24); illegal dispensing of drug samples (R.C. 2925.36); unlawful purchase or receipt of a pseudoephedrine product (R.C. 2925.55);



unlawful sale of a pseudoephedrine product (R.C. 2925.56); ethnic intimidation (R.C. 2927.12); or adulteration of food (R.C. 3716.11);

(2) A violation of the former offense of child stealing as that offense existed before July 1, 1996 (former R.C. 2905.04);

(3) A violation of the former offense of felonious sexual penetration (former R.C. 2907.12);

(4) A violation of conspiracy, attempt to commit an offense, or complicity in the commission of an offense when the underlying offense that is the object of the conspiracy, attempt, or complicity is one of the offenses listed above;

(5) A violation of an existing or former municipal ordinance or law of Ohio, any other state, or the United States that is substantially equivalent to any of the offenses listed above.

### **Other criminal record report**

The ODODD Director is permitted to request any other state or federal agency to supply the Director with a written report regarding the criminal record of an applicant. The Director may consider the reports when determining whether to issue or renew a supported living certificate.

### **Driving record**

An applicant who seeks to be an independent provider or is an independent provider seeking renewal of the applicant's supported living certificate must obtain the applicant's driving record from the Bureau of Motor Vehicles and provide a copy of the report to the ODODD Director if the supported living that the applicant will provide involves transporting individuals with mental retardation or developmental disabilities. The Director may consider the applicant's driving record when determining whether to issue or renew the certificate.

### **Release of reports**

A report obtained under the provisions discussed above is not a public record and is not to be made available to any person, other than the following:

(1) The applicant who is the subject of the report or the applicant's representative;

(2) The ODODD Director or the Director's representative;



(3) Any court, hearing officer, or other necessary individual involved in a case dealing with any of the following:

--The denial of or refusal to renew a supported living certificate;

--The denial, suspension, or revocation of a certificate for MR/DD personnel to administer prescribed medications, perform health-related activities, and perform tube feedings or a certificate for a registered nurse to provide MR/DD personnel training courses;

--A civil or criminal action regarding Medicaid or a program ODODD administers.

An applicant for whom the Director has obtained reports discussed above may submit a written request to the Director to have copies of the reports sent to any person or state or local government entity. The applicant must specify in the request the person or entities to which the copies are to be sent. On receipt of the request, the Director must send copies of the reports to the persons or entities so specified.

The Director is permitted to request that a person or state or local government entity send copies to the Director of any report regarding a records check or criminal records check that the person or entity possesses if the Director obtains the written consent of the individual who is the subject of the report.

The Director must provide each applicant with a copy of any report about the applicant obtained under the provisions discussed above.

### **Collaboration on rules**

The act requires the ODODD Director and the Directors of Aging, Health, and Job and Family Services to collaborate with each other when adopting the initial rules to be adopted for the purpose of implementing provisions of the act regarding criminal records checks. In the collaboration, the Directors must strive to (1) balance the risk mitigation that the database reviews and criminal records checks to be conducted under those provisions are expected to realize with the costs of conducting the database reviews and criminal records checks and (2) make the policies established by the rules as similar as possible among ODODD and the Departments of Aging, Health, and Job and Family Services.

## **Registry of MR/DD employees regarding abuse, neglect, or misappropriation**

(R.C. 5123.50, 5123.51, and 5123.542)

Under continuing law, the ODODD Director must establish a registry of MR/DD employees found to have committed certain actions related to the abuse, neglect, or misappropriation of property of an individual with mental retardation or developmental disabilities. In general, a person or government entity is prohibited from hiring, contracting with, or employing an individual if the individual is included in the registry.<sup>69</sup>

### **List of actions included in the registry**

The act expands the list of actions for which an MR/DD employee may be included in the registry by including the following:

--Misappropriation of prescribed medication of an individual with mental retardation or a developmental disability;

--Being convicted of or entering a plea of guilty to any of the following offenses if the victim of the offense is an individual with mental retardation or a developmental disability: sex offenses, theft offenses, fraud offenses, failing to provide for a functionally impaired person, patient abuse or neglect, patient endangerment, endangering children, or an offense of violence.<sup>70</sup>

### **MR/DD employees subject to the registry**

Continuing law defines "MR/DD employee" as (1) an employee of ODODD, (2) an employee of a county DD board, and (3) an employee in a position that includes providing specialized services to an individual with mental retardation or another developmental disability. The act provides that independent providers are MR/DD employees also; therefore, they are subject to inclusion in the registry regarding their

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<sup>69</sup> R.C. 5123.52 (not in the act).

<sup>70</sup> "Offenses of violence" are defined by continuing law as aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, felonious assault, aggravated assault, assault, permitting child abuse, aggravated menacing, menacing by stalking, menacing, abduction, extortion, trafficking in persons, rape, sexual battery, gross sexual imposition, aggravated arson, arson, terrorism, aggravated robbery, robbery, aggravated burglary, burglary, inciting to violence, aggravated riot, riot, inducing panic, domestic violence, intimidation, intimidating certain persons in a case, escape, improper discharge of a firearm, an offense other than a traffic offense that was committed purposely or knowingly and the offense resulted in harm or the risk of serious physical harm, and conspiracy or attempt to commit or complicity in committing any of these offenses. (R.C. 2901.01(A)(9).)

acts of abuse, neglect, or misappropriation of property. "Independent provider" is defined by the act as an individual who provides supported living on a self-employed basis and does not employ, directly or through contract, another individual to provide supported living.

### **Notice regarding the registry**

Continuing law provides for MR/DD employees to receive an annual notice explaining the conduct for which an MR/DD employee may be included in the registry of MR/DD employees. ODODD, county DD boards, and providers of specialized services to individuals with mental retardation or developmental disabilities are to provide the notice. The act requires ODODD or a county DD board to provide the notice to an MR/DD employee who is an independent provider.

### **Ineligibility for board membership**

(R.C. 5126.023)

Certain persons are prohibited from serving on a county DD board based on their familial relationships or their status as current or former employees. The act modifies some of these restrictions and clarifies others. Under the act's changes, none of the following may serve as a county DD board member:

(1) An immediate family member of a member of the *same* county DD board. Under prior law, a person could not serve as a county DD board member if the person was an immediate family member of *another county DD board member*.

(2) An employee of *any* county DD board. Previously, a person could not serve as a county DD board member if the person was *a county DD board employee*.

(3) An immediate family member of an employee of the *same* county DD board. Previously, a person could not serve as a county DD board member if the person was an immediate family member of *a county DD board employee*.

(4) A former employee of a county DD board whose employment ceased less than *four* calendar years before the employee would begin to serve as a member of the *same* county DD board. This is an increase in the prior law waiting period of *one* calendar year.

(5) A former employee of a county DD board whose employment ceased less than two years before the former employee would begin to serve as a member of a different county DD board.



(6) *Unless there is no conflict of interest*, a person who, or whose immediate family member, is a board member or employee of an agency licensed or certified by ODODD to provide services to individuals with MR/DD. Previously, these persons could not serve even if there was no conflict of interest.

The act eliminates a provision that prohibited (unless there was no conflict of interest) a person from serving as a county DD board member if the person was, or had an immediate family member who was, an employee or board member of an agency contracting with the county DD board that was not licensed or certified by ODODD to provide services to individuals with mental retardation or developmental disabilities. The act eliminates a corresponding provision specifying that (1) all questions relating the existence of a conflict of interest were to be submitted to the local prosecuting attorney for resolution and (2) the Ohio Ethics Commission could examine any issues arising under the ethics laws pertaining to public officers,<sup>71</sup> the criminal law prohibiting public officials from having an unlawful interest in a public contract,<sup>72</sup> and the criminal law prohibiting public servants from soliciting improper compensation.<sup>73</sup>

### **Certification or registration of employees**

(R.C. 5126.25, 5123.033, 5123.0414, 5123.0415, 5123.081, 5123.082 (repealed), 5123.083 (repealed), 5126.0220, 5126.20, 5126.22, 5126.251, 5126.252 (repealed), and 5126.26 (repealed))

### **Transfer to county DD boards**

Prior law required the ODODD Director to adopt rules establishing uniform standards and procedures for the certification or registration of persons for employment by county DD boards or employees of the entities with which county DD boards contract to serve individuals with mental retardation and developmental disabilities. The standards and procedures applied to the following: superintendents; management, professional, and service employees; and investigative agents.

The act transfers to superintendents of county DD boards the responsibility for the certification or registration of persons to be employed in positions serving individuals with mental retardation or developmental disabilities. The act maintains the ODODD Director's responsibility to take these actions relative to county DD board superintendents and investigative agents. The act maintains a requirement that no

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<sup>71</sup> R.C. Chapter 102.

<sup>72</sup> R.C. 2921.42 and 2921.421.

<sup>73</sup> R.C. 2921.43.



person be employed in a position requiring certification or registration without valid certification or registration, and no person continue to be employed if the required certification or registration is denied, revoked, or not renewed.<sup>74</sup> The act permits a county DD board superintendent to contract with another entity to carry out all or part of the superintendent's responsibilities for certification and registration of employees.

## Rules

The act requires the ODODD Director to adopt the rules to be followed by county DD boards regarding certification or registration. The rules apply to persons seeking employment with or employed by either a county DD board or an entity that contracts with a county DD board to operate programs and services for individuals with mental retardation or developmental disabilities. The rules must establish all of the following:

- (1) The positions of employment subject to certification or registration;
- (2) The requirements that must be met to receive the certification or registration, including standards regarding education, specialized training, and experience, taking into account the needs of individuals with mental retardation or developmental disabilities and the specialized techniques needed to serve them;<sup>75</sup>
- (3) Application requirements for a person seeking certification or registration for employment;
- (4) Initial certification or registration procedures and requirements for renewal, including continuing education and professional training requirements;
- (5) Grounds for which certification or registration may be denied, suspended, or revoked and procedures for appealing the denial, suspension, or revocation.

Superintendents of each county DD board are responsible for taking all actions regarding certification and registration of employees (other than the position of superintendent and investigative agent). These actions, which must be taken in

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<sup>74</sup> Continuing law provides that the certification and registration requirements do not apply to a teacher holding a valid license or certificate or another licensed professional (such as a health care professional) performing authorized professional duties.

<sup>75</sup> Continuing law provides that the ODODD Director may not require a person designated as a service employee to have or obtain a bachelor's or higher degree. "Service employee" is defined as a person employed by a county DD board in a position for which a bachelor's degree is not required and includes a workshop specialist, workshop specialist assistant, contract procurement specialist, community employment specialist, and any assistant to a professional employee.



accordance with the ODODD Director's rules, include issuing, renewing, denying, suspending, and revoking a certificate or registration. A person subject to a denial, suspension, or revocation may appeal the decision in accordance with the Director's rules. The Director retains responsibility for all of these actions relative to the position of superintendent and investigative agent.

Under continuing law, a person with a valid certificate or registration on the effective date of any rule change has at least one year to meet the new certification or registration standards. The act specifies that a person with valid certification or registration issued by one county DD board is qualified to be employed in any other county DD board or entity contracting with a county DD board.

### **Fees**

The act permits a county DD board superintendent to charge application fees to cover the costs of the board's certification and registration program. The act eliminates a requirement that fees be charged by ODODD for certification or registration.

### **Eliminated provisions**

All of the following provisions are eliminated by the act in transferring responsibility for employee certification and registration to county DD boards:

(1) A specific requirement that an investigative agent requires certification, must hold or obtain no less than an associate degree from an accredited college or university or hold or obtain comparable experience or training, and must complete continuing education;

(2) A requirement that certificates and evidence of registration be provided according to categories, levels, and grades;

(3) A requirement that the ODODD Director approve courses of study meeting certification standards and provide for the inspection of the courses to ensure the maintenance of satisfactory training procedures;

(4) A requirement that courses of study be approved only if given by a state university or college or an institution that has received from the Ohio Board of Regents a certificate to confer degrees;

(5) A requirement that applicants seeking certification or evidence of registration apply to ODODD on a form established by the Director and include an application fee;

(6) A requirement that the ODODD Director take disciplinary actions against the holder of a certificate or registration;



(7) Specific offenses for which the ODODD Director is authorized to take disciplinary actions and the hearing requirements regarding those actions (requirements to be adopted in rules under the act);

(8) Provisions on the completion of necessary courses of instruction by an applicant for a certificate, when the applicant has not completed necessary courses;

(9) Authorization for a county DD board superintendent or superintendent's designee to certify to the ODODD Director that a county DD board or contracting entity employee has met continuing education or professional training requirements as a condition of renewal of certification or registration;

(10) A provision providing for an automatic suspension or refusal to renew a certificate or registration if a person fails to comply with a child support order.

## **County DD board employees**

### **Management employees**

(R.C. 5126.20 and 5126.21)

Under continuing law, a person employed by a county DD board as a management employee is an employee in a position having supervisory or managerial responsibilities and duties. The act modifies the law governing these employees as follows:

(1) Eliminates a requirement that a county DD board reemploy a management employee for one year at the same salary, and any authorized salary increase, if the board superintendent fails to notify the employee at least 90 days before the expiration of the employee's contract that the board does not intend to rehire the employee (but maintains the 90-day notification requirement);

(2) Eliminates a provision specifying that a management employee's benefits include sick leave, vacation leave, holiday pay, and other benefits and instead provides that management employees are to receive employee benefits as established by the board;

(3) Eliminates provisions referring to procedures for retention of management employees who were under contract or in probationary periods at the time the statutes for contracting with management employees were modified in 1988.



## **Professional employees**

(R.C. 5126.26 and 5126.27 (repealed))

The act eliminates an obsolete exemption that applied to professional employees who were employed by a county DD board at the time the statutes for certification of employees were modified in 1990. That exemption provided that employees employed on that date were permitted to do either (1) accept an employment position at the board for which the employee met the certification requirements, or (2) remain in the position and comply with a professional development plan.

## **Termination of contracts**

(R.C. 5126.29 (repealed))

The act eliminates a provision under which a professional or management employee in a position requiring an educator's license issued by the State Board of Education or a certificate issued by the ODODD Director could not terminate the person's contract without first giving 30 days' notice to the county DD board or seeking prior written consent from the board. A person who did not provide the notice could have the person's license or certificate suspended for a period of time not to exceed one year.

## **County DD board employees as members of governing board**

(R.C. 5126.0222)

The act eliminates a provision specifying that an employee of a county DD board may be a member of the governing board of either a political subdivision, including a board of education, or an agency that does not provide services designed and operated to serve primarily individuals with mental retardation or a developmental disability. The act also eliminates a provision specifying that the county DD board is authorized to contract with that governing board even though its membership includes a county DD board employee.

## **Service and support administration**

(R.C. 5126.15)

Under continuing law largely maintained by the act, county DD boards are authorized, and in certain instances required, to provide service and support administration to individuals. Service and support administrators are required to assist individuals in receiving services, including assessing individual needs for services,



establishing an individual's eligibility for services, and ensuring that services are effectively coordinated.

The act eliminates a provision requiring service and support administrators to ensure that each individual receiving services had a "designated person" who was responsible on a continuing basis for providing the individual with representation, advocacy, advice, and assistance related to the day-to-day coordination of services. The act also eliminates a provision permitting the individual receiving services to designate that person.

### **Funds distributed for county DD boards in regional councils of government**

(R.C. 5126.13)

The act eliminates a provision requiring ODODD, when directed to do so by a county DD board that is part of a regional council of governments, to distribute funds for that county DD board to the regional council's fiscal officer.<sup>76</sup>

### **Licensure of ICFs/MR as residential facilities**

(R.C. 5123.192 (repealed and new enactment), 3702.62, 3721.01, 3721.21, 3721.50, 5123.171, 5123.19, 5123.41, and 5126.51; Sections 110.20, 110.21, 110.22, and 751.10)

The act repeals a provision under which a facility was subject to licensure by the Department of Health as a nursing home rather than by ODODD as a residential facility if, on June 30, 1987, the facility contained beds that the Department of Health certified before that date as intermediate care facility for the mentally retarded (ICF/MR) beds or the facility had an application pending with the Department of Health to convert intermediate care facility beds to ICF/MR beds. The provision did not apply to a facility that applied for recertification as an ICF/MR after its certification or provider agreement was not renewed or was terminated pursuant to a final order for which all appeal rights were exhausted. It also did not apply to additional ICF/MR beds a facility obtained.

A person or government agency operating an ICF/MR pursuant to a nursing home license under the provision repealed by the act must apply, not later than February 1, 2013, to the ODODD Director for a residential facility license for the ICF/MR and obtain the license by July 1, 2013, or cease to operate the ICF/MR. The ICF/MR's nursing home license ceases to be valid at the earliest of (1) the date that the nursing home license is revoked or voided, (2) the date that a residential facility license is obtained, or (3) July 1, 2013. No bed that is part of the ICF/MR may be used as part of

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<sup>76</sup> Regional councils of government are authorized by R.C. Chapter 167.



a nursing home on and after the earlier of the date that a residential facility license is obtained or July 1, 2013. The act specifies, however, that this prohibition does not apply to an existing nursing home bed that is not certified as an ICF/MR bed and is relocated in accordance with a move authorized by a certificate of need.

The act provides that, despite the repeal of the provision described above, an ICF/MR operating under a nursing home license is to continue to be a nursing home for the purposes for which it is considered to be a nursing home under the law in effect immediately before the repeal until the earliest of (1) the date that the nursing home license is revoked or voided, (2) the date that a residential facility license is obtained, or (3) July 1, 2013. The act specifies that its repeal of the provision does not change an ICF/MR's status regarding (1) the law regarding abuse, neglect, or misappropriation of residents' property at long-term care facilities, (2) the franchise permit fees on nursing homes and ICFs/MR, (3) the law that permits certain individuals who provide specialized services to individuals with mental retardation or developmental disabilities to administer prescribed medications, perform health-related activities, or perform tube feedings, or (4) the law governing the Residential Facility Linked Deposit Program.

The act eliminates a provision that required a nursing home certified as an ICF/MR to apply for licensure as a residential facility of the portion of the home certified as an ICF/MR. In place of this provision, the act provides that a residential facility includes a facility certified as an ICF/MR.

The act provides that the certificate of need law does not apply to any part of a long-term care facility's campus that is certified as an ICF/MR. Prior law, in contrast, provided that a nursing home certified as an ICF/MR that was required to apply for licensure by ODODD as a residential facility was not, with respect to the portion of the home certified as an ICF/MR, subject to the certificate of need law.

### **Lists and choice of providers of ODODD programs**

(R.C. 5126.046 (primary), 5123.044, and 5126.055)

The act eliminates a requirement that certain county DD boards create a list of all persons and government entities eligible to provide habilitation, vocational, or community employment services provided as part of home and community-based services available under a Medicaid waiver administered by ODODD. The requirement applied to a county DD board that had Medicaid local administrative authority for the services. If a county DD board chose and was eligible to provide the services, the board had to include itself on the list. The board had to make the list available to each individual with mental retardation or other developmental disability who resided in the county and was eligible for the services and to such individuals' families.



The act also eliminates a requirement for ODODD to create, each month, a list of all persons and government entities eligible to provide residential services and supported living. Prior law required that ODODD include on the list all licensed residential facilities and certified supported living providers. ODODD had to distribute the lists to county DD boards with Medicaid local administrative authority for residential services and supported living provided as part of home and community-based services available under an ODODD-administered Medicaid waiver. A county DD board that received a list was required to make it available to each individual with mental retardation or other developmental disability who resided in the county and was eligible for such residential services and supported living and to the families of such individuals.

In place of the provisions discussed above, the act requires ODODD to make available to the public on its Internet web site an up-to-date list of all providers of home and community-based services available under a Medicaid waiver administered by ODODD and all providers of non-Medicaid residential services and non-Medicaid supported living. County DD boards are required to assist individuals with mental retardation or other developmental disabilities and the families of such individuals access the list on ODODD's Internet web site.

The act provides that, except as otherwise provided by a federal Medicaid regulation, an individual with mental retardation or other developmental disability who is eligible for home and community-based services provided under an ODODD-administered Medicaid waiver program has the right to obtain the services from any provider that is qualified to furnish the services and is willing to provide the services to the individual. An individual with mental retardation or other developmental disability who is eligible for non-Medicaid residential services or non-Medicaid supported living has the right under the act to obtain the services from any provider of the residential services or supported living that is qualified to furnish the services and is willing to provide the services or support to the individual. Prior law, in contrast, provided that an individual with mental retardation or other developmental disability who was eligible for habilitation, vocational, or community employment services was allowed to choose the provider of the services and that an individual who was eligible for residential services or supported living was allowed to choose the provider of the residential services or supported living.

Under the act, the ODODD Director, rather than ODODD and the Department of Job and Family Services, must adopt rules regarding these provisions.



## **Retention of institutional records**

(R.C. 5123.31 and 5123.89; conforming changes in 5123.166)

Under continuing law, ODODD maintains records on residents of the institutions governed by it. These records must show the resident's name, residence, sex, age, nativity, occupation, condition, and date of entrance or commitment; the date, cause, and terms of the resident's discharge; the condition of the resident at the time of leaving; a record of the resident's transfer from one institution to another; and, if the resident dies while in the care and custody of ODODD, the date and cause of the resident's death.

The act permits ODODD, after a period of time it determines, to deposit such records with the Ohio Historical Society. The act generally prohibits the Historical Society from disclosing a resident's records or the information in them, except that disclosure may be made to the closest living relative of the resident on the relative's request.

The act corrects erroneous statutory cross-references in a related section of law (R.C. 5123.166).

## **Fees charged county DD boards for home and community-based services**

(R.C. 5123.0412 (primary) and 5123.01)

The act prohibits ODODD from charging a county DD board a fee for Medicaid paid claims for home and community-based services provided under the Transitions Developmental Disabilities Waiver. With respect to other ODODD-administered Medicaid waiver programs, ODODD continues to be required to charge a county DD board an annual fee equal to 1.25% of the total value of all Medicaid paid claims for home and community-based services provided during the year to an individual eligible for services from the board.

## **Decision-making by and for individuals with mental retardation and developmental disabilities**

(R.C. 5126.043)

The act eliminates a provision authorizing only the guardian of an individual with mental retardation or other developmental disability who has been adjudicated incompetent to make decisions regarding receipt of services from a county DD board. In place of the eliminated provision, the act establishes the following decision-making procedures regarding an individual's receipt of services or participation in a program provided for or funded by either a county DD board or ODODD:



**(1) Guardian appointed for the individual** – If a guardian has been appointed for the individual, the guardian must make all decisions described above. The decisions must be in the best interests of the individual on whose behalf the decisions are made and be consistent with the needs, desires, and preferences of the individual.

**(2) Guardian not appointed for the individual** – If a guardian has not been appointed for the individual, two options are available. First, the individual may make any one or more decisions described above. In making the decisions, the individual is permitted to obtain support and guidance from an adult family member or other person, but doing so does not affect the individual's right to make the decisions. Second, the individual may authorize an adult to make any one or more decisions described above on the individual's behalf, as long as the adult does not have a financial interest in the decision. The authorization must be in writing. The decisions the authorized adult makes must be in the individual's best interests and consistent with the needs, desires, and preferences of the individual.

### **Plans for residential services**

(R.C. 5123.042 and 5123.19; Sections 110.20, 110.21, and 110.22)

The act eliminates provisions regarding the review and approval of plans for residential services for individuals with mental retardation or developmental disabilities. The eliminated provisions did all of the following:

(1) Required a county DD board, in accordance with its comprehensive service plan, to review all proposals to develop residential services that were submitted to it and, if a proposal was acceptable to the county DD board, recommend providers of the services;

(2) Required ODODD to approve proposals based on the availability of funds and in accordance with rules;

(3) Prohibited a county DD board from recommending providers if the board was an applicant to provide services;

(4) Required the ODODD Director, in cases of possible conflict of interest, to appoint a committee that had to review and recommend providers in accordance with an approved county comprehensive service plan;

(5) Permitted the ODODD Director, if a county DD board failed to establish a comprehensive service plan, to establish residential services development goals for the county DD board based on documented need as determined by ODODD;



(6) Permitted ODODD, if a county DD board failed to develop or implement a comprehensive service plan, to review and select providers without the county DD board's involvement;

(7) Required the ODODD Director to adopt rules establishing:

- Uniform standards under which a person or agency had to submit plans to a county DD board for the development of residential services within the county;
- Eligibility criteria for selecting persons and agencies to provide residential services, taking into consideration a county DD board's recommendations.

In place of the repealed provisions described above, the act requires each person or government entity seeking to develop or modify residential services to submit a plan to ODODD. ODODD is required to approve a plan that (1) is submitted in accordance with rules the act requires the ODODD Director to adopt and (2) meets the uniform standards for plans established in the rules.

The act maintains a provision that exempts an applicant for an initial residential facility license or a modification of a residential facility license from the requirement to obtain approval of a plan for the proposal if (1) the new or modified facility is to serve individuals who have diagnoses or special care needs for which a special Medicaid reimbursement rate is set, (2) the Director of Job and Family Services and the ODODD Director determine that there is a need under the Medicaid program for the new or modified facility and that approving the facility is fiscally prudent for the Medicaid program, and (3) the Director of Budget and Management agrees with their determination and notifies them.

### **County DD board responsibility for certain Medicaid costs**

(R.C. 5123.38)

The act revises the law governing a county DD board's responsibility under certain circumstances to pay the nonfederal share of Medicaid expenditures for an individual's care in a state-operated intermediate care facility for the mentally retarded (ICF/MR). Under prior law, ODODD was required, except under certain circumstances, to use funds otherwise allocated to a county DD board as the nonfederal share of Medicaid expenditures for an individual's care in a state-operated ICF/MR if the individual received supported living or home and community-based services funded by the county DD board when the individual was committed to the state-operated ICF/MR. The act requires instead that ODODD collect the amount of the nonfederal



share for which a county DD board is responsible by either withholding that amount from funds ODODD has otherwise allocated to the county DD board or submitting an invoice for payment of that amount to the county DD board.

Under continuing law, a county DD board is not responsible for the nonfederal share under certain circumstances. First, a county DD board is not responsible if, not later 90 days after the date of the commitment of a person receiving supported services to a state-operated ICF/MR, the county DD board commences funding of supported living for an individual who resides in a state-operated ICF/MR on the date of the commitment or another eligible individual designated by ODODD. Second, a county DD board is not responsible if the county DD board, not later than 90 days after the date of the commitment of a person receiving Medicaid-funded home and community-based services, commences funding of such services for an individual who resides in a state-operated ICF/MR on the date of the commitment or another individual designated by ODODD. The act establishes a third circumstance under which a county DD board is not responsible for the nonfederal share. The third circumstance is to apply if the ODODD Director, after determining that circumstances warrant granting a waiver in an individual's case, grants a county DD board a waiver that exempts the county DD board from responsibility for the nonfederal share for that case.

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## DEPARTMENT OF EDUCATION (EDU)

- Eliminates the 10% or 25% income-based reduction required by prior law for scholarships and tutorial assistance grants under the Cleveland Scholarship Program.
- Specifies, for purposes of the Cleveland Scholarship Program, that (1) the scholarship amount is based on tuition minus financial aid or discounts to which the student is entitled, and (2) if discounts are offered for multiple students from the same family, the scholarship is based on the lowest tuition charged the family.
- Authorizes the Ohio Department of Education, upon approval by the U.S. Department of Education of the state's application for a waiver from the federal No Child Left Behind Act, to implement the changes contained in the application, except for changes related to the school district and building report cards.
- Waives the adoption and signing deadlines for sponsor contracts for new conversion community schools that open in the 2012-2013 school year and requires instead (1) that a copy of the adopted and signed sponsor contract be filed with the Superintendent of Public Instruction prior to the school's opening and (2) that the school open not later than September 30, 2012.



- Extends the Ohio Digital Learning Task Force's existence through June 30, 2012, and requires it to monitor implementation of its prior recommendations and to issue a report by June 30, 2012, on whether digital learning is advancing in Ohio and any recommendations to enhance digital learning.
- Requires each early childhood education program that receives state funding from the Department of Education to participate in the Step Up to Quality Program administered by the Department of Job and Family Services, and to be rated in the Program by July 1, 2016.
- Requires school districts, educational service centers, and county DD boards serving preschool children with disabilities also to participate in the Step Up to Quality Program, and to be rated in the Program by July 1, 2018.
- Until December 31, 2012, permits a school district board to offer real property to a state university, rather than first having to offer it to community schools located in the district as otherwise required by continuing law, if the university has a main campus in-state undergraduate enrollment between 17,000 and 22,000 and the property is within 100 yards of a university classroom or administrative building.
- Provides that a district's offer to a state university may be either or both (1) to exchange that property for in-kind services, educational programs, or other assistance valued in an amount "reasonably related" to the property's appraised fair market value, or (2) to sell the property for not more than its appraised fair market value.
- Authorizes entities that purchased school district real property in 2005 under the terms of Section 206.10.21 of H.B. 66 of the 126th General Assembly to use the property for residential, as well as commercial, development.

## **Cleveland Scholarship Program**

(R.C. 3313.976, 3313.978, and 3313.979)

The act removes a stipulation of prior law that limited the actual scholarship payment under the Cleveland Scholarship Program to 90% (for low-income families) or 75% (for other families) of the calculated scholarship amount. As a result, beginning in the 2012-2013 school year, eligible students may receive up to the maximum amount in its entirety to use towards tuition: \$4,250 for grades K to 8 and \$5,000 for grades 9 to 12. The act also eliminates similar limits on tuition assistance grants, so that students may receive up to the maximum \$400 grant.



In a conforming change, the act adjusts the parameters by which a private school may or may not charge scholarship students beyond the scholarship amount. Under the act, for students in grades K through 8 with family incomes at or below 200% of the federal poverty guidelines, private schools must agree not to charge any tuition in excess of the scholarship amount. For students in grades K through 8 with family incomes above 200% of poverty whose scholarship amounts are less than the actual tuition charge of the school, and for high school students, private schools must agree not to charge more than the difference between the actual tuition charge of the school and the scholarship amount.

Under prior law, a student was eligible for a scholarship of up to either 90% or 75% of the maximum award amount, depending upon family income. The remaining 10% or 25%, respectively, was required to be provided by "a political subdivision, a private nonprofit or for profit entity, or another person."<sup>77</sup> A school could not charge any tuition to "low-income families" in excess of 10% of the scholarship amount for students in grades K through 8 who received the 90% amount. For elementary students who received the 75% amount, and for high school students, prior law permitted a private school to charge the difference between the school's actual tuition charge and the student's scholarship amount.

### **Factoring tuition discounts into scholarship amount**

(R.C. 3313.978(C)(1))

The scholarship amount for any student under the Cleveland Scholarship Program is the lesser of the statutory maximum (\$4,250 for grades K to 8 and \$5,000 for grades 9 to 12) or the actual tuition charged by the private school the student attends. The act adds two specifications to this policy:

(1) The school's tuition amount, for purposes of determining the scholarship amount, is the *net* tuition, which is tuition *minus* all financial aid, discounts, and adjustments received for the student; and

(2) If the student's school offers discounts for multiple students from the same family, but not all students in the family have a scholarship, the scholarship amount is based on the lowest net tuition to which the family is entitled.

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<sup>77</sup> R.C. 3313.978(C)(4).

These specifications parallel a State Board of Education rule for the Ed Choice scholarship program, which operates throughout the state outside of the Cleveland district.<sup>78</sup>

## **Waiver from No Child Left Behind Act**

(R.C. 3302.043)

The act authorizes the Ohio Department of Education, upon approval of its application for a waiver from the federal No Child Left Behind Act, to implement the changes contained in the application, except for changes regarding the school district and building report cards. The U.S. Department of Education approved Ohio's waiver application on May 29, 2012.

Among the changes in the application are (1) a transition to more challenging academic content standards, curricula, and student assessments, (2) replacement of the federal standard of "adequate yearly progress" with other metrics designed to measure the performance of student subgroups, (3) recognition and rewards for highly performing schools, (4) elimination of the requirement for certain poorly performing schools to offer supplemental educational services, such as tutoring, to economically disadvantaged students and expanded authority for schools to redirect those funds to other intervention services, and (5) implementation of teacher and principal evaluations. Under the act, the Ohio Department of Education may implement all of these changes. However, it may not implement the application's report card changes, which propose replacing the existing system for rating school districts and buildings with an A-F letter grade rating system based on revised measures of student achievement, student academic growth, and closure of achievement gaps between student subgroups.

## **Contract deadlines for new conversion schools**

(Section 733.15)

The act temporarily waives the adoption (March 15) and signing (May 15) deadlines for sponsor contracts for the establishment of new conversion community schools for the 2012-2013 school year. Under the act, instead, a new conversion community school may open for operation, as long as its sponsor contract is adopted, signed, and filed with the Superintendent of Public Instruction prior to its opening,

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<sup>78</sup> Ohio Administrative Code 3301-11-10(C).



which the act specifies may not be later than September 30, 2012.<sup>79</sup> The act does not alter the adoption and signing deadlines for start-up schools.

(Under continuing law, the establishment of either a conversion or start-up community school requires the adoption of the sponsor contract by a majority vote of both the board of the sponsoring entity and the school's governing authority. Furthermore, except as provided under the act, the contract must be adopted by March 15 and signed by May 15, prior to the school year in which the school will open. The governing authority must notify the Department of Education when the contract has been signed.)<sup>80</sup>

## **Ohio Digital Learning Task Force**

(Section 371.60.80 of H.B. 153 of the 129th General Assembly)

The act delays, from March 1, 2012, to June 30, 2012, the termination of the Ohio Digital Learning Task Force, and requires it to monitor the implementation of its previous recommendations. The act also requires the Task Force, not later than June 30, 2012, to report to the Governor, the Senate President, and the Speaker of the House whether digital learning is advancing in Ohio schools and any recommendations to enhance the delivery of digital learning programs and services.

### **Background**

The Task Force was created in 2011 by H.B. 153 of the 129th General Assembly "to develop a strategy for the expansion of digital learning that enables students to customize their education, produces cost savings, and meets the needs of Ohio's economy." It consists of the Chancellor of the Board of Regents, the Superintendent of Public Instruction, the Director of the Governor's Office of 21st Century Education, or their designees, up to six members appointed by the Governor, one member appointed by the Senate President, and one member appointed by the Speaker of the House. The Task Force was required to submit a report by March 1, 2012, to the Governor, the Senate President, and the Speaker of the House regarding recommendations on various initiatives, including (1) access to digital content instruction for public and nonpublic schools and students receiving home instruction, (2) professional development for educators providing digital content, (3) funding strategies, (4) student assessment and accountability, (5) infrastructure to support digital learning, (6) mobile learning and mobile learning applications, (7) the distance learning clearinghouse, (8) ways to align

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<sup>79</sup> Separate continuing law requires all community schools, except those that serve only dropouts, to open for operation not later than September 30 each school year (R.C. 3314.03(A)(25), not in the act).

<sup>80</sup> R.C. 3314.02(D) (not in the act).



the resources and digital learning initiatives of state agencies and offices, (9) methods for providing coordination of and removing redundancy and inefficiency in digital learning programs, and (10) ways of addressing future changes in technology and learning.

### **Early childhood education programs subject to ODJFS rating program**

(Sections 267.10.10 and 267.30.20 of H.B. 153 of the 129th General Assembly)

The act amends uncodified sections of H.B. 153 of the 129th General Assembly that prescribe standards for early childhood education programs that receive state funding from the Department of Education. It requires the programs receiving the funding to participate in the Step Up to Quality Program administered by the Ohio Department of Job and Family Services, and sets deadlines for them to be rated by that program. Specifically:

(1) Early childhood education programs receiving state funding must be rated by July 1, 2016; and

(2) Special education programs for preschool children with disabilities that are operated by school districts, educational service centers, and county DD boards must be rated by July 1, 2018.

The Step Up to Quality Program is a voluntary rating system for licensed child care programs.

### **Disposal of school district property**

#### **Offer to state university**

(Section 733.10)

The act grants temporary authority for a school district board to transfer real property to a state university. Specifically, until December 31, 2012, when a school district board of education has decided to dispose of real property, the act permits the board to offer the right of first refusal to acquire that property to a state university if: (1) the property is within 100 yards of a classroom or administrative building on the university's main campus, and (2) the university has a main campus in-state undergraduate enrollment of more than 17,000 but less than 22,000 for fiscal year 2012. The state universities meeting the enrollment qualification described in (2) above appear to be: the University of Akron, the University of Cincinnati, Kent State University, and Ohio University.



The district board may offer the property to the university in either or both of the following ways: (1) exchange the property, in an "as is" condition, in return for agreed-upon in-kind services, educational programs, or other assistance provided by the university to the district with an aggregate value "reasonably related" to the property's appraised fair market value, or (2) for money at a price that is not higher than the property's appraised fair market value. If the university does not accept the offer, or if an agreement is not entered into between the district and university, within 60 days after the offer is made, the district board then must offer the property for sale to start-up community schools located within the district, in the same manner as it would under continuing law.<sup>81</sup>

### **Use of property sold in 2005**

(Section 753.11)

The act expands the uses authorized for former school district real property that was sold in 2005 under the terms of Section 206.10.21 of H.B. 66 of the 126th General Assembly, by allowing the property to be used for residential development, as well as commercial development. Originally, that section provided a temporary exception (from June 30 to December 31, 2005) to the general statute governing sale of school district property, if the property, "when sold will be used for commercial development." A school district could, "in support of economic development within its territory," dispose of *certain* property by direct sale, in lieu of any of the existing alternatives, including the requirement to offer the property first to community schools within the district. The property exempted from the general law by the H.B. 66 provision was required to meet the following conditions:

(1) The property must be encumbered by easements, liens, or other restrictions that benefit the purchaser; and

(2) The property must be part of or adjacent to real property previously disposed of by the district.

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<sup>81</sup> R.C. 3313.41(G) (not in the act). Effective September 24, 2012, S.B. 316 of the 129th General Assembly, amends that section to include college-preparatory boarding schools in the right of first refusal, in addition to community schools.



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## ENVIRONMENTAL PROTECTION AGENCY (EPA)

### Transfer of Division of Recycling and Litter Prevention

- Abolishes the Division of Recycling and Litter Prevention in the Department of Natural Resources, transfers its functions and responsibilities to the Environmental Protection Agency (EPA), and transfers applicable appropriations to the EPA.
- Transfers the authority to make grants from the Recycling and Litter Prevention Fund from the Chief of the Division of Recycling and Litter Prevention with the approval of the Director of Natural Resources to the Director of Environmental Protection.
- Generally prohibits information that is submitted to, acquired by, or exchanged with EPA employees in order to obtain a grant from the Fund from being used in any manner for the purpose of enforcement of any requirement established in an environmental law or used as evidence in any judicial or administrative enforcement proceeding.
- States that the above provision does not confer immunity on persons from enforcement that is based on information that is obtained by the Director of Environmental Protection or the Director's authorized representatives who are not EPA employees who administer or provide services under the grant program.
- Transfers the authority to make grants from the Scrap Tire Grant Fund from the Chief of the Division of Recycling and Litter Prevention to the Director.
- Makes necessary conforming changes.

### Clean Air Fund

- Eliminates the Clean Air Fund, which was used by EPA to administer Title V and non-Title V air pollution control programs, and replaces it with the Title V Clean Air Fund and the Non-Title V Clean Air Fund.
- Retains the fee structure that provided money to the former Clean Air Fund, but distributes the proceeds of those fees to either the new Title V Clean Air Fund or the new Non-Title V Clean Air Fund.
- Requires fees related to emissions from a Title V air contaminant source to be credited to the Title V Clean Air Fund and certain fees related to non-Title V air contaminant sources to be credited to the Non-Title V Clean Air Fund.



- Requires money in the Title V Clean Air Fund generally to be used to administer and enforce the Title V permit program.
- Specifies that a transfer from the former Clean Air Fund to the Small Business Assistance Fund be transferred instead from the Title V Clean Air Fund and that it be transferred via an interstate transfer voucher.
- Requires that, annually, money in the Title V Clean Air Fund be transferred to the Small Business Ombudsperson Fund in an amount that is necessary for the operation of the Office of Ombudsperson.
- Requires money in the Non-Title V Clean Air Fund generally to be used to administer and enforce laws pertaining to the prevention, control, and abatement of air pollution other than the Title V program and, as in law revised by the act, other than motor vehicle inspection and maintenance programs.
- Makes technical changes, including the repeal of statutory authority for certain fees that expired.

### **Consensual administrative order agreements**

- Authorizes the Director of Environmental Protection to enter into consensual administrative order agreements in furtherance of the purposes of the state's environmental laws.
- Authorizes the Director to advise, consult, cooperate, and enter into contracts or agreements with persons, in addition to governmental entities, affected groups, and industries as in ongoing law, in furtherance of those purposes.

### **Operators of water supply and wastewater systems**

- Establishes a new fee schedule for certification of operators of water supply and wastewater systems by consolidating the former application fee with the former fee schedule for examinations administered by the Director for each class of operator.
- Establishes all of the following fees:
  - \$45 for certification as an operator of a water supply system or wastewater system for a person who has passed an examination administered by an approved examination provider;
  - \$500 to apply to be a water supply system or wastewater system operator examination provider; and

--10% annually of the fees assessed and collected by an approved examination provider for administering examinations to persons seeking certification in Ohio as water supply system or wastewater system operators.

### **Public water system licenses**

- Requires the Director to adopt rules governing the issuance, conditioning, and denial of public water system licenses and license renewals in addition to rules governing the suspension and revocation of licenses as in ongoing law.
- Allows the Director to condition a license or license renewal in addition to suspending or revoking a license or license renewal as in ongoing law.
- With regard to an application for a new license, states that the Director has the authority to issue, issue with terms and conditions, or deny the license.
- Requires applications for initial licenses to be submitted at least 45 days prior to the commencement of the operation of a public water system.
- Makes additional organizational and technical changes to the law governing public water system licenses and license renewals.

### **Transfer of functions and responsibilities of Division of Recycling and Litter Prevention to Environmental Protection Agency**

(R.C. 121.04, 125.082, 125.14, 1501.04, 1502.01 (3736.01), 1502.02 (3736.03), 1502.03 (3736.02), 1502.04 (3736.04), 1502.05 (3736.05), 1502.06 (3736.06), 1502.07 (3736.07), 1502.12 (3734.822), 1502.99 (3736.99), 3714.073, 3734.51, 3734.55, 3734.82, and 5733.064; Sections 737.20 and 737.30)

The act abolishes the Division of Recycling and Litter Prevention in the Department of Natural Resources and transfers its functions and responsibilities to the Environmental Protection Agency (EPA). It establishes transition procedures for that transfer and also transfers applicable appropriations to the EPA. Under former law, the Division and its Chief were responsible for implementing programs and making grants related to recycling and litter prevention as discussed below.

#### **Programs**

The act transfers responsibility for establishing and implementing statewide source reduction, recycling, recycling market development, and litter prevention programs to the Director of Environmental Protection. It then requires those programs



to be consistent with the state solid waste management plan that is adopted under the Solid, Hazardous, and Infectious Wastes Law.

### **Recycling and Litter Prevention Fund**

The act transfers the authority to make grants from the continuing Recycling and Litter Prevention Fund from the Chief of the Division of Recycling and Litter Prevention with the approval of the Director of Natural Resources to the Director of Environmental Protection. The Fund may be used to make grants for all of the following programs: (1) assessment of waste generation within the state and implementation of source reduction practices, (2) implementation of recycling and recycling market development activities and projects, (3) litter prevention assistance to enforce antilitter laws, educate the public, and stimulate collection and containment of litter, and (4) research and development regarding source reduction, recycling, and litter prevention.

The act then prohibits information that is submitted to, acquired by, or exchanged with EPA employees in order to obtain a grant from the Fund from being used in any manner for the purpose of enforcement of any requirement established in an environmental law or used as evidence in any judicial or administrative enforcement proceeding unless the information reveals a clear and immediate danger to the environment or to the health, safety, or welfare of the public. For that purpose, an environmental law is a law that is administered by the EPA. The act adds that nothing in the statute governing the Fund confers immunity on persons from enforcement that is based on information that is obtained by the Director or the Director's authorized representatives who are not EPA employees who administer or provide services under that statute.

### **Scrap Tire Grant Fund**

The act also transfers the authority to make grants from the Scrap Tire Grant Fund to the Director of Environmental Protection. Grants from the Fund may be made to support marketing development activities for scrap tires and synthetic rubber from tire manufacturing and recycling processes and to support scrap tire amnesty and cleanup events sponsored by solid waste management districts.

### **Conforming changes**

As a result of the abolishment of the Division, the act makes necessary conforming changes. For example, it removes the chairperson of the Recycling and Litter Prevention Advisory Council, which the act transfers to within EPA, from the Recreation and Resources Commission in the Department of Natural Resources. It also



removes the Director of Natural Resources from the Solid Waste Management Advisory Council in the EPA.

### **Title V Clean Air Fund and Non-Title V Clean Air Fund**

(R.C. 3704.035, 3706.19, 3734.79, 3745.11, 3745.111 (repealed), 3745.112, 5709.212, and 6109.21)

The act repeals the Clean Air Fund and replaces it with the Title V Clean Air Fund and the Non-Title V Clean Air Fund. The act requires the Director of Environmental Protection to expend money in the Title V Clean Air Fund generally to administer and enforce the Title V program pursuant to the federal Clean Air Act, the state Air Pollution Control Law, and rules adopted under it. The act requires the Title V Clean Air Fund to consist of continuing fees levied on Title V air contaminant sources. The act also specifies that a transfer from the former Clean Air Fund to the Small Business Assistance Fund be transferred instead from the Title V Clean Air Fund and that it be transferred via an interstate transfer voucher. The act requires that, annually, money in the Title V Clean Air Fund, instead of the former Clean Air Fund, be transferred to the Small Business Ombudsperson Fund in an amount that is necessary for the operation of the Office of Ombudsperson.

The act requires the Director to expend money in the Non-Title V Clean Air Fund exclusively to pay the cost of administering and enforcing the laws of Ohio pertaining to the prevention, control, and abatement of air pollution, rules adopted under those laws, and terms and conditions of permits, variances, and orders issued under those laws. However, the Director is prohibited from expending money credited to the Non-Title V Clean Air Fund for the administration and enforcement of the Title V permit program, rules adopted under that program, or motor vehicle inspection and maintenance programs. The act requires the Non-Title V Clean Air Fund to consist of continuing fees related to non-Title V air contaminant sources. The act also requires certain fees related to air pollution control facilities to be credited to the Non-Title V Clean Air Fund rather than the Clean Air Fund as in former law, provided that certain circumstances established in ongoing law are applicable.

The act also makes technical changes, including the repeal of statutory authority for certain air pollution control fees that expired.

Under former law, the Director was required to expend money in the Clean Air Fund for the following purposes:



--To administer and enforce the Title V program pursuant to the federal Clean Air Act, the state Air Pollution Control Law, and rules adopted under it; and

--To pay the cost of administering and enforcing the laws of Ohio pertaining to the prevention, control, and abatement of air pollution, rules adopted under those laws, and terms and conditions of permits, variances, and orders issued under those laws, except that the Director was prohibited from expending money credited to the Clean Air Fund for motor vehicle inspection and maintenance programs.

### **Consensual administrative order agreements**

(R.C. 3745.01)

The act authorizes the Director of Environmental Protection to enter into consensual administrative order agreements with other Ohio agencies, the federal government, other states, interstate agencies, affected groups, political subdivisions, and industries in furtherance of the purposes of the state's environmental laws. Under law revised in part by the act, the Director is authorized to advise, consult, cooperate, and enter into contracts or agreements for those purposes, but was not specifically authorized to enter into consensual administrative order agreements.

The act further authorizes the Director to advise, consult, cooperate, and enter into contracts or agreements, including consensual administrative order agreements, with persons. Law revised in part by the act authorizes the Director to advise, consult, cooperate, and enter into contracts or agreements only with the governmental entities, affected groups, and industries discussed above.

### **Water supply system and wastewater system operator certification fees**

(R.C. 3745.11(O))

The act alters the fee schedule for certification of operators of water supply and wastewater systems. The act does this by consolidating the former application fee of \$45 with the former fee schedule for examinations administered by the Director, applicable through November 30, 2014, for each class of operator of a water supply system or a wastewater system. The act also consolidates the \$25 application fee that was to be applicable on and after December 1, 2014 with the fee schedule for examinations that were to be applicable on and after that date. Below is a list of the former and new fee schedules applicable through November 30, 2014, and on and after December 1, 2014.



Through November 30, 2014

Class A operator – \$35 (former fee), \$80 (consolidated fee under the act)

Class I operator – \$60 (former fee), \$105 (consolidated fee under the act)

Class II operator – \$75 (former fee), \$120 (consolidated fee under the act)

Class III operator – \$85 (former fee), \$130 (consolidated fee under the act)

Class IV operator – \$100 (former fee), \$145 (consolidated fee under the act)

On and after December 1, 2014

Class A operator – \$25 (former fee), \$50 (consolidated fee under the act)

Class I operator – 45 (former fee), \$70 (consolidated fee under the act)

Class II operator – \$55 (former fee), \$80 (consolidated fee under the act)

Class III operator – \$65 (former fee), \$90 (consolidated fee under the act)

Class IV operator – \$75 (former fee), \$100 (consolidated fee under the act)

The act also establishes the following new fees:

--\$45 for certification as an operator of a water supply system or wastewater system for a person who has passed an examination administered by an approved examination provider;

--\$500 to apply to be a water supply system or wastewater system operator examination provider; and

--10% annually of the fees assessed and collected by an approved examination provider for administering examinations to persons seeking certification in Ohio as water supply system or wastewater system operators.

## **Public water system licenses**

(R.C. 6109.21 and 3734.11 (for cross reference purposes only))

The act alters the statutory requirements governing the issuance of licenses for public water systems and makes numerous organizational and technical changes to the law governing those systems. The act also makes substantive changes to that law. First, the act requires the Director to adopt rules in accordance with the Administrative



Procedure Act establishing procedures and requirements governing the issuance, conditioning, suspension, revocation, and denial of licenses and license renewals. Former law required the rules to establish procedures governing only applications, suspensions, and revocations. The act retains unchanged the requirement that the Director adopt rules establishing the information to be included on applications for licenses and license renewals.

The act allows the Director to condition, suspend, or revoke a license or license renewal at any time if the Director finds that the public water system was not or will not be operated in substantial compliance with the Safe Drinking Water Law and rules adopted under it. Law revised by the act instead allows the Director only to suspend or revoke a license or license renewal if the Director finds that the public water system was not operated in substantial compliance with that Law and rules adopted under it.

The act authorizes the Director, with respect to a new license application, to: (1) issue the license, (2) issue the license with terms and conditions, or (3) deny the license. It retains those options established in ongoing law for license renewals.

The act requires a license application to be submitted at least 45 days prior to commencing operation of the public water system. Law revised in part by the act requires that a license application be submitted prior to commencing operation of the system, but does not specify a date certain by which the application must be submitted.

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## **ETHICS COMMISSION (ETH)**

- Modifies the filing fees for the disclosure statements required to be filed by certain public offices with the appropriate ethics commission.

### **Ethics disclosure statements**

(R.C. 102.02(E))

The act modifies the filing fees for the disclosure statements required to be filed by certain public offices with the appropriate ethics commission. The general filing fee, which is the filing fee for public offices not specifically identified and assigned a special dollar amount, is increased from \$40 to \$60. The special filing fee for a member of the State Board of Education is increased from \$25 to \$35. And for members appointed to the Ohio Livestock Care Standards Board, the act clarifies that they are subject to the general filing fee.



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## EXPOSITIONS COMMISSION (EXP)

- Adds the Director of Natural Resources or the Director's designated representative to the membership of the Ohio Expositions Commission.

### Membership

(R.C. 991.02)

The act adds the Director of Natural Resources or the Director's designated representative to the membership of the Ohio Expositions Commission as an ex officio member with voting rights. Under continuing law, the Commission is composed of the Directors of Development and Agriculture or their designated representatives, who are ex officio members with voting rights, the chairpersons of the standing committees in the House of Representatives and the Senate to which matters dealing with agriculture are generally referred, who are nonvoting members, and nine members appointed by the Governor. The Commission is responsible for conducting the Ohio State Fair and managing the State Fairgrounds.

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## DEPARTMENT OF HEALTH (DOH)

### Patient Centered Medical Home Education Program

- Establishes the Patient Centered Medical Home Education Program within the Ohio Department of Health (ODH).
- Requires the ODH Director, to the extent funds are available, to implement the preexisting Patient Centered Medical Home Education Pilot Project.
- Authorizes the ODH Director to adopt rules defining what constitutes a "patient centered medical home" for purposes of an entity authorized to provide care coordination services, rather than defining a "health home" as provided under prior law.
- Maintains, in part, the preexisting Patient Centered Medical Home Education Advisory Group, but specifies that the Advisory Group is to provide recommendations to the ODH Director rather than serve as a decision-making body.



- Removes the limit on the number of practices that may participate in the Pilot Project and provides that a practice is ineligible to participate unless it had submitted an application by April 15, 2011.
- Eliminates the Advisory Group's authority to appoint an executive director and employ other staff and a requirement that, on securing funding, the Advisory Group provide participating practices in the Pilot Project reimbursement for up to 75% of the cost incurred in purchasing health information technology.
- Includes curricula for physician assistants in the patient centered medical home model of care curricula development program required by continuing law.

### **Informed consent brochures**

- Requires ODH to publish on its web site instead of causing to be published materials that inform a pregnant woman seeking an abortion about family planning, pregnancy and childbirth assistance, adoption agencies, and probable anatomical and physiological characteristics of the zygote, blastocyte, embryo, or fetus at certain points during the pregnancy.
- Eliminates the duty of ODH to produce more than one copy of the materials described above to any person, hospital, physician, or medical facility that requests more than one copy.
- Eliminates the affirmative defense available to a physician or agent of the physician in a civil action that the physician or agent of the physician requested hard copies of the materials described above from ODH and ODH failed to produce them.

### **Abolishment of Public Health Council**

- Abolishes the Public Health Council and transfers its duties to the ODH Director.

### **Ohio Public Health Advisory Board**

- Creates the Ohio Public Health Advisory Board and requires it to review and make recommendations to the ODH Director on (1) developing and adopting proposed rules concerning programs administered by ODH, (2) prescribing proposed fees in the Office of Vital Statistics and the Bureau of Environmental Health, (3) issues to improve public health and increase awareness of public health issues at state and local levels, and (4) other public health issues at the request of the Director.
- Generally requires the ODH Director to consider the Advisory Board's recommendation regarding a proposed rule before the rule may be filed with the Joint Committee on Agency Rule Review.

## **Lupus Education and Awareness Program**

- Authorizes ODH to establish, promote, and maintain a Lupus Education and Awareness Program and to establish both an intergovernmental council and an advisory panel to oversee the program.
- Authorizes ODH to establish the following grant programs: (1) a grant program to support nonprofit health organizations with expertise in lupus and (2) a grant program to educate and train health care professionals and service providers with the grants to be awarded to applicants affiliated with the Lupus Foundation of America.

## **Home health agency criminal records checks**

- Revises the law governing criminal records checks for employment positions with home health agencies.
- Permits the ODH Director to adopt rules that require employees of home health agencies to undergo criminal records checks and database reviews.
- Creates a database review process regarding employment positions with home health agencies.
- Provides that a criminal records check for an employment position with a home health agency is not required for an applicant or employee found by a database review to be ineligible for the position.
- Increases to 60 (from 30) the number of days that a home health agency may conditionally employ an individual before receiving the results of a criminal records check.
- Revises the list of disqualifying offenses that may make an individual ineligible for an employment position with a home health agency.

## **The Ohio Violent Death Reporting System**

- Requires the ODH Director to establish and maintain the Ohio Violent Death Reporting System to monitor the incidence and causes of various types of violent deaths in Ohio.
- Requires the ODH Director to adopt rules necessary to establish, maintain, and carry out the purposes of the Reporting System.



- Establishes confidentiality requirements for information, data, and records collected for use and maintained by, and all work products created in carrying out the purposes of, the Reporting System.

### **Certificate of Need Program**

- Modifies terms used in the certificate of need (CON) law to reflect changes from previous enactments that limited the law to projects related to long-term care facilities.
- With respect to a CON application, specifies that (1) the application fee is nonrefundable unless the ODH Director determines that the application cannot be accepted and (2) the Director's determination that a CON application is not complete is final and not subject to appeal.
- Eliminates a provision allowing, and in some cases requiring, a community public informational hearing on a CON application.
- Eliminates a requirement that the ODH Director invite interested parties to a meeting requested by one or more people about a CON application.
- Requires the ODH Director to consider all written comments received regarding a CON application, but eliminates the requirement that an administrative hearing be conducted when written comments are received.
- Establishes requirements that must be met upon completion of a project under which beds are to be relocated after the granting of a CON, including a CON granted during the initial phase of a four-year review period.
- Eliminates requirements that the ODH Director (1) regularly conduct health system data collection and analysis for the CON program, prepare reports, and make recommendations and (2) issue, and annually review and revise, a state health resources plan.
- Eliminates a provision requiring the Public Health Council to authorize the creation of one or more nursing home placement clearinghouses.
- Provides that the ODH Director's determination that a CON has expired is final and not subject to appeal.
- Provides that persons whose sole involvement with a CON application is testifying or submitting written comments on the application are not "affected persons" and therefore are no longer permitted to appeal.

- Modifies the process for reviewing applications for replacement or relocation of long-term care beds from a county with excess beds to a county with fewer beds than needed.
- Modifies requirements for the review of applications for an increase in beds in an existing nursing home to limit the increase to a total of no more than 30 beds for all applications combined.
- Requires the ODH Director to accept applications for replacement CONs under certain conditions.
- Requires, as part of the ODH Director's determination of the long-term care bed supply, that the Director include beds in a hospital that are registered as special skilled nursing beds, long-term beds, or long-term care beds.
- Eliminates the requirement that the ODH Director designate health service areas and health service agencies for each area and all requirements related to health service areas and agencies.

### **Vital statistics fees**

- Not later than 30 days following the end of each calendar quarter, requires a local commissioner of health or a local registrar of vital statistics to forward to ODH (and not the Treasurer of State) the portion of the fees for certified copies of birth records, certifications of birth, and copies of death records the local commissioner or local registrar collects (and does not retain) for the benefit of the Children's Trust Fund and Family Violence Prevention Fund.
- Not later than two days after the fees are forwarded to ODH each calendar quarter, requires ODH to pay to the Treasurer of State all fees it collects from a local commissioner of health or local registrar of vital statistics, as described above, and all fees the ODH Director charges and collects for the same purpose.

### **Other provisions**

- Provides that rules governing nursing homes (1) cannot prescribe the number of social workers that nursing homes with 120 or fewer beds must employ, (2) must require each nursing home with more than 120 beds to employ one social worker on a full-time basis, and (3) must require each nursing home to offer its residents medically related social services that assist the residents in attaining or maintaining their highest practicable physical, mental, and psychosocial well-being.

- Decreases the penalty for late payment of a fee charged by ODH under the Radiation Control Program to an additional 10% of the original fee when the fee remains unpaid on the 91st day after the invoice date, in place of the previous fee assessments that were made as follows: (1) two times the original fee if not paid within 90 days and (2) five times the original fee if not paid within 180 days.
- Establishes the Legislative Committee on Public Health Futures to review the expected report of the Futures Committee of the Ohio Association of Health Commissioners and to develop recommendations for legislative and fiscal policies that would improve local public health services in Ohio.

## **Patient Centered Medical Home Education Program**

### **Overview**

The act provides that the Patient Centered Medical Home Education Pilot Project, administered under prior law by the Patient Centered Medical Home Education Advisory Group, be administered instead by the Ohio Department of Health (ODH) within a Patient Centered Medical Home Education Program. The Advisory Group is to provide recommendations to the ODH Director regarding the Education Program rather than serve as a decision-making body for the Pilot Project.

### **Pilot Project – background**

(R.C. Chapter 185.)

The Patient Centered Medical Home Education Pilot Project was established by Sub. H.B. 198 of the 128th General Assembly for the purpose of advancing medical education in the patient centered medical home model of care. This model of care is described in continuing law as an "enhanced model of primary care in which care teams attend to the multifaceted needs of patients, providing whole person comprehensive and coordinated patient centered care."

### **Establishment of Patient Centered Medical Home Education Program**

(R.C. 185.01 (3701.92), 3701.921, and 3701.922; R.C. 3701.032 (repealed))

The act establishes within ODH the Patient Centered Medical Home Education Program and applies the purposes of the preexisting Pilot Project – to advance education in the patient centered medical home model of care – to the Education Program. The ODH Director is authorized to do any of the following to implement the Education Program:



(1) Develop and implement programs of education or training on the patient centered medical home model of care or other similar enhanced models of coordinated patient centered care that are intended to address the multifaceted needs of patients and provide whole person comprehensive and coordinated patient centered care;

(2) Advise, consult, cooperate with, and assist, by contract or other arrangement, government agencies or institutions or private organizations, corporations, or associations in the development and promotion of programs pertaining to the evaluation and implementation of the patient centered medical home model of care or other similar enhanced models of coordinate patient centered care;

(3) Establish pilot projects that evaluate or implement, or provide education or training in the patient centered medical home model of care or other similar enhanced models of coordinated patient centered care;

(4) Seek and administer state funds or grants from other sources to carry out any function of the Education Program;

(5) Adopt rules under the Administrative Procedure Act (R.C. Chapter 119.) to implement and administer the Education Program, including definitions on what constitutes a "patient centered medical home" for purposes of identifying an entity authorized to provide care coordination services. The act eliminates the Director's authority under prior law to define a "health home" for the same purpose.

### **Patient Centered Medical Home Education Pilot Project**

(R.C. 185.02 (3701.923), 185.06 (3701.926), and 185.07 (3701.927); 185.04 (repealed), 185.08 (repealed), 185.10 (repealed), and 185.11 (repealed))

To the extent that funds are available, the Education Program is to include the Patient Centered Medical Home Education Pilot Project established under preexisting law, with certain modifications. The ODH Director is to do all of the following if the Pilot Project is implemented:

(1) Select practices led by physicians and primary care practices led by advanced practice nurses to participate in the Pilot Project and make the selection in accordance with continuing law that specifies requirements that apply to participating practices;<sup>82</sup>

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<sup>82</sup> These include certification requirements, capacity to adapt the practice to comply with standards for the operation of a patient centered medical home, and any other criteria established by the ODH Director (rather than the Advisory Group).

(2) Conduct the Pilot Project in a manner that advances education in the patient centered medical home model of care;

(3) Evaluate learning opportunities generated by the Pilot Project, training of physicians and advanced practice nurses under the Pilot Project, costs of the Pilot Project, and the extent to which the Pilot Project met expected outcomes;

(4) Assess and review results of the Pilot Project;

(5) Recommend best practices and opportunities for improving technology, education, comprehensive training, consultation, and technical assistance for health care service providers in the patient centered medical home model of care.

In implementing the Pilot Project, the ODH Director is authorized to contract with an entity that has significant experience in assisting physician-led practices and advanced practice nurse-led primary care practices in transitioning to the patient centered medical home model of care. A contract is to require that the entity do both of the following:

(1) For each participating practice, provide comprehensive training, consultation, and technical assistance in the operation of a patient centered medical home, including assistance with leadership training, scheduling changes, staff support, and care management for chronic health conditions;

(2) Assist the Director in identifying necessary financial and operational requirements and any barriers or challenges associated with transitioning to a patient centered medical home model of care.

Although continuing law modified by the act required the submission of a final report on the project (see "**Reports**," below), it did not establish a beginning and ending date, for the Pilot Project. The act provides that the Pilot Project is to begin when the first practice begins to participate in the Project and end no later than two years after the final practice selected by the ODH Director begins participation.

While the Pilot Project to be administered by the ODH Director retains in large part the provisions of preexisting law regarding the Pilot Project, the following provisions are modified by the act as follows:

(1) Participating practices are to be selected by the ODH Director, rather than the Advisory Group;

(2) The limit of 40 physician practices that may participate in the Pilot Project is eliminated;



(3) A practice must have submitted an application to participate not later than April 15, 2011;

(4) A practice must enter into a contract with the Director rather than the Advisory Group.

The act provides that the contract entered into with the ODH Director may include requirements regarding the number of patients served by the practice who are Medicaid recipients and individuals without health insurance. The contract is also required to specify that a participating practice provide comprehensive, coordinated primary care services.

As part of the Pilot Project's transfer to ODH, the act eliminates all of the following:

(1) Authority of the Advisory Group to appoint an executive director and employ other staff considered necessary;

(2) On securing funding, a requirement that the Advisory Group provide reimbursement to participating practices for up to 75% of the cost incurred in purchasing necessary health information technology;

(3) Authority of the Advisory Group to seek funding and hold the funds in an account to support the Pilot Project.

### **Patient Centered Medical Home Education Advisory Group**

(R.C. 185.03 (3701.924) and 185.05 (3701.925))

The preexisting Patient Centered Medical Home Education Advisory Group is recreated in a modified form under the act with substantially the same membership. The Advisory Group is no longer responsible for implementing and administering the Pilot Project, instead acting as a recommending body to the ODH Director on the Pilot Project specifically and the Education Program generally. The Advisory Group is required to develop and provide to the Director a set of expected outcomes for the Pilot Project.

The responsibility of the Advisory Group to select practice participants for the Pilot Project is eliminated. The Advisory Group is instead to provide recommendations to the ODH Director. The recommendations must be made in accordance with the

requirements specified under continuing law.<sup>83</sup> The Advisory Group is to provide a copy of all applications received to the Director after making its recommendations.

The composition of the Advisory Group is modified in part by the act. Members who were appointed by a recommending authority are no longer appointed by that authority and instead are appointed by the ODH Director, in consultation with their respective recommending authority. Under the act, recommended members serve at the pleasure of the Director. In addition, former nonvoting, ex officio members are included as full voting members. The act adds an employee of ODH and no more than five additional members with relevant expertise, appointed by the Director.

In making the original appointments to the recreated Advisory Group, the ODH Director is required to appoint the previously serving members of the Advisory Group. If one of those members is unable to serve, the Director is to request from the specified recommending authority a list of no less than two persons qualified to serve and appoint one of those recommended. This process is also to be used in filling a vacancy.

The ODH Director is to appoint from the Advisory Group's members a chairperson and vice-chairperson. The act requires the Advisory Group to meet at least annually and at the call of the Director. The act maintains a provision requiring that members serve without compensation. The Advisory Group must have a majority of a quorum to make any recommendations, and a majority of the members of the Advisory Group constitutes a quorum.

### **Curricula development**

(R.C. 185.09 (3701.928))

Similar to a requirement under prior law, the act authorizes the ODH Director, or at the Director's request the Advisory Group, to work with medical and nursing schools or programs in the development of curricula designed to prepare primary care physicians and advanced practice nurses to practice within the patient centered medical home model of care. The act includes authority to work with schools or programs for physician assistants.

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<sup>83</sup> These include requirements to recommend practices with certain affiliations and a diverse range of specialties and to consider the percentage of patients served by the practice who are part of a medically underserved population.

## Reports

(R.C. 185.12 (3701.929))

The act maintains the requirement that two reports on the Pilot Project be submitted to the Governor, President and Minority Leader of the Senate, Speaker and Minority Leader of the House of Representatives, and Director of the Legislative Service Commission. However, the act provides that the six-month and two-year respective deadlines for the reports are to be based on when the last practice enters into a contract with the ODH Director to participate in the Project, rather than when the first funding for the Project is released.

## Informed consent brochures

(R.C. 2317.56)

Prior law, largely unchanged by the act, requires ODH *to cause to be published* in English and in Spanish the following materials:

(1) Materials that inform a pregnant woman about family planning information, of publicly funded agencies that are available to assist in family planning, and of public and private agencies and services that are available to assist her through the pregnancy, upon childbirth, and while the child is dependent, including, but not limited to, adoption agencies;

(2) Materials that inform a pregnant woman of the probable anatomical and physiological characteristics of the zygote, blastocyte, embryo, or fetus at two-week gestational increments for the first 16 weeks of pregnancy and at four-week gestational increments from the 17th week of pregnancy to full term, including any relevant information regarding the time at which the fetus possibly would be viable.

The act instead requires ODH to *publish* the above materials *on ODH's web site*.

Under prior law, ODH was required to provide the requested number of copies of the above materials to any person, hospital, physician, or medical facility that requested one or more copies of the materials. The act requires ODH to provide only one copy of the materials to any person, hospital, physician, or medical facility that requests a copy.

## Affirmative defenses to a civil action for failure to provide informed consent materials

Continuing law unchanged by the act provides that an abortion may be performed or induced only if several conditions are satisfied, except in cases when there



is a medical emergency or medical necessity. One of these conditions is that at least 24 hours prior to the performance or inducement of the abortion one or more physicians or their agents must do each of the following in person, by telephone, by certified mail, return receipt requested, or by regular mail evidenced by a certificate of mailing:

(1) Inform the pregnant woman of the name of the physician who is scheduled to perform or induce the abortion.

(2) Give the pregnant woman copies of the materials described above under "**Informed consent brochures.**"

(3) Inform the pregnant woman that the materials described above under "**Informed consent brochures,**" are *provided* by the state and that they describe the embryo or fetus and list agencies that offer alternatives to abortion.

Additionally, continuing law unchanged by the act provides that a physician who performs or induces an abortion with actual knowledge that any of the conditions mentioned above have not been satisfied or with a heedless indifference as to whether those conditions have been satisfied is liable in compensatory and exemplary damages in a civil action to any person, or the representative of the estate of any person, who sustains injury, death, or loss to person or property as a result of the failure to satisfy those conditions.

Prior law provided the following three affirmative defenses to a civil action described in the preceding paragraph:

(1) The physician performed or induced the abortion because of a medical emergency or medical necessity.

(2) The physician made a good faith effort to satisfy the conditions mentioned above.

(3) The physician or an agent of the physician requested copies of the materials described above under "**Informed consent brochures,**" but the physician was not able to give a pregnant woman copies of the materials because ODH failed to make the requested number of copies available to the physician or agent.

The act eliminates the affirmative defense listed above at (3).

## **Abolishment of Public Health Council**

(R.C. 3701.02 (repealed), 3701.12 (repealed), 3701.33 (repealed), 3701.34 (repealed), and 3701.35 (repealed); conforming changes in Sections 601.50 and 601.51 and R.C. 140.03, 140.05, 313.121, 313.122, 313.16, 339.091, 955.16, 955.26, 1923.02, 2307.89, 2907.29, 3313.71,



3701.021, 3701.023, 3701.024, 3701.025, 3701.03, 3701.05, 3701.07, 3701.072, 3701.11, 3701.132, 3701.146, 3701.161, 3701.20, 3701.201, 3701.21, 3701.221, 3701.23, 3701.232, 3701.24, 3701.241, 3701.242, 3701.248, 3701.341, 3701.342, 3701.343, 3701.344, 3701.345, 3701.347, 3701.352, 3701.40, 3701.507, 3701.508, 3701.509, 3701.57, 3701.87, 3702.52, 3702.522, 3702.57, 3702.58, 3705.24, 3709.03, 3709.04, 3709.06, 3709.09, 3709.092, 3709.32, 3709.35, 3710.01, 3710.02, 3710.04, 3710.05, 3710.051, 3710.06, 3710.07, 3710.08, 3710.09, 3710.10, 3710.12, 3710.13, 3710.17, 3711.04, 3711.06, 3711.08, 3711.12, 3711.21, 3712.03, 3712.04, 3712.09, 3715.01, 3715.025, 3715.60, 3715.61, 3715.62, 3715.68, 3716.01, 3716.03, 3717.01, 3717.04, 3717.05, 3717.07, 3717.45, 3717.51, 3718.02, 3718.021, 3718.022, 3718.05, 3718.06, 3718.07, 3718.09, 3721.01, 3721.011, 3721.03, 3721.032, 3721.04, 3721.07, 3721.121, 3721.13, 3721.21, 3721.28, 3721.29, 3723.06, 3723.07, 3723.09, 3725.02, 3727.42, 3729.02, 3729.03, 3729.04, 3729.07, 3729.08, 3730.10, 3733.02, 3733.021, 3733.022, 3733.025, 3733.04, 3733.05, 3733.091, 3733.10, 3733.101, 3733.13, 3733.41, 3733.42, 3734.01, 3742.01, 3742.02, 3742.03, 3742.04, 3742.05, 3742.30, 3742.47, 3742.50, 3748.04, 3748.05, 3748.10, 3748.12, 3748.15, 3748.20, 3749.02, 3749.03, 3749.04, 3781.06, 4731.22, 4736.01, and 4773.08)

The act abolishes the Public Health Council, which was created in 1917 as part of ODH.<sup>84</sup> The act transfers the Council's duties to the ODH Director.

Under prior law, the Council was required to consider any matter relating to the preservation and improvement of the public health and to advise the ODH Director accordingly. It had to conduct hearings in cases when ODH was required by law to give hearings; the Council's decisions governed the Director's subsequent actions. The Council was required to prescribe by rule the number and functions of divisions and bureaus within ODH and the qualifications of their chiefs.

The Council had general authority to adopt, amend, and rescind rules of general application throughout Ohio. Several statutes required the Council to adopt rules governing ODH's programs pertaining to public health. The act transfers the rule-making responsibilities to the ODH Director. The programs addressed by the rules include the following:

- Prevention and treatment of certain health conditions and diseases;
- Infectious disease surveillance and investigation;
- Licensing and operation of certain health care facilities and providers, including nursing homes, residential care facilities, and hospice care programs;

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<sup>84</sup> ODH, *Public Health Council* (last visited August 6, 2012), available at <<http://www.odh.ohio.gov/rules/publicHealthCouncil/publicHealthCouncil.aspx>>.

--Implementation of the Certificate of Need Program, which governs the number and distribution of long-term care facilities in the state;

--Implementation of Ohio's Pure Food and Drug Law, establishment of the Ohio Uniform Food Safety Code, and licensure of food service operations;

--Licensing of asbestos abatement, lead abatement, and radon professionals and workers;

--Regulation of handlers of radiation-generating equipment of radioactive material under the Radiation Control Program and licensure of general x-ray machine operators, radiographers, radiation therapy technologists, or nuclear medicine technologists;

--Installation and maintenance of private water systems and sewage treatment systems;

--Licensing and operation of public swimming pools and public spas;

--Licensing and operation of manufactured home parks and recreational vehicle parks.

### **Transition provisions**

(Section 737.10)

For purposes of transferring the Council's duties to the ODH Director, the act specifies the following:

(1) Any business commenced by the Council but not completed before the transfer is to be completed by the Director;

(2) No validation, cure, right, privilege, remedy, obligation, or liability is lost or impaired by reason of the transfer;

(3) Rules, orders, and determinations of the Council continue to be in effect after the transfer, until modified or rescinded by the Director;

(4) Any action or proceeding that is pending when the transfer occurs is not affected by the transfer and is to be prosecuted or defended in the name of the Director.



## Ohio Public Health Advisory Board

(R.C. 3701.33 and 3701.34)

### Creation and membership

The act creates the Ohio Public Health Advisory Board. The Board is to consist of the following members:

(1) The following members appointed by the ODH Director from among individuals who are not employed by the state and are recommended by statewide trade or professional organizations that represent interests in public health:

--One physician;

--One registered nurse;

--Three members of the public, two of whom are representatives of entities licensed by ODH or boards of health.

(2) One representative of the Association of Ohio Health Commissioners, appointed by the Association;

(3) One representative of the Ohio Public Health Association, appointed by the Association;

(4) One representative of the Ohio Environmental Health Association, appointed by the Association, who is a registered sanitarian;

(5) One representative of the Ohio Association of Boards of Health, appointed by the Association;

(6) One representative of the Ohio Society for Public Health Education, appointed by the Society;

(7) One representative of the Ohio Hospital Association, appointed by the Association.

The ODH Director or the Director's designee is to serve as an ex officio, nonvoting member of the Advisory Board.

Appointments to the Advisory Board must be made not later than October 10, 2012 (which is 30 days after the act's 90-day effective date). The following members are to serve initial terms ending June 30, 2014: (1) representatives of the Ohio Association of Boards of Health, Ohio Society for Public Health Education, and Ohio Hospital



Association and (2) the members of the public representing entities licensed by ODH or boards of health. The remaining members are to serve initial terms ending June 30, 2015. Thereafter, all members are to serve terms of three years.

### **Organization and meetings**

The Advisory Board must annually select from among its members a chairperson and vice-chairperson. The ODH Director is to designate an officer or employee of ODH to act as the Board's secretary. The secretary is to serve as a nonvoting Board member. ODH is required to provide meeting space and staff and other administrative support for the Board to carry out its duties.

The Advisory Board chairperson is authorized to appoint subcommittees as the chairperson considers necessary. The Board is to meet at the call of the chairperson, but not less than four times per year. In conducting meetings, the Board and its subcommittees are permitted to use an interactive video teleconferencing system. Special meetings may be called by the chairperson and must be called by the chairperson at the request of the ODH Director. In a request for a special meeting, the Director is to specify the purpose of the meeting and the date and place the meeting is to be held. No other business is to be considered at a special meeting except by a unanimous vote of members present at the meeting.

### **Reimbursement for expenses; ethics training**

Members are to serve without compensation, but may be reimbursed for actual and necessary expenses. Members are required to attend annual ethics training provided by the Ohio Ethics Commission.

### **Duties**

The act requires the Advisory Board to review and make recommendations to the ODH Director on all of the following:

- (1) Developing and adopting proposed rules concerning programs administered by ODH;
- (2) Prescribing proposed fees for services provided by the Office of Vital Statistics and the Bureau of Environmental Health;
- (3) Issues to improve public health and increase awareness of public health issues at the state level, local level, or both;
- (4) Any other public health issues the Director requests the Board to consider.



## **Recommendations on proposed rules**

The act requires the ODH Director to consider the Advisory Board's recommendation regarding a proposed rule before the rule may be filed with the Joint Committee on Agency Rule Review (JCARR). The requirement does not apply, however, in the case of an emergency rule or a rule that is refiled with JCARR with technical or other nonsubstantive revisions.

Before filing a proposed rule with the JCARR, ODH is to provide each Advisory Board member with a copy of the proposed rule, copies of public comments received by ODH during the public comment period, and written evidence of stakeholder involvement. Before Board meetings, copies of proposed rules are to be provided to members. On request of a member, ODH must ensure that appropriate ODH employees attend Board meetings to answer questions concerning proposed rules.

Not later than 60 days after receiving a copy of a proposed rule, the Advisory Board must recommend approval or disapproval of the rule and submit its recommendation by Board action to the ODH Director. In making its recommendation, the Board may consider public comments provided to ODH or the Board. If the Board fails to make a recommendation within 60 days of receiving a copy of the proposed rule, the act authorizes the Director to file the proposed rule with JCARR.

If a timely recommendation is made, the ODH Director is required to consider the Advisory Board's recommendation before filing a proposed rule. On request, the Director must meet with the Board to discuss the Board's recommendation. If the Director disagrees with the recommendation, the Director must inform the Board in writing of the Director's decision and the reason for the decision. This must be provided before the Board's next quarterly meeting. The Director or the Director's designee is permitted to meet with the Board at the next quarterly meeting to answer questions regarding why the Director disagreed.

The act specifies that, to the extent the Advisory Board believes that a proposed rule does not comply with requirements established by JCARR or the Common Sense Initiative Office, nothing prohibits the Board, in carrying out its duties in making recommendations on proposed rules, from contacting JCARR or the Common Sense Initiative Office.

To facilitate the Advisory Board's review of proposed rules, ODH must establish and maintain an electronic web-based database of Board meeting agendas and meeting minutes, proposed rules, public comments, and other documents relevant to the work of the Board.



## **Cost methodology for proposed fees in the Bureau of Environmental Health**

In making recommendations to the ODH Director on prescribing proposed fees for services provided by the Bureau of Environmental Health, the act requires the Advisory Board and ODH to develop a cost methodology subject to approval by the Director.

### **Exemption from sunset review**

The act exempts the Advisory Board from continuing law under which a board or commission ceases to exist after four years unless legislation is enacted extending its existence.

## **Lupus Education and Awareness Program**

(R.C. 3701.77(A) and (B))

The act authorizes ODH to establish, promote, and maintain a Lupus Education and Awareness Program that focuses on communities at risk for contracting lupus. Lupus is an autoimmune disease that causes a person's immune system to attack otherwise healthy tissues and organs, resulting in chronic inflammation and tissue damage. Some of the most common symptoms are extreme fatigue, painful or swollen joints, unexplained fever, skin rashes, and kidney problems.<sup>85</sup>

In creating and implementing the program, ODH is authorized to do all of the following:

- (1) Provide sufficient staff and appropriate training to carry out the program;
- (2) Create a grant program to support nonprofit health organizations with expertise in lupus to increase public awareness and improve health professional education and understanding of the disease;
- (3) Establish an intergovernmental council and advisory panel to oversee the program's implementation;
- (4) Identify appropriate entities to carry out the program;
- (5) Base the program on the most up-to-date scientific information and findings;

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<sup>85</sup> National Institute of Arthritis and Musculoskeletal and Skin Diseases, *Lupus* (last visited May 24, 2012), available at <[http://www.niams.nih.gov/Health\\_Info/Lupus/default.asp](http://www.niams.nih.gov/Health_Info/Lupus/default.asp)>.



(6) Coordinate efforts with government entities, community leaders and organizations, health and human services providers, and national, state, and local lupus organizations, such as the Lupus Foundation of America, to maximize state resources in the areas of lupus awareness and education;

(7) Identify and use other successful lupus education and awareness programs and obtain related materials and services from organizations with expertise and knowledge of lupus.

### **Lupus Education and Awareness Fund**

(R.C. 3701.77(C) and (D) and 3701.775)

The act creates the Lupus Education and Awareness Fund in the state treasury. Under the act, ODH is authorized to accept grants, donations, and gifts from foundations, organizations, medical schools, and other entities for fulfilling the program's requirements. ODH may also accept grants from the federal government. ODH may seek any federal waiver necessary to maximize funds from the federal government. If ODH establishes the program, money collected from any of these entities must be credited to the Lupus Education and Awareness Fund, which must be used to administer the program.

### **Intergovernmental council**

(R.C. 3701.773)

The act authorizes ODH to create an intergovernmental council to oversee the program's implementation. In establishing the council, ODH must seek to ensure coordination of lupus education and awareness efforts.

The council must include representatives from appropriate state agencies, including entities with responsibility for Medicaid, health disparities, public health programs, education, and public welfare. The ODH Director is to serve as the chairperson of the council.

The act requires the council to do all of the following:

- (1) Provide oversight for the program and other lupus programs ODH conducts;
- (2) Develop and issue grant applications and policies and procedures for programs aimed at health professionals and the public;
- (3) Establish a mechanism for sharing lupus information among those involved in implementing lupus-related programs;



(4) Assist ODH and other offices in developing and coordinating plans for lupus education and health promotion and ensure that lupus-related issues are integrated into other statewide plans.

The council must prepare an annual report describing state-sponsored lupus education initiatives and the council's recommendations for new lupus education initiatives. The report must be transmitted to the General Assembly and made available to the public.

### **Advisory panel**

(R.C. 3701.774)

The act authorizes ODH to establish an advisory panel to advise ODH and the intergovernmental council on the implementation of the Lupus Education and Awareness Program. ODH must consult with the panel on a regular basis.

The panel members are to be appointed by the ODH Director. Each member must have familiarity with lupus and lupus-related issues. Individuals and organizations may submit nominations for appointment to the panel. The membership must include (1) at least three individuals with lupus, (2) not more than two representatives from ODH, (3) at least five individuals from lupus nonprofit health organizations, with preference given to individuals from the Lupus Foundation of America, and (4) at least five scientists or clinicians with experience in lupus who practice in a variety of scientific fields.

ODH must select one of the panel members to serve as the panel's chairperson. The panel must meet at the call of the chairperson, but not fewer than four times per year. Panel members' terms are for a period of two years, and a panel member may serve no more than two terms. Members are to serve without compensation but may be reimbursed for actual and necessary expenses.

### **Needs assessment and program administration**

(R.C. 3701.771)

The act authorizes ODH to conduct a needs assessment to identify all of the following:

(1) The level of lupus awareness in Ohio among health professionals and the public;

(2) The existence, in Ohio and nationwide, of lupus education, awareness, and treatment programs and related technical assistance;



(3) The educational and support service needs of health care providers in Ohio as the needs relate to lupus;

(4) The needs of people with lupus, as well as their families and caregivers;

(5) The services available to people with lupus.

The act authorizes ODH to develop and maintain a directory of lupus-related services and health care providers that specialize in diagnosing and treating lupus. ODH may distribute the directory to all stakeholders, including individuals with lupus, families, representatives from voluntary organizations, health professionals, health plans, and state and local health agencies.

The act authorizes ODH to undertake activities to raise public awareness about lupus symptoms, risk factors, diagnosis, and treatment options, with a focus on elevated-risk populations. The activities may include (1) implementing a statewide campaign to educate the general public about lupus through public service announcements, advertisements, posters, and other materials, (2) distributing health information and conducting risk assessments at public events, and (3) distributing information through local health departments, schools, area agencies on aging, employer wellness programs, health professionals, hospitals and health plans, community-based and other organizations, and regional ODH offices.

### **Grant programs**

The act authorizes ODH to establish two grant programs related to lupus awareness and education. One grant program is for educating health professionals and other service providers affiliated with the Lupus Foundation of America. The other grant program is for supporting nonprofit organizations in promoting public awareness and increasing education of health professionals.

#### **Grant program for health professionals and service providers**

(R.C. 3701.772)

Under one of the act's grant programs, ODH is to award grants to educate and train physicians, health professionals, and other service providers in the most current scientific and medical information on lupus. This includes education on lupus diagnosis, treatment, medical best practices for dealing with lupus in special populations, and the risks and benefits of medications.

The act requires that grant awards be allocated in amounts proportionate to the populations of areas served by the Ohio chapters of the Lupus Foundation of America. Only applicants who are affiliated with the Foundation are eligible to receive grants.



The act requires each grant recipient to do all of the following:

- (1) Develop health professional educational materials with the latest scientific and medical information;
- (2) Work to increase knowledge among health and human services professionals about the importance of lupus diagnosis, treatment, and rehabilitation;
- (3) Use available curricula for training community leaders and health and human services providers on lupus detection and treatment;
- (4) Support continuing medical education programs in Ohio presented by leading state academic institutions;
- (5) Provide seminars and workshops for the professional development of lupus care providers;
- (6) Conduct statewide conferences on lupus.

Each grant recipient is to prepare and submit to ODH an annual report that describes the use of the grant money.

#### **Grant program for nonprofit organizations**

(R.C. 3701.77(B)(2))

Under the other grant program that may be established, ODH is to support nonprofit health organizations with expertise in lupus. The purpose of the grant program is to aid these organizations in increasing public awareness and enhancing health professional education and understanding of the symptoms and consequences of lupus and the populations most at risk of contracting the disease.

#### **Legislative findings and intent**

(Section 737.60)

Under the act, the General Assembly's findings regarding lupus are specified as including the following:

- Lupus is a serious, complex, and debilitating autoimmune disease that can cause inflammation and tissue damage to virtually any organ system in the body, including the skin, joints, other connective tissue, blood and blood vessels, heart, lungs, kidneys, and brain.



- The Lupus Foundation of America estimates that approximately 1.5 to 2 million Americans live with lupus.
- According to the Centers for Disease Control and Prevention, the rate of lupus mortality has increased since the late 1970s.
- The pain and fatigue associated with lupus can threaten the ability to live independently, maintain employment, and lead a normal life. One in five individuals with lupus is disabled by the disease, and consequently receives support from government programs, including Medicare, Medicaid, Social Security Disability, and Social Security Supplemental Income.
- The estimated average annual cost of medical treatment for an individual with lupus is between \$10,000 and \$30,000; for individuals with the most serious form of lupus, medical costs can greatly exceed this amount, causing a significant economic, emotional, and social burden to the entire family and society.
- More than half of individuals with lupus suffer four or more years and visit three or more physicians before obtaining a diagnosis of lupus. Early diagnosis of and treatment for lupus can prevent or reduce serious organ damage, disability, and death.
- Despite the magnitude of lupus, health professional and public understanding of lupus remains low. Only one in five Americans can provide basic information about lupus, and awareness of lupus is lowest among adults 18 to 34 years of age--the age group most likely to develop lupus.
- Lupus is a significant national health issue that deserves a comprehensive and coordinated response by state and federal governments with involvement of the health care provider, patient, and public health communities.

The act specifies that its purpose is to create a multi-pronged, statewide program to promote public and health professional awareness and increase knowledge concerning the causes and consequences of lupus, the importance of early diagnosis and appropriate management, and effective treatment and management strategies. The act identifies the following activities:

- Conducting educational and training programs for health professionals on lupus diagnosis and management;



- Developing and disseminating educational materials and information to patients and health professionals on lupus research results and health care services available;
- Designing and implementing a statewide public education campaign aimed at heightening public awareness of lupus;
- Leveraging educational and training resources and services previously developed by organizations with appropriate expertise and knowledge of lupus.

### **Home health agency criminal records checks**

(R.C. 3701.881 (primary), 109.57, 109.572, 1121.23, 1155.03, 1163.05, 1315.141, 1321.37, 1321.53, 1321.531, 1322.03, 1322.031, 1733.47, 1761.26, 2151.86, 3712.09, 3721.121, 4763.05, 5104.012, 5104.013, and 5104.09; Sections 610.10, 610.11, 620.10, 620.11, 751.20, 751.31, 812.11, and 812.12)

The act revises the law governing criminal records checks for employment positions with home health agencies. That act also establishes a database review process for such positions. These provisions take effect January 1, 2013.

### **Uniformity**

Before the act, the criminal records check requirement applied only to applicants. There were two types of applicants under prior law: (1) persons under final consideration for appointment to or employment with home health agencies in positions as persons responsible for the care, custody, or control of children and (2) persons under final consideration for employment with a home health agency in a full-time, part-time, or temporary position (but not a volunteer position) that involved providing direct care to a person age 60 or older. Different procedures and disqualifying offenses applied to the two types of applicants. For example, the chief administrator of a home health agency generally was the person who is required to request that the Bureau of Criminal Identification and Investigation (BCII) conduct a criminal records check of an applicant. However, a chief administrator was not required to make the request for an applicant who was referred to the home health agency by an employment service for a position that involved providing direct care to persons age 60 or older if (1) the chief administrator received from the employment service or applicant a criminal records check report regarding the applicant that BCII conducted within the one-year period immediately preceding the applicant's referral and (2) the report demonstrated that the applicant had not been convicted of or pleaded guilty to a disqualifying offense or, despite having been convicted of or pleaded guilty



to a disqualifying offense, the applicant met personal character standards specified in rules adopted by ODH.

The act makes the criminal records check processes and database reviews (see "**Database reviews**," below) uniform for applicants. Instead of distinguishing between two types of applicants based on whether children or older adults will receive care, the act provides that an applicant is a person under final consideration for employment with a home health agency in a full-time, part-time, or temporary position that involves providing direct care to an individual or is referred to a home health agency by an employment service for such a position. As a result, the criminal records check and database review requirements apply to applicants who will provide direct care to persons of any age and volunteers are no longer expressly excluded.

"Direct care" is defined by the act as any of the following:

(1) Skilled nursing care, physical therapy, speech-language pathology, occupational therapy, medical social services, or home health aide services provided in a patient's place of residence used as the patient's home;

(2) Any activity that requires the person performing the activity to be routinely alone with a patient or to routinely have access to a patient's personal property or financial documents regarding a patient;

(3) For each home health agency individually, any other routine service or activity that the agency's chief administrator designates as direct care.

### **Employees subject to database reviews and criminal records checks**

The enactment that established the criminal records check requirement for an applicant seeking a position with a home health agency in which the applicant would be responsible for the care, custody, or control of children, Am. Sub. S.B. 38 of the 120th General Assembly, provided that the requirement applied only to persons seeking such employment on or after October 29, 1993. The enactment that established the criminal records check requirement for an applicant seeking a position with a home health agency in a position that involved providing direct care to a person age 60 or older, Am. Sub. S.B. 160 of the 121st General Assembly, provided that the requirement applied only to persons seeking such employment on or after January 27, 1997.

The act eliminates the exemptions described above and permits the ODH Director to adopt rules that require employees to undergo criminal records checks. The rules also may require employees to undergo database reviews that the act creates (see "**Database reviews**," below). The act defines "employee" as a person employed by a home health agency in a full-time, part-time, or temporary position that involves



providing direct care to an individual and a person who works in such a position due to being referred to a home health agency by an employment service. The ODH Director may exempt one or more classes of employees from the database review and criminal records check requirements. If the rules require employees to undergo database reviews and criminal records checks, the rules must specify the times at which the database reviews and criminal records checks are to be conducted.

Continuing law permits a home health agency to charge an applicant a fee regarding a criminal records check if the agency notifies the applicant of the fee at the time the applicant initially applies for employment and Medicaid does not reimburse the home health agency the fee it pays for the criminal records check. The fee may not exceed the amount that the home health agency pays to BCII for the criminal records check. The act does not authorize a home health agency to charge an employee a fee regarding a criminal records check.

A home health agency may not employ an applicant who fails to provide the information necessary to complete a BCII criminal records check form or to provide fingerprint impressions on a BCII standard impression sheet if the home health agency requests the applicant to do so. Under the act, a home health agency is prohibited from employing an applicant or continuing to employ an employee who fails to complete the form or provide the employee's fingerprint impressions on the BCII impression sheet if the home health agency provides the form and impression sheet to the applicant or employee.

### **Database reviews**

The act creates a database review process. An applicant is to undergo a database review as a condition of employment with a home health agency in a position that involves providing direct care to an individual. If the ODH Director's rules so require, an employee is to undergo a database review as a condition of continuing employment with a home health agency in such a position. A database review is to determine whether an applicant or employee is included in any of the following:

(1) The excluded parties list system operated by the United States General Services Administration (GSA);

(2) The list of excluded individuals and entities operated by the Office of Inspector General (OIG) in the United States Department of Health and Human Services;

(3) The registry of MR/DD employees operated by the Department of Developmental Disabilities;



(4) The Internet-based sex offender and child-victim offender database operated by BCII;

(5) The Internet-based database of inmates operated by the Department of Rehabilitation and Correction (DRC);

(6) The state nurse aide registry operated by ODH;

(7) Any other database, if any, the ODH Director is permitted to specify in rules.

The act prohibits a home health agency from employing an applicant or continuing to employ an employee if a database review reveals any of the following:

(1) The applicant or employee is included in GSA's excluded parties list system, OIG's list of excluded individuals and entities, the registry of MR/DD employees, BCII's Internet-based sex offender and child-victim offender database, or DRC's Internet-based database of inmates;

(2) There is in the state nurse aide registry a statement detailing findings by the Director that the applicant or employee neglected or abused a long-term care facility or residential care facility resident or misappropriated property of such a resident;

(3) The applicant or employee is included in one or more of the other databases that the ODH Director may specify in rules and the rules prohibit a home health agency from employing an applicant or employee included in such a database in a position that involves providing direct care to an individual.

An applicant or employee is not required to undergo a criminal records check in addition to a database review if the applicant or employee is found by the database review to be ineligible for the position.

The chief administrator of a home health agency is required to inform each applicant that a database review will be conducted to determine whether the agency is prohibited from employing the applicant. The chief administrator also must inform each applicant about the criminal records check requirement. However, the notification requirement may not apply if the applicant is referred by an employment service (see "**Referrals by an employment service**," below).

### **Conditional employment**

An applicant may be employed conditionally by a home health agency before a criminal records check is completed. Under prior law, the terms of conditional employment varied for the different types of applicants. For example, an applicant for a position in which the applicant would be responsible for the care, control, or custody



of a child could be employed conditionally until the criminal records check was completed and the home health agency received the results. But an applicant for a position that involved providing direct care to a person age 60 or older could be employed conditionally if the home health agency requested the criminal records check not later than five business days after the applicant began conditional employment and the home health agency had to terminate the conditional employment if the results, other than results from the Federal Bureau of Investigation (FBI), were not obtained within the period ending 30 days after the date the request was made.

The act makes the terms of conditional employment uniform for all applicants. Under the act, a home health agency may conditionally employ an applicant before obtaining the results of a criminal records check if the agency is not prohibited by a database review from employing the applicant and either of the following applies:

(1) The agency's chief administrator requests the criminal records check not later than five business days after the applicant begins conditional employment;

(2) The applicant is referred to the home health agency by an employment service, the employment service or the applicant provides the agency's chief administrator a letter that is on the letterhead of the employment service, the letter is dated and signed by a supervisor or another designated official of the employment service, and the letter states all of the following:

(a) That the employment service has requested BCII to conduct a criminal records check of the applicant;

(b) That the requested criminal records check is to include a determination of whether the applicant has been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for an offense that makes the applicant ineligible for the position at the home health agency (see "**Disqualifying offenses**," below);

(c) That the employment service has not received the results of the criminal records check as of the date set forth on the letter;

(d) That the employment service promptly will send a copy of the results of the criminal records check to the home health agency's chief administrator when the employment service receives the results.

If a home health agency conditionally employs an applicant who is referred by an employment service, the employment service, on receiving the results of the criminal records check, must promptly send a copy of the results to the agency's chief administrator.



The home health agency must terminate the conditional employment of an applicant, regardless of whether the applicant is referred to the agency by an employment service or applies directly to the agency, if the results of the criminal records check, other than the results of any request for information from the FBI, are not obtained within the period ending 60 days after the date the request for the criminal records check is made. Regardless of when the results are obtained, if the results indicate that the applicant has been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense, the home health agency must terminate the applicant's employment unless the applicant meets personal character standards specified in the ODH Director's rules and the agency chooses to employ the applicant.

### **Referrals by an employment service**

The act maintains certain provisions of law regarding applicants who are referred to home health agencies by employment services and applies the provisions to database reviews and employees who work at home health agencies by being referred by employment services. Under these provisions, a home health agency is not required to subject an applicant or employee to a database review or criminal records check if the applicant or employee is referred to the agency by an employment service and both of the following apply:

(1) The agency's chief administrator receives from the employment service confirmation that a database review was conducted of the applicant or employee;

(2) The chief administrator receives from the employment service, applicant, or employee a report of the results of a criminal records check of the applicant or employee that has been conducted by BCII within the one-year period immediately preceding the following:

(a) In the case of an applicant, the date of the applicant's referral by the employment service to the home health agency;

(b) In the case of an employee, the date by which the home health agency would otherwise have to request a criminal records check of the employee.

### **Disqualifying offenses**

Prior law prohibited a home health agency from employing a person in a position in which the person was responsible for the care, custody, or control of a child if the person previously had been convicted of or pleaded guilty to a disqualifying offense. However, a home health agency could employ such a person in such a position if the person met standards in regard to rehabilitation set by ODH in rules. A home



health agency was prohibited from employing a person in a position that involved providing direct care to a person age 60 or older if the person previously had been convicted of or pleaded guilty to a disqualifying offense unless the person met personal character standards specified in ODH rules. There were differences in the lists of disqualifying offenses for the two types of positions.

Under the act, a home health agency may not employ an applicant or continue to employ an employee in a position that involves providing direct care to an individual if the applicant or employee is found by a criminal records check to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense unless the applicant or employee meets personal character standards specified in rules to be adopted by the ODH Director. The act revises the list of disqualifying offenses and makes the list uniform for applicants and employees.

The following table compares prior law's list of disqualifying offenses applicable to a position in which a person was responsible for the care, custody, or control of a child to the act's list of uniform disqualifying offenses. The number preceding an offense is the Revised Code section that establishes the offense.

Prior Law	The Act
No provision.	959.13 (cruelty to animals)
No provision.	959.131 (cruelty against companion animal)
2903.01 (aggravated murder)	Same.
2903.02 (murder)	Same.
2903.03 (voluntary manslaughter)	Same.
2903.04 (involuntary manslaughter)	Same.
No provision.	2903.041 (reckless homicide)
2903.11 (felonious assault)	Same.
2903.12 (aggravated assault)	Same.
2903.13 (assault)	Same.
No provision.	2903.15 (permitting child abuse)
2903.16 (Failing to provide for a functionally impaired person)	Same.
2903.21 (aggravated menacing)	Same.
No provision.	2903.211 (menacing by stalking)
No provision.	2903.22 (menacing)
2903.34 (patient abuse or neglect)	Same.



Prior Law	The Act
No provision.	2903.341 (patient endangerment)
2905.01 (kidnapping)	Same.
2905.02 (abduction)	Same.
A violation of former 2905.04 (child stealing) as it existed before July 1, 1996.	Same.
2905.05 (criminal child enticement)	Same.
No provision.	2905.11 (extortion)
No provision.	2905.12 (coercion)
No provision.	2905.32 (trafficking in persons)
No provision.	2905.33 (unlawful conduct with respect to documents)
2907.02 (rape)	Same.
2907.03 (sexual battery)	Same.
2907.04 (unlawful sexual conduct with a minor)	Same.
2907.05 (gross sexual imposition)	Same.
2907.06 (sexual imposition)	Same.
2907.07 (importuning)	Same.
2907.08 (voyeurism)	Same.
2907.09 (public indecency)	Same.
Felonious sexual penetration in violation of former 2907.12.	Same.
2907.21 (compelling prostitution)	Same.
2907.22 (promoting prostitution)	Same.
2907.23 (procuring)	Same.
No provision.	2907.24 (soliciting and solicitation after a positive HIV test)
2907.25 (prostitution and prostitution after a positive HIV test)	Same.
2907.31 (disseminating matter harmful to juveniles)	Same.
2907.32 (pandering obscenity)	Same.
2907.321 (pandering obscenity involving a minor)	Same.
2907.322 (pandering sexually oriented matter involving a minor)	Same.



Prior Law	The Act
2907.323 (illegal use of a minor in nudity-oriented material or performance)	Same.
No provision.	2907.33 (deception to obtain matter harmful to juveniles)
No provision.	2909.02 (aggravated arson)
No provision.	2909.03 (arson)
No provision.	2909.04 (disrupting public services)
No provision.	2909.22 (support of terrorism)
No provision.	2909.23 (terroristic threats)
No provision.	2909.24 (terrorism)
2911.01 (aggravated robbery)	Same.
2911.02 (robbery)	Same.
2911.11 (aggravated burglary)	Same.
2911.12 (burglary and trespass in a habitation when a person is present or likely to be present)	Same.
No provision.	2911.13 (breaking and entering)
No provision.	2913.02 (theft)
No provision.	2913.03 (unauthorized use of a vehicle)
No provision.	2913.04 (unauthorized use of property; unauthorized use of computer, cable, or telecommunication property; unauthorized use of LEADS; and unauthorized use of OHLEG)
No provision.	2913.05 (telecommunications fraud)
No provision.	2913.11 (passing bad checks)
No provision.	2913.21 (misuse of credit cards)
No provision.	2913.31 (forgery and forging identification cards)
No provision.	2913.32 (criminal simulation)
No provision.	2913.40 (Medicaid fraud)
No provision.	2913.41 (prima facie evidence of purpose to defraud [This is not an offense but rather specifies what constitutes prima facie evidence of purpose to defraud under certain circumstances.])
No provision.	2913.42 (tampering with records)



Prior Law	The Act
No provision.	2913.43 (securing writing by deception)
No provision.	2913.44 (personating an officer)
No provision.	2913.441 (unauthorized display of emblems related to law enforcement on motor vehicles)
No provision.	2913.45 (defrauding creditors)
No provision.	2913.46 (illegal use of Supplemental Nutrition Assistance Program or WIC program benefits)
No provision.	2913.47 (insurance fraud)
No provision.	2913.48 (Workers' Compensation fraud)
No provision.	2913.49 (identity fraud)
No provision.	2913.51 (receiving stolen property)
No provision.	2917.01 (inciting to violence)
No provision.	2917.02 (aggravated riot)
No provision.	2917.03 (riot)
No provision.	2917.31 (inducing panic)
2919.12 (unlawful abortion)	Same.
No provision.	2919.121 (unlawful abortion [on a minor])
No provision.	2919.123 (unlawful distribution of an abortion-inducing drug)
2919.22 (endangering children)	Same.
A violation of 2919.23 (interference with custody) that would have been a violation of 2905.04 (child stealing) as it existed before July 1, 1996, had the violation been committed before that date.	2919.23 (interference with custody)
2919.24 (contributing to unruliness or delinquency)	Same.
2919.25 (domestic violence)	Same.
No provision.	2921.03 (intimidation)
No provision.	2921.11 (perjury)
No provision.	2921.12 (tampering with evidence)
No provision.	2921.13 (falsification)
No provision.	2921.21 (compounding a crime)
No provision.	2921.24 (disclosure of confidential information)



Prior Law	The Act
No provision.	2921.32 (obstructing justice)
No provision.	2921.321 (assaulting a police dog, horse, or assistance dog)
No provision.	2921.34 (escape)
No provision.	2921.35 (aiding escape or resistance to authority)
No provision.	2921.36 (prohibited conveying of certain items onto property of state facilities)
No provision.	2921.51 (impersonation of certain officers)
No provision.	A violation of 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity) when the underlying offense that is the object of the conspiracy, attempt, or complicity is one of the offenses included in this list.
2923.12 (carrying concealed weapons)	Same.
No provision.	2923.122 (illegal conveyance or possession of a deadly weapon or dangerous ordnance in a school safety zone and illegal possession of an object indistinguishable from a firearm in a school safety zone)
No provision.	2923.123 (illegal conveyance of a deadly weapon or dangerous ordnance into a courthouse and illegal possession or control of a deadly weapon or dangerous ordnance in a courthouse)
2923.13 (having weapons while under disability)	Same.
2923.161 (improperly discharging firearm at or into habitation or school safety zone)	Same.
No provision.	2923.162 (discharge of firearm on or near prohibited premises)
No provision.	2923.21 (improperly furnishing firearms to a minor)
No provision.	2923.32 (engaging in a pattern of corrupt activity)
No provision.	2923.42 (criminal gang activity)
2925.02 (corrupting another with drugs)	Same.
2925.03 (trafficking offenses)	Same.



Prior Law	The Act
2925.04 (illegal manufacture of drugs and cultivation of marihuana)	Same.
No provision.	2925.041 (illegal assembly or possession of chemicals for the manufacture of drugs)
2925.05 (funding of drug or marihuana trafficking)	Same.
2925.06 (illegal administration or distribution of anabolic steroids)	Same.
No provision.	2925.09 (sale or use of drugs not approved by U.S. Food and Drug Administration)
A violation of 2925.11 (drug possession offenses) that is not a minor drug possession offense.	2925.11 (drug possession offenses)
No provision.	2925.13 (permitting drug abuse)
No provision.	2925.14 (use, possession, or sale of drug paraphernalia)
No provision.	2925.22 (deception to obtain a dangerous drug)
No provision.	2925.23 (illegal processing of drug documents)
No provision.	2925.24 (tampering with drugs)
No provision.	2925.36 (illegal dispensing of sample drugs)
No provision.	2925.55 (unlawful purchase or receipt of pseudoephedrine product)
No provision.	2925.56 (unlawful sale of pseudoephedrine product)
No provision.	2927.12 (ethnic intimidation)
3716.11 (adulteration of food)	Same.
A violation of an existing or former law of this state, any other state, or the United States that is substantially equivalent to any of the offenses listed above.	Same, except that it also applies to an existing or former municipal ordinance of this or another state that is substantially equivalent to any of the offenses listed above.



The following table compares prior law's list of disqualifying offenses applicable to a position that involved providing direct care to a person age 60 or older to the act's list of uniform disqualifying offenses. The number preceding an offense is the Revised Code section that establishes the offense.

Prior Law	The Act
No provision.	959.13 (cruelty to animals)
No provision.	959.131 (cruelty against companion animal)
2903.01 (aggravated murder)	Same.
2903.02 (murder)	Same.
2903.03 (voluntary manslaughter)	Same.
2903.04 (involuntary manslaughter)	Same.
No provision.	2903.041 (reckless homicide)
2903.11 (felonious assault)	Same.
2903.12 (aggravated assault)	Same.
2903.13 (assault)	Same.
No provision.	2903.15 (permitting child abuse)
2903.16 (Failing to provide for a functionally impaired person)	Same.
2903.21 (aggravated menacing)	Same.
No provision.	2903.211 (menacing by stalking)
No provision.	2903.22 (menacing)
2903.34 (patient abuse or neglect)	Same.
No provision.	2903.341 (patient endangerment)
2905.01 (kidnapping)	Same.
2905.02 (abduction)	Same.
No provision.	A violation of former 2905.04 (child stealing) as it existed before July 1, 1996.
No provision.	2905.05 (criminal child enticement)
2905.11 (extortion)	Same.
2905.12 (coercion)	Same.
No provision.	2905.32 (trafficking in persons)
No provision.	2905.33 (unlawful conduct with respect to documents)
2907.02 (rape)	Same.



Prior Law	The Act
2907.03 (sexual battery)	Same.
No provision.	2907.04 (unlawful sexual conduct with a minor)
2907.05 (gross sexual imposition)	Same.
2907.06 (sexual imposition)	Same.
2907.07 (importuning)	Same.
2907.08 (voyeurism)	Same.
2907.09 (public indecency)	Same.
2907.12 [felonious sexual penetration (This offense was repealed on September 3, 1993.)]	Felonious sexual penetration in violation of former 2907.12.
No provision.	2907.21 (compelling prostitution)
No provision.	2907.22 (promoting prostitution)
No provision.	2907.23 (procuring)
No provision.	2907.24 (soliciting and solicitation after a positive HIV test)
2907.25 (prostitution and prostitution after a positive HIV test)	Same.
2907.31 (disseminating matter harmful to juveniles)	Same.
2907.32 (pandering obscenity)	Same.
2907.321 (pandering obscenity involving a minor)	Same.
2907.322 (pandering sexually oriented matter involving a minor)	Same.
2907.323 (illegal use of a minor in nudity-oriented material or performance)	Same.
No provision.	2907.33 (deception to obtain matter harmful to juveniles)
No provision.	2909.02 (aggravated arson)
No provision.	2909.03 (arson)
No provision.	2909.04 (disrupting public services)
No provision.	2909.22 (support of terrorism)
No provision.	2909.23 (terroristic threats)
No provision.	2909.24 (terrorism)
2911.01 (aggravated robbery)	Same.



Prior Law	The Act
2911.02 (robbery)	Same.
2911.11 (aggravated burglary)	Same.
2911.12 (burglary and trespass in a habitation when a person is present or likely to be present)	Same.
2911.13 (breaking and entering)	Same.
2913.02 (theft)	Same.
2913.03 (unauthorized use of a vehicle)	Same.
2913.04 (unauthorized use of property; unauthorized use of computer, cable, or telecommunication property; unauthorized use of LEADS; and unauthorized use of OHLEG)	Same.
No provision.	2913.05 (telecommunications fraud)
2913.11 (passing bad checks)	Same.
2913.21 (misuse of credit cards)	Same.
2913.31 (forgery and forging identification cards)	Same.
No provision.	2913.32 (criminal simulation)
2913.40 (Medicaid fraud)	Same.
No provision.	2913.41 (prima facie evidence of purpose to defraud [This is not an offense but rather specifies what constitutes prima facie evidence of purpose to defraud under certain circumstances.])
No provision.	2913.42 (tampering with records)
2913.43 (securing writing by deception)	Same.
No provision.	2913.44 (personating an officer)
No provision.	2913.441 (unauthorized display of emblems related to law enforcement on motor vehicles)
No provision.	2913.45 (defrauding creditors)
No provision.	2913.46 (illegal use of Supplemental Nutrition Assistance Program or WIC program benefits)
2913.47 (insurance fraud)	Same.
No provision.	2913.48 (Workers' Compensation fraud)



Prior Law	The Act
No provision.	2913.49 (identity fraud)
2913.51 (receiving stolen property)	Same.
No provision.	2917.01 (inciting to violence)
No provision.	2917.02 (aggravated riot)
No provision.	2917.03 (riot)
No provision.	2917.31 (inducing panic)
No provision.	2919.12 (unlawful abortion)
No provision.	2919.121 (unlawful abortion [on a minor])
No provision.	2919.123 (unlawful distribution of an abortion-inducing drug)
No provision.	2919.22 (endangering children)
No provision.	2919.23 (interference with custody)
No provision.	2919.24 (contributing to unruliness or delinquency)
2919.25 (domestic violence)	Same.
No provision.	2921.03 (intimidation)
No provision.	2921.11 (perjury)
No provision.	2921.12 (tampering with evidence)
No provision.	2921.13 (falsification)
No provision.	2921.21 (compounding a crime)
No provision.	2921.24 (disclosure of confidential information)
No provision.	2921.32 (obstructing justice)
No provision.	2921.321 (assaulting a police dog, horse, or assistance dog)
No provision.	2921.34 (escape)
No provision.	2921.35 (aiding escape or resistance to authority)
2921.36 (prohibited conveying of certain items onto property of state facilities)	Same.
No provision.	2921.51 (impersonation of certain officers)
No provision.	A violation of 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity) when the underlying offense that is the object of the conspiracy, attempt, or complicity is one of the offenses included in this list.



Prior Law	The Act
2923.12 (carrying concealed weapons)	Same.
No provision.	2923.122 (illegal conveyance or possession of a deadly weapon or dangerous ordnance in a school safety zone and illegal possession of an object indistinguishable from a firearm in a school safety zone)
No provision.	2923.123 (illegal conveyance of a deadly weapon or dangerous ordnance into a courthouse and illegal possession or control of a deadly weapon or dangerous ordnance in a courthouse)
2923.13 (having weapons while under disability)	Same.
2923.161 (improperly discharging firearm at or into habitation or school safety zone)	Same.
No provision.	2923.162 (discharge of firearm on or near prohibited premises)
No provision.	2923.21 (improperly furnishing firearms to a minor)
No provision.	2923.32 (engaging in a pattern of corrupt activity)
No provision.	2923.42 (criminal gang activity)
2925.02 (corrupting another with drugs)	Same.
2925.03 (trafficking offenses)	Same.
No provision.	2925.04 (illegal manufacture of drugs and cultivation of marihuana)
No provision.	2925.041 (illegal assembly or possession of chemicals for the manufacture of drugs)
No provision.	2925.05 (funding of drug or marihuana trafficking)
No provision.	2925.06 (illegal administration or distribution of anabolic steroids)
No provision.	2925.09 (sale or use of drugs not approved by U.S. Food and Drug Administration)
2925.11 (drug possession offenses)	Same.
2925.13 (permitting drug abuse)	Same.
No provision.	2925.14 (use, possession, or sale of drug paraphernalia)



Prior Law	The Act
2925.22 (deception to obtain a dangerous drug)	Same.
2925.23 (illegal processing of drug documents)	Same.
No provision.	2925.24 (tampering with drugs)
No provision.	2925.36 (illegal dispensing of sample drugs)
No provision.	2925.55 (unlawful purchase or receipt of pseudoephedrine product)
No provision.	2925.56 (unlawful sale of pseudoephedrine product)
No provision.	2927.12 (ethnic intimidation)
3716.11 (adulteration of food)	Same.
A violation of an existing or former law of this state, any other state, or the United States that is substantially equivalent to any of the offenses listed above.	Same, except that it also applies to an existing or former municipal ordinance of this or another state that is substantially equivalent to any of the offenses listed above.

### Release of criminal records check report

Continuing law provides that a criminal records check report is not a public record and may be released only to certain persons. The act expands the list of persons to whom a criminal records check report may be released by permitting the following to receive a report:

(1) The ODH Director and the staff of ODH who monitor a home health agency's compliance with the criminal records check requirements;

(2) The Director of Aging or the Director's designee if the criminal records check is requested by (a) a home health agency that also is a community-based long-term care agency or (b) an employment service that makes the request for an applicant or employee the employment service refers to a home health agency that also is a community-based long-term care agency;

(3) The Director of Job and Family Services and the staff of the Department of Job and Family Services who are involved in the administration of the Medicaid program if the criminal records check is requested by (a) a home health agency that also is a waiver agency providing home and community-based services under a Medicaid waiver program administered by the Department of Job and Family Services or (b) an



employment service that makes the request for an applicant or employee the employment service refers to a home health agency that also is such a waiver agency;

(4) A court, hearing officer, or other necessary individual involved in a case dealing with a civil or criminal action regarding Medicaid.

### **Deadline for BCII to send results of criminal records check**

Under prior law, the BCII Superintendent was required to provide the results of a criminal records check regarding home health agencies not later than 30 days after the date the Superintendent received a request for the criminal records check. The act increases the deadline to 60 days.

### **Collaboration on rules**

The act requires the ODH Director and the Directors of Aging, Developmental Disabilities, and Job and Family Services to collaborate with each other when adopting the initial rules to be adopted for the purpose of implementing provisions of the act regarding criminal records checks. In the collaboration, the Directors must strive to (1) balance the risk mitigation that the database reviews and criminal records checks to be conducted under those provisions are expected to realize with the costs of conducting the database reviews and criminal records checks and (2) make the policies established by the rules as similar as possible among ODH and the Departments of Aging, Developmental Disabilities, and Job and Family Services.

## **The Ohio Violent Death Reporting System**

(R.C. 3701.93 to 3701.9314)

Subject to available funds, the act requires the Director of Health to establish the Ohio Violent Death Reporting System to collect and maintain information, data, and records regarding violent deaths in Ohio.

### **Duties of the Reporting System**

Regarding the violent death information, data, and records it maintains, the Reporting System must do all of the following:

- (1) Monitor the incidence and causes of the various types of violent deaths;
- (2) Make appropriate epidemiologic studies of the violent deaths;
- (3) Analyze trends and patterns in, and circumstances related to, the violent deaths;



(4) With the assistance of the advisory group established by the Director under the act (see discussion below), recommend actions to relevant entities to prevent violent deaths and make any other such recommendations the Director determines necessary.

### **Data collection**

The act requires that the data collection model used by the Reporting System follow the data collection model used by the United States Centers for Disease Control and Prevention National Violent Death Reporting System and any other data collection model set forth by the Director in rules.

The act requires the Director to adopt rules in accordance with the Administrative Procedures Act that do all of the following:

(1) If determined appropriate by the Director, set forth any other data collection model to be used by the Reporting System;

(2) Specify the types of violent deaths that shall be included in the Reporting System;

(3) Specify the information, data, and records to be collected for use by the Reporting System;

(4) Specify the sources from which the information, data, and records are to be collected for use by the Reporting System.

The act also specifies that the Director is permitted to collect information about violent deaths in Ohio only from existing sources related to violent crimes and explicitly prohibits the Director from conducting independent criminal investigations in order to obtain information, data, or records for use by the Reporting System.

### **Data sharing**

The act requires that every state department, agency, and political subdivision in Ohio provide information, data, and records, and otherwise assist in the execution of the Reporting System at the request of the Director. Notwithstanding any section of the Revised Code pertaining to confidentiality, the act also specifically requires any individual, public social service agency, or public agency that provides services to individuals or families, law enforcement agency, coroner, or public entity that provided services to an individual whose death is a violent death, to provide information, data, records, and otherwise assist in the execution of the Reporting System.

Similarly, the act permits (but does not require) any other individual or entity, at the individual's or entity's discretion, to provide information, data, records, and



otherwise assist in the execution of the Reporting System at the request of the Director. Any information, data, and records provided to the Director by any other individual or entity must contain only information, data, or records that are available or reasonably drawn from any information, data, and record developed and kept in the normal course of business.

### **Confidentiality**

Except as otherwise provided for confidential information made available to researchers under the act, the following are not public records under the Public Record Law, they are confidential, and they are to be published only in statistical form:

(1) Information, data, and records collected for use and maintained by the Reporting System including, but not limited to, medical records, law enforcement investigative records, coroner investigative records, laboratory reports, and other records concerning a decedent;

(2) Work products created in carrying out the purposes of the Reporting System.

### **Researcher access to confidential information**

The act requires the Director to adopt rules in accordance with the Administrative Procedures Act to establish standards and procedures to make available to researchers confidential information collected by the Reporting System. Researchers complying with those standards and procedures also must comply with the act's confidentiality requirements described above.

### **Exemption from subpoena or discovery**

Information, data, and records collected for use and maintained by, and all work products created in carrying out the purposes of, the Reporting System are not subject to subpoena or discovery while in the possession of the Reporting System or admissible in any criminal or civil proceeding if obtained through, or from, the Reporting System.

### **Advisory group**

The act requires the Director to establish an advisory group of interested parties and stakeholders to recommend actions to relevant entities to prevent violent deaths and make other recommendations the Director determines necessary.

## **General rule-making authority**

The act permits the Director to adopt additional rules in accordance with the Administrative Procedures Act necessary to establish, maintain, and carry out the purposes of the Reporting System.

## **Certificate of Need Program**

(R.C. 3702.51, 3702.511, 3702.52, 3701.521 (repealed), 3702.522 (3702.521), 3702.523 (3702.522), 3702.524 (3702.523), 3702.525 (3702.524), 3702.526 (3702.525), 3702.526 (new), 3702.527 (new), 3702.5210 (repealed), 3702.5211 (repealed), 3702.5212 (repealed), 3702.5213 (repealed), 3702.53, 3702.531, 3702.54, 3702.55, 3702.56, 3702.57, 3702.58 (repealed), 3702.59, 3702.591 (repealed), 3702.592, 3702.593, 3702.594, 3702.60, and 3702.62; conforming changes in R.C. 1751.01, 1751.02, 1751.13, 3701.503, 3701.63, 3702.141, 3702.31, 3705.30, 3721.01, 3727.01, and 3781.112)

## **Certificate of need program applicable to long-term care facilities**

The act updates terms used in the certificate of need (CON) law to reflect that the program now applies only to long-term care facilities. Ohio has had a CON program since the late 1970s. Under the original program, a health care facility was permitted to conduct a "reviewable activity" only if a CON was approved by the Director of Health. Reviewable activities include such activities as building or renovating a facility or adding additional beds. CON requirements for hospital construction and many other activities related to health care facilities were phased out in the late 1990s, but an approved CON must still be obtained to construct, replace, or renovate a long-term care facility or to add or relocate long-term care beds.

## **CON applications**

The act specifies that the fee for a CON application, which is established by administrative rule, is nonrefundable unless the Director determines that the application cannot be accepted. It also specifies that the Director's determination that a CON application is not complete is final and not subject to appeal.

The act eliminates a provision allowing, and in some cases requiring, a community public informational hearing on a CON application. Under prior law, the Director was permitted to conduct this type of hearing and was required to do so at the request of an affected person made not later than 15 days after notice that the application was complete was mailed. The hearing had to be conducted in the community in which the activities authorized by the CON would be carried out, and any affected person was permitted to testify at the hearing. The Director was permitted to designate a health service agency to conduct the hearing.



The act also eliminates a requirement that the Director invite interested parties to a meeting or conference call that is requested by one or more people and is about a CON application.

With respect to comments regarding a CON application, the act requires the Director to consider all written comments received but eliminates the requirement that an administrative hearing be conducted under R.C. Chapter 119. on receipt of the comments. Under prior law, the Director was required to assign a hearing examiner to conduct an administrative hearing concerning a CON application whenever written objections to the application were received. The applicant, Director, and affected persons that filed objections were parties to the hearing, and the affected persons had the burden of proving by a preponderance of evidence that the project was not needed or that granting the CON would not be in accordance with the CON law.

### **Completion of a project to relocate beds**

The act modifies the requirements that must be met upon completion of a project under which beds are to be relocated after the granting of a CON. Under prior law, when a CON application was approved during the initial phase of a four-year review period, on completion of the project, that number of beds had to cease to be operated in the health care facility from which they were relocated. If the licensure or certification of those beds could not be or was not transferred to the facility to which the beds are relocated, the licensure or certification had to be surrendered.

In the act, these requirements are modified and applied to all projects that relocate beds, not just those in the initial phase of a four-year review period. The act requires all of the following:

--The end of operation of a number of beds in the long-term care facility equal to the number of beds relocated from the facility, except that the beds may continue to be operated for up to 15 days to allow relocation of residents to the facility to which the beds have been relocated;

--For beds in a nursing home licensed by the Director, the reduction of the license for beds in that facility by the number of licensed beds relocated (the reduction is to occur within 15 days of the relocation with no further action required by the Director);

--The surrender of the certification for any relocated beds that are certified under the Medicare or Medicaid program;

--For beds that are registered with ODH as skilled nursing beds or long-term care beds, removal of the beds from registration not later than 15 days after relocation.



## **CON appeals**

The act provides that the Director's determination that a CON has expired is final and not subject to appeal.

The act also provides that persons whose sole involvement with a CON application is testifying or submitting written comments on the application are not "affected persons" and therefore are no longer permitted to appeal a decision regarding the application.

## **Replacements CONs**

The act requires the Director to accept applications for replacement CONs under certain conditions. Replacement CONs are for any change in the bed capacity or site, or any other failure to conduct a reviewable activity in substantial accordance with the approved application for which a CON concerning long-term care beds was granted, if the change is made within five years after the implementation of the reviewable activity for which the CON was granted. The Director must accept the application if (1) the applicant is the same as the applicant for the approved CON or an affiliate or related person, (2) the source of any long-term care beds to be relocated is the same as in the approved CON, and (3) the application for the approved CON was not subject to comparative review.

For the purpose of determining whether long-term care beds are from an existing long-term care facility, the Director must consider the date of filing of the application for a replacement CON to be the same as the date of filing of the original application for the approved CON.

The Director must not accept an application for a replacement CON that proposes to increase the number of long-term care beds to be relocated specified in the application for the approved CON.

The act requires an applicant for a replacement CON to submit with the application a nonrefundable fee equal to the application fee for the approved CON.

Any long-term care beds that were approved in the approved CON remain approved in the application for a replacement CON. Upon approval of the application for a replacement CON, the original CON is automatically voided.

## **Review of applications for replacement or relocation of long-term beds**

The act modifies the process for reviewing applications for replacement or relocation of long-term beds from a county with excess beds to a county with fewer beds than needed.



It requires comparative review for some applications, rather than requiring comparative review for all applications as under prior law. Under the act, comparative review is required if two or more applications are submitted during the same review period and any of the following applies:

--The applications propose to relocate beds from the same county and the number of beds for which CONs are being requested totals more than the number of beds available in the county from which beds are to be relocated.

--The applications propose to relocate beds to the same county and the number of beds for which CONs are being requested totals more than the number of beds needed in the county to which the beds are to be relocated.

--The applications propose to relocate beds from the same service area and the number of beds left in the service area from which the beds are being relocated would be less than the state bed need rate determined by the Director.

The act permits a person who has submitted a bed replacement or relocation application that is not subject to comparative review to revise the site of the proposed project.

### **Review of applications for an increase in beds in an existing nursing home**

The act modifies requirements for the review of applications for an increase in beds in an existing nursing home to limit the increase to a total of no more than 30 beds for all applications combined. Once the cumulative total of beds relocated reaches 30, the act prohibits further applications from being accepted until the monitoring period expires.

### **Determination of long-term care bed supply**

The act requires the Director as part of the determination of long-term care bed supply to include beds in a hospital that are registered as skilled nursing beds, long-term care beds, or special skilled nursing beds.

### **Health system data**

The act eliminates requirements that the Director regularly conduct health system data collection and analysis activities for the CON program, prepare reports, and make recommendations to the Public Health Council based on these activities.



## **State health resources plan**

The act repeals a requirement that the Director issue, and annually review and revise, a state health resources plan. Prior law required this plan to include (1) a description of the optimal quantity and distribution of all health services, facilities, and other resources in this state, (2) a description of existing deficiencies in the health resources of this state, and (3) a description of excess health resources in this state.

## **Nursing home placement clearinghouses**

The act eliminates a provision requiring the Public Health Council to adopt rules authorizing creation of nursing home placement clearinghouses. Prior law authorized ODH to approve one or more clearinghouses. Some hospitals were required and all others permitted to utilize a nursing home placement clearinghouse prior to admitting a patient to a skilled nursing bed within the hospital and prior to keeping a patient in a skilled nursing bed within a hospital in excess of 30 days.

## **Health service areas**

The act repeals the requirement that the Director designate health service areas and health service agencies for each area and eliminates all requirements related to health service areas and health service agencies.

## **Technical and conforming changes**

The act eliminates CON provisions that are obsolete due to elapsed time periods or the resolution of pending cases. It also relocates the definitions of "health service," "health care facility," "osteopathic hospital," "children's hospital," and "freestanding birthing center" to Revised Code sections outside the CON law.

## **Vital statistics fees**

(R.C. 3109.14 and 3705.242)

The total fee for a certified copy of birth record, certification of birth, or copy of a death record includes a \$3 portion, which benefits the Children's Trust Fund, and a \$1.50 portion, which benefits the Family Violence Prevention Fund. Under prior law, a local commissioner of health or a local registrar of vital statistics who collects the total fee may retain up to 3% of each of those portions and use the retained amounts for costs directly related to the collection of the fees for the respective funds and the forwarding of those fees to the Treasurer of State. Not later than 30 days following the end of each calendar quarter, a local commissioner or local registrar was then required to forward directly to the Treasurer the amounts collected but not retained for the particular quarter.



The act instead requires a local commissioner or local registrar to forward to ODH (as opposed to the Treasurer) the portions of the fees collected and not retained. As under prior law, the act requires such fees to be forwarded not later than 30 days following the end of each calendar quarter. Not later than two days after the fees are forwarded, ODH must pay to the Treasurer all fees it collects as described above from each local commissioner and local registrar (in addition to all fees the ODH Director charges and collects for the same purpose) in accordance with rules the Treasurer adopts under continuing law.

### **Nursing homes' social worker staff requirements**

(R.C. 3721.04)

The act establishes restrictions and requirements the ODH Director must follow when adopting rules regarding the number and qualifications of personnel in nursing homes or rules regarding social services to be provided by nursing homes. The act prohibits the rules from prescribing the number of individuals licensed as social workers that a nursing home with 120 or fewer beds must employ. The rules must require each nursing home with more than 120 beds to employ on a full-time basis one individual licensed as a social worker. The rules also must require each nursing home to offer its residents medically related social services that assist the residents in attaining or maintaining their highest practicable physical, mental, and psychosocial well-being.

### **Radiation Control Program late fees**

(R.C. 3748.04, 3748.07, 3748.12, and 3748.13)

The act decreases the penalty for late payment of a fee charged by ODH under the Radiation Control Program. Under the act, the late fee is an additional 10% of the original fee when the fee remains unpaid on the 91st day after the invoice date. Previously, when fees were not paid timely by a generator of low-level radioactive waste or handler of radiation-generating equipment, the fees were assessed as follows: (1) two times the original fee if not paid within 90 days (a penalty of an additional 100% of the original fee), and (2) five times the original fee if not paid within 180 days (a penalty of an additional 400% of the original fee).

### **Legislative Committee on Public Health Futures**

(Section 737.91)

The act establishes the Legislative Committee on Public Health Futures to review the expected June 2012 report of the Futures Committee of the Ohio Association of



Health Commissioners and, on the basis of its review, to recommend legislative and fiscal policies that would improve local public health services in Ohio.

The act requires the Legislative Committee, not later than October 31, 2012, to prepare a report that describes its review of the Future Committee's report, and that states, and provides explanations of, its policy recommendations. The Legislative Committee must transmit a copy of its report to the Governor, the President and Minority Leader of the Senate, and the Speaker and Minority Leader of the House of Representatives for consideration as part of the operating budget for fiscal years 2014 and 2015. Upon transmitting its report, the Legislative Committee ceases to exist.

The act specifies that the Legislative Committee is to be comprised of legislative members and of members representing various associations concerned with public health. Each of the following associations is required to appoint one individual to the Legislative Committee: the County Commissioners Association of Ohio, the Ohio Township Association, the Department of Health, the Ohio Public Health Association, the Ohio Environmental Health Association, the Ohio Boards of Health Association, the Ohio Municipal League, and the Ohio Hospital Association. The Association of Ohio Health Commissioners must appoint two individuals to the Legislative Committee. The President and Minority Leader of the Senate each must appoint two members to the Legislative Committee. The Speaker and Minority Leader of the House of Representatives each must appoint two members to the Legislative Committee. Of the two appointments made by each legislative leader, one must be a member of the General Assembly from the appointing member's chamber. The act requires that appointments to the Legislative Committee be made as soon as possible but not later than October 10, 2012. Vacancies on the Legislative Committee must be filled in the same manner as the original appointment.

As soon as all members have been appointed to the Legislative Committee, the President of the Senate must fix a time and place for the committee to hold its first meeting. At that meeting, the committee must elect from among its membership a chairperson, a vice-chairperson, and a secretary.

The act requires the Director of Health to provide the Legislative Committee with meeting and office space, equipment, and professional, technical, and clerical staff as are necessary to enable the Legislative Committee successfully to complete its work.



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## OFFICE OF HEALTH TRANSFORMATION (OHT)

### Health transformation initiatives and operating protocols for state agencies

- Authorizes the Executive Director of the Office of Health Transformation or the Director's designee to facilitate the coordination of operations and exchange of information between certain state agencies.
- Requires the Executive Director or designee to identify each health transformation initiative in Ohio that involves the participation of two or more state agencies and that permits or requires an interagency agreement to be entered into for purposes of specifying each participating agency's role in the initiative or facilitating the exchange of data or other information for the initiative.
- For each identified health transformation initiative, requires the Executive Director or designee to adopt, in consultation with each participating agency, one or more operating protocols for the initiative.
- Specifies that provisions in an operating protocol supersede any conflicting provisions in an interagency agreement.
- Specifies certain terms an operating protocol is required and permitted to include.
- Specifies that an operating protocol has the same force and effect as an interagency agreement or data sharing agreement, and requires each participating agency to comply with it.
- Requires the Director of Job and Family Services to determine whether federal approval under the Medicaid program is necessary to fulfill the act's requirements and to apply for the approval if necessary.

### Exchange of information by state agencies

- Authorizes participating state agencies to exchange protected health information with each other relating to eligibility for or enrollment in a health plan or relating to participation in a government program providing public benefits if the exchange of information is necessary for operating a health plan or coordinating, or improving the administration or management of, the health care-related functions of at least one government program providing public benefits.
- Authorizes, during fiscal year 2013, a participating state agency to exchange personally identifiable information for purposes related to and in support of an identified health transformation initiative.



- Imposes certain conditions on a participating agency's use or disclosure of personally identifiable information.

## **Health information exchanges**

### **Covered entities' use and disclosure of protected health information**

- Establishes in state law certain requirements of federal regulations known as the HIPAA Privacy Rule regarding a covered entity's use and disclosure of protected health information.
- Specifies that any state or local requirement that conflicts with the act's requirements, or that conflicts with other provisions of the act pertaining to confidentiality, privacy, security, or privileged status of protected health information, is generally unenforceable.
- Specifies that a covered entity may disclose protected health information to an approved health information exchange without valid authorization from the individual who is the subject of the information or the individual's personal representative only if certain conditions are satisfied.
- Specifies that a covered entity that accesses protected health information from or through an approved health information exchange or discloses protected health information to an approved exchange in a manner that complies with the act is not liable in a civil action and not subject to criminal prosecution for or professional disciplinary action arising out of or relating to the access or disclosure.
- Specifies that an approved health information exchange is immune from civil liability and not subject to criminal prosecution arising out of or related to a covered entity's disclosure of protected health information to the exchange, or use of protected health information accessed from the exchange, if the disclosure or use is in conformance with the act.

### **Standard authorization form for information use and disclosure**

- Requires the Director of Job and Family Services, in consultation with the Office of Health Transformation, to adopt rules prescribing a standard authorization form meeting federal requirements for the use and disclosure of protected health information and substance abuse records.
- Requires that the standard authorization form be accepted by any person or governmental entity in Ohio as valid authorization for the use or disclosure of protected health information and substance abuse records to the persons or governmental entities specified in the form.



- Specifies that the act does not preclude a form other than a standard authorization form from being accepted as valid authorization for the use or disclosure of protected health information and substance abuse records in Ohio if the other form meets all federal requirements.

### **Approval of exchanges**

- Authorizes the Director of Job and Family Services, in consultation with the Office of Health Transformation, to adopt rules establishing standards the Director must use to approve health information exchanges operating in Ohio and for other purposes related to approved health information exchanges.
- Requires the rules to be consistent with certification standards for health information exchanges established in federal statutes and regulations, including nationally recognized standards for interoperability.
- Delays adoption of the rules until the earlier of (1) 60 days following the adoption of a federal certification process for health information exchanges or (2) January 1, 2013.

### **Identification of health transformation initiatives**

(R.C. 191.06(A) to (C))

During fiscal year 2013, the act authorizes the Executive Director of the Office of Health Transformation or the Director's designee to facilitate the coordination of operations and exchange of information between state agencies.<sup>86</sup> The act specifies that the purpose of this authority is to support agency collaboration for health transformation purposes, including modernization of the Medicaid program, streamlining of health and human services programs in Ohio, and improving the quality, continuity, and efficiency of health care and health care support systems in Ohio.

In furtherance of the Executive Director's authority, the Director or designee must identify each health transformation initiative in Ohio that involves the

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<sup>86</sup> The act defines "state agency" as each of the following: Department of Aging, Department of Alcohol and Drug Addiction Services, Department of Development, Department of Developmental Disabilities, Department of Education, Department of Health, Department of Insurance, Department of Job and Family Services, Department of Mental Health, Department of Rehabilitation and Correction, Department of Taxation, Department of Veterans Services, and Department of Youth Services (R.C. 191.01(H)).



participation of two or more state agencies and that permits or requires an interagency agreement to be entered into for the purposes of specifying each participating agency's role in coordinating, operating, or funding the initiative, or facilitating the exchange of data or other information for the initiative. The act requires the Executive Director to publish a list of the identified health transformation initiatives on the Internet web site maintained by the Office of Health Transformation.

## **Operating protocols for the initiatives**

### **Adoption of the protocols**

(R.C. 191.06(D))

For each health transformation initiative that is identified as described above, the Executive Director of the Office of Health Transformation or a designee must, in consultation with each participating agency, adopt one or more operating protocols. The act specifies that notwithstanding any statute or rule adopted by a state agency, the provisions in a protocol supersede any provisions in an interagency agreement. These include statutes that authorize the Director of Job and Family Services to enter into (1) contracts or agreements with public and private entities<sup>87</sup> and (2) contracts to have one or more other state agencies or political subdivisions administer one or more components of the Medicaid program.<sup>88</sup>

### **Operating protocol contents**

(R.C. 191.06(E))

An operating protocol that is adopted as described above must include both of the following: (1) all terms necessary to meet the requirements of "other arrangements" between a covered entity and a business associate that are referenced in a provision of the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule,<sup>89</sup> and (2) if known, the date on which the protocol will terminate or expire.

In addition, the act permits a protocol to specify the extent to which each participating agency is responsible and accountable for completing the tasks necessary for successful completion of the initiative, including tasks related to the following components of the initiative: workflow, funding, and exchange of data or other information that is confidential pursuant to state or federal law.

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<sup>87</sup> R.C. 5101.10 (not in the act).

<sup>88</sup> R.C. 5111.91 (not in the act).

<sup>89</sup> 45 C.F.R. 164.314(a)(2)(ii).



## **Status of and compliance with an operating protocol**

(R.C. 191.06(F))

The act specifies that an operating protocol has the same force and effect as an interagency agreement or data sharing agreement, and each participating agency must comply with it.

## **Medicaid waiver or state plan amendment**

(R.C. 191.06(G))

The act requires the Director of Job and Family Services to determine whether a waiver of federal Medicaid requirements or a Medicaid state plan amendment is necessary to fulfill the act's provisions on operating protocols. If the Director determines a waiver or amendment is necessary, the Director must apply for it to the U.S. Secretary of Health and Human Services.

## **Exchange of protected health information and personally identifiable information related to and in support of health transformation initiatives**

### **Identification of government programs providing public benefits**

(R.C. 191.02)

The act requires the Executive Director of the Office of Health Transformation, in consultation with all of the following individuals, to identify each government program administered by a state agency that is to be considered a "government program providing public benefits" for purposes of the act's provision governing the authority of state agencies to exchange protected health information with each other (as described below): Director of Aging, Director of Alcohol and Drug Addiction Services, Director of Development, Director of Developmental Disabilities, Director of Health, Director of Job and Family Services, Director of Mental Health, Director of Rehabilitation and Correction, Director of Veterans Services, Director of Youth Services, Administrator of the Rehabilitation Services Commission, Administrator of Workers' Compensation, Superintendent of Insurance, Superintendent of Public Instruction, and Tax Commissioner.



## **Exchange of protected health information**

(R.C. 191.04(A))

The act authorizes a state agency to exchange protected health information with another state agency relating to eligibility for or enrollment in a health plan<sup>90</sup> or relating to participation in a government program providing public benefits if the exchange of information is necessary for either or both of the following:

- (1) Operating a health plan;
- (2) Coordinating, or improving the administration or management of, the health care-related functions of at least one government program providing public benefits.

The exchange of protected health information must be in accordance with federal laws governing the confidentiality of individually identifiable health information. These laws include HIPAA and regulations promulgated to implement HIPAA.

## **Exchange of personally identifiable information**

(R.C. 191.04(B))

For fiscal year 2013 only, the act permits a state agency to exchange personally identifiable information<sup>91</sup> with another state agency for purposes related to and in support of an identified health transformation initiative (see "**Identification of health transformation initiatives**," above).

## **Conditions for the use or disclosure of personally identifiable information**

(R.C. 191.04(C))

With respect to a state agency that uses or discloses personally identifiable information, the act specifies that all of the following conditions apply:

- (1) The state agency must use or disclose the information only as permitted or required by state and federal law. In addition, if the information is obtained during fiscal year 2013 from an exchange of personally identifiable information permitted by

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<sup>90</sup> "Health plan" is defined in federal regulations (45 Code of Federal Regulations 160.103) as an individual or group plan that provides, or pays the cost of, medical care (as defined in section 2791(a)(2) of the Public Health Services Act, 42 United States Code 300gg-91(a)(2)).

<sup>91</sup> The act defines "personally identifiable information" as information that meets both of the following criteria: (1) it identifies an individual or there is reasonable basis to believe that it may be used to identify an individual, and (2) it relates to an individual's eligibility for, application for, or receipt of public benefits from a government program providing public benefits (R.C. 191.01(G)).

the act as described above, the agency must also use or disclose the information in accordance with all operating protocols that apply to the use or disclosure.

(2) If the state agency is other than the Ohio Department of Job and Family Services (ODJFS) and it uses and discloses protected health information that is related to a Medicaid recipient and obtained from ODJFS or another agency operating a component of the Medicaid program, the agency must also comply with all state and federal laws that apply to ODJFS when it, as Ohio's single state agency to supervise the Medicaid program, uses or discloses protected health information.

(3) A state agency must implement administrative, physical, and technical safeguards<sup>92</sup> for the purpose of protecting the confidentiality,<sup>93</sup> integrity,<sup>94</sup> and availability<sup>95</sup> of personally identifiable information the creation, receipt, maintenance, or transmittal of which is affected or governed by conditions the act imposes on state agencies that use or disclose personally identifiable information.

(4) If a state agency discovers an unauthorized use or disclosure of unsecured protected health information or unsecured individually identifiable health information, the state agency must, not later than 72 hours after the discovery, do all of the following:

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<sup>92</sup> "Administrative, physical, and technical safeguards" are defined in federal regulations (45 C.F.R. 164.304):

--"Administrative safeguards" are administrative actions, and policies and procedures, to manage the selection, development, implementation, and maintenance of security measures to protect electronic protected health information and to manage the conduct of the covered entity's workforce in relation to the protection of that information.

--"Physical safeguards" are physical measures, policies, and procedures to protect a covered entity's electronic information systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion.

--"Technical safeguards" are the technology and the policy and procedures for its use that protect electronic protected health information and control access to it.

<sup>93</sup> "Confidentiality" is defined in federal regulations (45 C.F.R. 164.304) as the property that data or information is not made available or disclosed to unauthorized persons or processes.

<sup>94</sup> "Integrity" is defined in federal regulations (45 C.F.R. 164.304) as the property that data or information have not been altered or destroyed in an unauthorized manner.

<sup>95</sup> "Availability" is defined in federal regulations (45 C.F.R. 164.304) as the property that data or information is accessible and useable upon demand by an authorized person.



(a) Identify the individuals who are the subject of the protected health information or individually identifiable health information;<sup>96</sup>

(b) Report the discovery and the names of all individuals identified as described above to all other state agencies and the Executive Director of the Office of Health Transformation or the Director's designee;

(c) Mitigate, to the extent reasonably possible, any potential adverse effects of the unauthorized use or disclosure.

(5) A state agency must make available to the Executive Director or designee, and to any other state or federal governmental entity required by law to have access on that entity's request, all internal practices, records, and documentation relating to personally identifiable information it receives, uses, or discloses that is affected or governed by conditions the act imposes on state agencies that use or disclose personally identifiable information.

(6) On termination or expiration of an operating protocol and if feasible, a state agency must return or destroy all personally identifiable information received directly from or received on behalf of another state agency. If the personally identifiable information is not returned or destroyed, the state agency maintaining the information must extend the protections described above for as long as it is maintained.

(7) If a state agency enters into a subcontract or, when required by federal regulations,<sup>97</sup> a business associate agreement, the subcontract or agreement must require the subcontractor or business associate to comply with the act's provisions discussed above as if the subcontractor or business associate were a state agency.

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<sup>96</sup> "Protected health information" is defined in federal regulations (45 C.F.R. 160.103) generally as individually identifiable health information that is transmitted or maintained in electronic media or any other form or medium. "Individually identifiable health information" (also defined in federal regulations (45 C.F.R. 160.103)) is health information, including demographic information collected from an individual, that meets all of the following criteria: (1) it is created or received by a health care provider, a health plan, an employer, or a health care clearinghouse, (2) it relates to (a) the past, present, or future physical or mental health or condition of an individual, (b) the provision of health care to an individual, or (c) the past, present, or future payment for the provision of health care to an individual, and (3) it identifies the individual, or there is reasonable basis to believe it could be used to identify the individual.

<sup>97</sup> 45 C.F.R. 164.502(e)(2).

## Use and disclosure of protected health information by covered entities

(R.C. 3798.03 and 3798.04)

### Overview

The act generally enacts provisions in state law (1) requiring covered entities<sup>98</sup> to comply with requirements established by the HIPAA Privacy Rule, and (2) prohibiting covered entities from violating prohibitions established by the HIPAA Privacy Rule. According to the U.S. Department of Health and Human Services, the HIPAA Privacy Rule, otherwise known as the "standards for privacy of individually identifiable health information," provides federal protections for personal health information held by covered entities and gives patients an array of rights with respect to that information while at the same time permitting the disclosure of personal health information needed for patient care and other important purposes.<sup>99</sup>

### Requirements

With respect to protected health information, the act requires a covered entity to do both of the following:

(1) If an individual's protected health information<sup>100</sup> is maintained by the covered entity in a designated record set,<sup>101</sup> provide the individual or the individual's

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<sup>98</sup> "Covered entity" is defined in federal regulations (45 C.F.R. 160.103) as a health plan, a health care clearinghouse, or a health care provider who transmits any health information in electronic form in connection with a transaction covered by the HIPAA Privacy Rule.

<sup>99</sup> U.S. Department of Health and Human Services, *Understanding Health Information Privacy* (last visited May 25, 2012), accessible at <<http://www.hhs.gov/ocr/privacy/hipaa/understanding/index.html>>.

<sup>100</sup> "Protected health information" is defined in federal regulations (45 C.F.R. 160.103) generally as individually identifiable health information that is transmitted or maintained in electronic media or any other form or medium. "Individually identifiable health information" (also defined in federal regulations (45 C.F.R. 160.103)) is health information, including demographic information collected from an individual, that meets all of the following criteria: (1) it is created or received by a health care provider, a health plan, an employer, or a health care clearinghouse, (2) it relates to (a) the past, present, or future physical or mental health or condition of an individual, (b) the provision of health care to an individual, or (c) the past, present, or future payment for the provision of health care to an individual, and (3) it identifies the individual, or there is reasonable basis to believe it could be used to identify the individual.

<sup>101</sup> "Designated record set" is defined in federal regulations (45 C.F.R. 164.501) as (1) a group of records maintained by or for a covered entity that is: (a) the medical records and billing records about individuals maintained by or for a covered health care provider, (b) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan, or (c) used, in whole or in part, by or for the covered entity to make decisions about individuals.



representative with access to that information in a manner consistent with a specified provision of the HIPAA Privacy Rule.<sup>102</sup>

(2) Implement and maintain appropriate administrative, technical, and physical safeguards to protect the privacy of protected health information in a manner consistent with a specified provision of the HIPAA Privacy Rule.<sup>103</sup>

The act provides that if a covered entity is a hybrid entity,<sup>104</sup> the requirements apply only to the health care component<sup>105</sup> of the hybrid entity.

### **Prohibitions in general**

With respect to protected health information, the act prohibits a covered entity from doing either of the following:

(1) Using or disclosing protected health information without patient authorization that is valid pursuant to a specified provision of the HIPAA Privacy Rule<sup>106</sup> and, if applicable, federal regulations governing the use and disclosure of substance abuse records,<sup>107</sup> except when the use or disclosure is required or permitted without such authorization by specified provisions of the HIPAA Privacy Rule<sup>108</sup> and, if applicable, federal regulations governing the use and disclosure of substance abuse records;<sup>109</sup>

(2) Using or disclosing protected health information in a manner not consistent with a specified provision of the HIPAA Privacy Rule.<sup>110</sup>

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<sup>102</sup> 45 C.F.R. 164.524.

<sup>103</sup> 45 C.F.R. 164.530(c).

<sup>104</sup> "Hybrid entity" is defined in federal regulations (45 C.F.R. 164.103) as a single legal entity: (1) that is a covered entity, (2) whose business activities include both covered and non-covered functions, and (3) that designates health care components in accordance with 45 C.F.R. 164.105(a)(2)(iii)(C).

<sup>105</sup> "Health care component" is defined in federal regulations (45 C.F.R. 164.103) as a component or combination of components of a hybrid entity designated by the hybrid entity in accordance with 45 C.F.R. 164.105(a)(2)(iii)(C).

<sup>106</sup> 45 C.F.R. 164.508.

<sup>107</sup> 42 C.F.R. part 2.

<sup>108</sup> Subchapter C of Subtitle A of Title 45 of the C.F.R.

<sup>109</sup> 42 C.F.R. part 2.

<sup>110</sup> 45 C.F.R. 164.502.



## Health information exchanges

### Prohibition related to disclosure

The act prohibits a covered entity from disclosing protected health information to a health information exchange<sup>111</sup> without an authorization that is valid under a specified provision of the HIPAA Privacy Rule<sup>112</sup> unless, as described above, disclosure without authorization is required or permitted by the HIPAA Privacy Rule or all of the following are true:

(1) The disclosure is to a health information exchange approved under the act (described below).

(2) The covered entity is a party to a valid participation agreement with the approved health information exchange that meets the requirements in rules to be adopted under the act.

(3) The disclosure is consistent with all procedures established by the approved health information exchange.

(4) Prior to the disclosure, the covered entity furnishes to the individual or the individual's personal representative<sup>113</sup> a written notice that complies with rules to be adopted under the act.

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<sup>111</sup> The act defines "health information exchange" as any person or governmental entity that provides in Ohio a technical infrastructure to connect computer systems or other electronic devices used by covered entities to facilitate the secure transmission of health information. The act specifies that the term excludes health care providers engaged in direct exchange, including direct exchange through the use of a health information service provider. "Direct exchange" is defined as the activity of electronic transmission of health information through a direct connection between the electronic record systems of health care providers without the use of a health information exchange.

<sup>112</sup> 45 C.F.R. 164.508.

<sup>113</sup> The act defines a "personal representative" as a person who has authority under applicable law to make decisions related to health care on behalf of an adult or emancipated minor, or the parent, legal guardian, or other person acting *in loco parentis* who is authorized under law to make health care decisions on behalf of an unemancipated minor. "Personal representative" does not, however, include the parent or legal guardian of, or another person acting *in loco parentis* to, a minor who consents to the minor's own receipt of health care or a minor who makes medical decisions on the minor's own behalf pursuant to law, court approval, or because the minor's parent, legal guardian, or other person acting *in loco parentis* has assented to an agreement of confidentiality between the provider and the minor (R.C. 3798.01(K)).



## Conditions related to disclosure

In addition to a covered entity being subject to the conditions described in (1) to (4), above, the act specifies that a covered entity is also subject to the following conditions when it discloses protected health information to a health information exchange:

(1) The covered entity must restrict disclosure consistent with all applicable federal laws governing the disclosure.

(2) If the protected health information concerns a minor,<sup>114</sup> the covered entity must restrict disclosure in a manner that complies with Ohio laws pertaining to the circumstances under which a minor may consent to the minor's own receipt of health care or make medical decisions on the minor's own behalf, including circumstances when a minor is examined following sexual assault,<sup>115</sup> diagnosed or treated for venereal diseases,<sup>116</sup> diagnosed or treated for substance abuse,<sup>117</sup> provided medical care while incarcerated in a state correctional facility for one or more adult offenses,<sup>118</sup> provided outpatient mental health services that exclude the use of medication,<sup>119</sup> or required to make a decision regarding the minor's receipt of a service or participation in a program provided for or funded by the Ohio Department of Developmental Disabilities or a county board of developmental disabilities.<sup>120</sup>

(3) The covered entity must restrict disclosure in a manner that is consistent with a written request from the individual or the individual's personal representative to restrict disclosure of all of the individual's protected health information.

(4) The covered entity must restrict disclosure in a manner that is consistent with a written request from the individual or the individual's personal representative concerning specific categories of protected health information to the extent that rules to be adopted under the act require the covered entity to comply with such a request.

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<sup>114</sup> The act requires the Director of Job and Family Services to adopt rules specifying the criteria a person who is mentally or physically disabled and who is under 21 years of age must meet to be considered a "minor" under the act's provisions governing the use and disclosure of protected health information (R.C. 3798.13).

<sup>115</sup> R.C. 2907.29.

<sup>116</sup> R.C. 3709.241.

<sup>117</sup> R.C. 3719.012.

<sup>118</sup> R.C. 5120.172.

<sup>119</sup> R.C. 5122.04.

<sup>120</sup> R.C. 5126.043 (as amended by the act).



The act specifies that the conditions described above do not render unenforceable or restrict in any manner any of the following:

(1) A provision of Ohio law that on September 10, 2012 (the act's 90-day effective date) requires a person or governmental entity to disclose protected health information to a state agency, political subdivision, or other governmental entity;

(2) The confidential status of proceedings and records within the scope of a peer review committee of a health care entity, as described in R.C. 2305.252;

(3) The confidential status of quality assurance program activities and quality assurance records relating to the hospitalization of mentally ill persons, as described in R.C. 5122.32;

(4) The testimonial privilege, established by R.C. 2317.02(B), that applies to communications between a physician or dentist and a patient;

(5) Any of the following items that govern the confidentiality, privacy, security, or privileged status of protected health information in the possession or custody of an agency:<sup>121</sup>

(a) A section of Ohio law not in the act's provisions regarding use and disclosure of protected health information by covered entities (R.C. Chapter 3798.);

(b) A rule as defined by the Administrative Procedure Act;<sup>122</sup>

(c) An internal management rule;<sup>123</sup>

(d) Guidance issued by an agency;

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<sup>121</sup> The act specifies that an "agency" is any governmental entity of the state and includes, but is not limited to, any board, department, division, commission, bureau, society, council, institution, state college or university, community college district, technical college district, or state community college. "Agency" does not, however, include the General Assembly, the Controlling Board, the Adjutant General's Department, or any court (R.C. 111.15).

<sup>122</sup> R.C. 119.01 defines a rule as any rule, regulation, or standard, having a general and uniform operation, adopted, promulgated, and enforced by any agency under the authority of the laws governing such agency, and includes an appendix to a rule. "Rule" does not include any internal management rule of an agency unless the internal management rule affects private rights and does not include any guideline adopted pursuant to R.C. 3301.0714 for a statewide education management information system.

<sup>123</sup> R.C. 111.15 defines an internal management rule as any rule, regulation, bylaw, or standard governing the day-to-day staff procedures and operations within an agency.



- (e) Orders or regulations of a board of health of a city health district;<sup>124</sup>
- (f) Orders or regulations of a board of health of a general health district;<sup>125</sup>
- (g) An ordinance or resolution adopted by a political subdivision;<sup>126</sup>
- (h) A professional code of ethics;

(i) When a minor is authorized to consent to the minor's own receipt of health care or make medical decisions on the minor's own behalf, including the circumstances when a minor is examined following sexual assault,<sup>127</sup> diagnosed or treated for venereal diseases,<sup>128</sup> diagnosed or treated for substance abuse,<sup>129</sup> provided medical care while incarcerated in a state correctional facility for one or more adult offenses,<sup>130</sup> provided outpatient mental health services that exclude the use of medication,<sup>131</sup> or required to make a decision regarding the minor's receipt of a service or participation in a program provided for or funded by the Ohio Department of Developmental Disabilities or a county board of developmental disabilities.<sup>132</sup>

## **Immunity**

(R.C. 3798.08)

The act specifies that a covered entity that accesses protected health information from or through an approved health information exchange or discloses protected health information to such an exchange in a manner that complies with the conditions discussed above and is not in violation of the prohibition discussed above is not liable in a civil action and is not subject to criminal prosecution or professional disciplinary action arising out of or relating to the access or disclosure.

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<sup>124</sup> R.C. 3709.20.

<sup>125</sup> R.C. 3709.21.

<sup>126</sup> The act defines a "political subdivision" as a municipal corporation, township, county, school district, or other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state (R.C. 3798.01(L)).

<sup>127</sup> R.C. 2907.29.

<sup>128</sup> R.C. 3709.241.

<sup>129</sup> R.C. 3719.012.

<sup>130</sup> R.C. 5120.172.

<sup>131</sup> R.C. 5122.04.

<sup>132</sup> R.C. 5126.043 (as amended by the act).

The act also specifies that an approved health information exchange is not liable in a civil action and not subject to criminal prosecution arising out of or relating to either of the following:

(1) A covered entity's having accessed protected health information from or through an approved health information exchange;

(2) A covered entity's disclosure of protected health information to the approved health information exchange if the disclosure complies with the conditions discussed above and is not in violation of the prohibition discussed above.

### **Supremacy of act's provisions**

(R.C. 3798.12)

Subject to certain exceptions discussed below, the act specifies that any of the following pertaining to the confidentiality, privacy, security, or privileged status of protected health information transacted, maintained in, or accessed through a health information exchange is unenforceable if it conflicts with the act's provisions pertaining to the use and disclosure of protected health information and approved health information exchanges (R.C. Chapter 3798.):

(1) A section of Ohio law not in the act's provisions regarding use and disclosure of protected health information by covered entities (R.C. Chapter 3798.);

(2) A rule as defined by the Administrative Procedure Act;<sup>133</sup>

(3) An internal management rule;<sup>134</sup>

(4) Guidance issued by an agency;<sup>135</sup>

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<sup>133</sup> R.C. 119.01 defines a rule as any rule, regulation, or standard, having a general and uniform operation, adopted, promulgated, and enforced by any agency under the authority of the laws governing such agency, and includes an appendix to a rule. "Rule" does not include any internal management rule of an agency unless the internal management rule affects private rights and does not include any guideline adopted pursuant to R.C. 3301.0714 for a statewide education management information system.

<sup>134</sup> R.C. 111.15 defines an internal management rule as any rule, regulation, bylaw, or standard governing the day-to-day staff procedures and operations within an agency.

<sup>135</sup> The act specifies that an "agency" is any governmental entity of the state and includes, but is not limited to, any board, department, division, commission, bureau, society, council, institution, state college or university, community college district, technical college district, or state community college. "Agency" does not, however, include the General Assembly, the Controlling Board, the Adjutant General's Department, or any court (R.C. 111.15).



- (5) Orders or regulations of a board of health of a city health district;<sup>136</sup>
- (6) Orders or regulations of a board of health of a general health district;<sup>137</sup>
- (7) An ordinance or resolution adopted by a political subdivision;<sup>138</sup>
- (8) A professional code of ethics.

### **Exceptions**

The act specifies that, notwithstanding the general supremacy of its provisions, the act does not render unenforceable or restrict in any manner any of the following:

- (1) A provision of the Revised Code that on September 10, 2012 (the act's 90-day effective date) requires a person or governmental entity to disclose protected health information to a state agency,<sup>139</sup> political subdivision, or other government entity;
- (2) The confidential status of proceedings and records within the scope of a peer review committee of a health care entity;<sup>140</sup>
- (3) The confidential status of quality assurance program activities and quality assurance records;<sup>141</sup>
- (4) The testimonial privilege between a physician or dentist and a patient;<sup>142</sup>

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<sup>136</sup> R.C. 3709.20.

<sup>137</sup> R.C. 3709.21.

<sup>138</sup> The act defines a "political subdivision" as a municipal corporation, township, county, school district, or other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state (R.C. 3798.01(L)).

<sup>139</sup> The act defines "state agency" as any one or more of the following: the Department of Aging; the Department of Alcohol and Drug Addiction Services; the Department of Developmental Disabilities; the Department of Education; the Department of Health; the Department of Insurance; the Department of Job and Family Services; the Department of Mental Health; the Department of Rehabilitation and Correction; the Department of Youth Services; the Bureau of Workers' Compensation; the Rehabilitation Services Commission; the Office of the Attorney General; or a health care licensing board created under Title 47 of the Revised Code that possesses individually identifiable health information (see footnote above for definition of "individually identifiable health information").

<sup>140</sup> R.C. 2305.252.

<sup>141</sup> R.C. 5122.32.

<sup>142</sup> R.C. 2317.02(B).



(5) A statute, rule, or other provision described above (see "**Supremacy of act's provisions**") that governs any of the following: (a) the confidentiality, privacy, security, or privileged status of protected health information in the possession or custody of an agency, (b) the process for obtaining from a patient consent to the provision of health care or consent for participation in medical or other scientific research, (c) the process for determining whether an adult has a physical or mental impairment or an adult's capacity to make health care decisions for purposes of the law governing county boards of developmental disabilities (R.C. Chapter 5126.), or (d) the process for determining whether a minor has been emancipated;

(6) When a minor<sup>143</sup> is authorized to consent to the minor's own receipt of health care or make medical decisions on the minor's own behalf, including circumstances when a minor is examined following sexual assault,<sup>144</sup> diagnosed or treated for venereal diseases,<sup>145</sup> diagnosed or treated for substance abuse,<sup>146</sup> provided medical care while incarcerated in a state correctional facility for one or more adult offenses,<sup>147</sup> provided outpatient mental health services that exclude the use of medication,<sup>148</sup> or required to make a decision regarding the minor's receipt of a service or participation in a program provided for or funded by the Ohio Department of Developmental Disabilities or a county board of developmental disabilities.<sup>149</sup>

### **Rules – standards to approve the exchanges**

(R.C. 3798.14)

The act requires the Director of Job and Family Services, in consultation with the Office of Health Transformation, to adopt rules in accordance with the Administrative Procedure Act for the purpose of establishing standards the Director must use to approve health information exchanges operating in Ohio. The rules may not be adopted until the earlier of 60 days following the adoption of a federal certification process for health information exchanges by the Office of the National Coordinator for

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<sup>143</sup> The act requires the Director of Job and Family Services to adopt rules for purposes of specifying the criteria a person who is mentally or physically disabled and who is under 21 years of age must meet to be considered a "minor" for purposes of the act's provisions governing the use and disclosure of protected health information – R.C. 3798.06 and 3798.12 (R.C. 3798.13).

<sup>144</sup> R.C. 2907.29.

<sup>145</sup> R.C. 3709.241.

<sup>146</sup> R.C. 3719.012.

<sup>147</sup> R.C. 5120.172.

<sup>148</sup> R.C. 5122.04.

<sup>149</sup> R.C. 5126.043 (as amended by the act).



Health Information Technology in the U.S. Department of Health and Human Services or January 1, 2013. The rules must be consistent with certification standards for health information exchanges established in federal statutes and regulations, including nationally recognized standards for interoperability,<sup>150</sup> and may include standards and procedures to be followed by a health information exchange regarding the following:

- (1) Access to and use and disclosure of protected health information maintained by or on an approved health information exchange;
- (2) Demonstration of adequate financial resources to sustain continued operations in compliance with the rules the Director adopts;
- (3) Participation in outreach activities for individuals and covered entities;
- (4) Conduct of operations in a transparent manner to promote consumer confidence;
- (5) Implementation of security breach notification procedures.

#### **Rules – processes for various exchange functions**

(R.C. 3798.15)

The act requires the Director of Job and Family Services, in consultation with the Office of Health Transformation, to adopt rules in accordance with the Administrative Procedure Act for the purpose of establishing processes for all of the following:

- (1) A health information exchange to obtain approval to operate as an approved health information exchange in Ohio and, at times specified by the Director, obtain reapproval of such status;
- (2) The Director to investigate and resolve concerns and complaints submitted to the Director regarding an approved health information exchange;
- (3) A health information exchange to apply for reconsideration of a decision the Director makes under a process established under (1) or (2), above;
- (4) Covered entities and approved health information exchanges to enter into participation agreements and enforce the terms of such agreements.

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<sup>150</sup> "Interoperability" is defined by the act to mean the capacity of two or more information systems to exchange information in an accurate, effective, secure, and consistent manner (R.C. 3798.01(G)).



The act specifies that any decision the Director makes in relation to a request for reconsideration made as described in (3), above, is not subject to an appeal under the Administrative Procedure Act.

### **Rules – content of participation agreements**

(R.C. 3798.16)

The act requires the Director of Job and Family Services, in consultation with the Office of Health Transformation, to adopt rules in accordance with the Administrative Procedure Act for the purpose of specifying the contents of agreements governing covered entities' participation in approved health information exchanges. At a minimum, the rules must require the content of such participation agreements to include all of the following:

(1) Procedures for a covered entity to disclose an individual's protected health information to an approved health information exchange;

(2) Procedures for a covered entity to access an individual's protected health information from an approved health information exchange;

(3) A written notice to be provided by a covered entity to an individual or the individual's personal representative prior to the covered entity's disclosure of the individual's protected health information to an approved health information exchange;

(4) Documentation the covered entity must use to verify that a notice described in (3), above, has been provided by the covered entity to an individual or the individual's personal representative prior to the disclosure of the individual's protected health information to an approved health information exchange;

(5) Procedures for an individual or the individual's personal representative to submit to the covered entity a written request to place restrictions on the covered entity's disclosure of protected health information to the approved health information exchange;

(6) The standards a covered entity must use to determine whether, and to what extent, to comply with a written request described in (5), above;

(7) The purposes for which a covered entity may access and use protected health information from the approved health information exchange.

When the Director adopts the standards a covered entity must use to determine whether, and to what extent, to comply with a written request to place restrictions on the disclosure of protected health information to an approved health information



exchange (described in (6), above), the Director must take into consideration the technical capabilities of software available to health information exchanges.

### **Notice prior to disclosure**

With respect to a written notice described in (3), above, the rules *may* specify that the notice can be incorporated into the covered entity's notice of privacy practices required by a specified provision of the HIPAA Privacy Rule<sup>151</sup> and *must* specify that the notice include the following statements:

(1) The individual's protected health information will be disclosed to the approved health information exchange to facilitate the provision of health care to the individual.

(2) The approved health information exchange maintains appropriate administrative, physical, and technical safeguards to protect the privacy and security of protected health information.

(3) Only authorized individuals may access and use protected health information from the approved health information exchange.

(4) The individual or the individual's personal representative has the right to request in writing that the covered entity do either or both of the following: (a) not disclose any of the individual's protected health information to the approved health information exchange, or (b) not disclose specific categories of the individual's protected health information to the exchange.

(5) Any restrictions on the disclosure of protected health information an individual requests as described in (4)(a) or (b), above, may result in a health care provider not having access to information that is necessary for the provider to render appropriate care to the individual.

(6) Any restrictions on the disclosure of protected health information an individual requests as described in (4)(a), above, must be honored by the covered entity.

(7) Any restrictions on the disclosure of protected health information an individual requests as described in (4)(b), above, must be honored if the restriction is consistent with rules the Director is required to adopt.

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<sup>151</sup> 45 C.F.R. 164.520.



## **Standard authorization form – use and disclosure of protected health information and substance abuse records**

(R.C. 3798.10)

The act requires the Director of Job and Family Services, in consultation with the Office of Health Transformation and not later than March 10, 2012 (which is six months after the act's 90-day effective date), to prescribe by rules adopted in accordance with the Administrative Procedure Act a standard authorization form for the use and disclosure of protected health information by covered entities in Ohio. The form must meet all requirements of a specified provision of the HIPAA Privacy Rule pertaining to authorization forms<sup>152</sup> and, where applicable, federal law governing the use and disclosure of substance abuse records.<sup>153</sup>

If the authorization form prescribed by the Director is properly executed by an individual or the individual's personal representative, the act provides that the form must be accepted by any person or governmental entity in Ohio as valid authorization for the use or disclosure of the individual's protected health information to the persons or governmental entities specified in the form.

The act specifies that nothing in it precludes a person or governmental entity from accepting as valid authorization for the use or disclosure of protected health information a form, other than one described above, if the other form meets all requirements specified in the relevant HIPAA Privacy Rule provision<sup>154</sup> and, if applicable, federal law governing the use and disclosure of substance abuse records.<sup>155</sup>

### **General Assembly's intent**

(R.C. 3798.02)

The act specifies that it is the General Assembly's intent in enacting all of the provisions discussed above (concerning the use and disclosure of protected health information by covered entities, standard authorization forms, and approved health information exchanges) to make the laws of Ohio governing these items consistent with, but generally not more stringent<sup>156</sup> than, the HIPAA Privacy Rule for the purpose of

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<sup>152</sup> 45 C.F.R. 164.508.

<sup>153</sup> 42 C.F.R. part 2.

<sup>154</sup> 45 C.F.R. 164.508.

<sup>155</sup> 42 C.F.R. part 2.

<sup>156</sup> "More stringent" is defined in federal regulations (45 C.F.R. 160.202) as (in the context of a comparison of a provision of state law and a standard, requirement, or implementation specification adopted by the



eliminating the barriers to the adoption and use of electronic health records and health information exchanges. The act specifies that it is also the General Assembly's intent in enacting these provisions to supersede any judicial or administrative ruling issued in Ohio that is inconsistent with the provisions discussed above.

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## DEPARTMENT OF INSURANCE (INS)

- Eliminates a requirement that employers who employ more than ten workers establish cafeteria plans to allow employees to pay for health insurance coverage by a salary reduction arrangement.

### **Cafeteria plans and health insurance coverage by salary reduction**

(R.C. 4113.11 (repealed))

The act eliminates the prior law requirement that employers who employ more than ten workers establish cafeteria plans to allow employees to pay for health insurance coverage by a salary reduction arrangement. The prior law requirement was contingent on the Superintendent of Insurance receiving written confirmation from the federal government that the rules adopted by the Superintendent pursuant to that

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HIPAA Privacy Rule) a state law that meets one or more of the following criteria: (1) with respect to a use or disclosure, the law prohibits or restricts a use or disclosure in circumstances under which such use or disclosure otherwise would be permitted under the HIPAA Privacy Rule, except if the disclosure is (a) required by the U.S. Secretary of Health and Human Services in connection with determining whether a covered entity is in compliance with the HIPAA Privacy Rule, or (b) to the individual who is the subject of the individually identifiable health information, (2) with respect to the rights of an individual who is the subject of the individually identifiable health information, regarding access to or amendment of individually identifiable health information, permits greater rights of access or amendment, as applicable, (3) with respect to information to be provided to an individual who is the subject of the individually identifiable health information about a use, a disclosure, rights, and remedies, provides the greater amount of information, (4) with respect to the form, substance, or the need for express legal permission from an individual, who is the subject of the individually identifiable health information, for use or disclosure of individually identifiable health information, provides requirements that narrow the scope or duration, increase the privacy protections afforded (such as by expanding the criteria for), or reduce the coercive effect of the circumstances surrounding the express legal permission, as applicable, (5) with respect to recordkeeping or requirements relating to accounting of disclosures, provides for the retention or reporting of more detailed information or for a longer duration, and (6) with respect to any other matter, provides greater privacy protection for the individual who is the subject of the individually identifiable health information.



provision would permit employers to establish cafeteria plans in accordance with federal law; it appears that this confirmation was not received.

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## DEPARTMENT OF JOB AND FAMILY SERVICES (JFS)

### I. General

- Eliminates the requirement that the Ohio Department of Job and Family Services (ODJFS) report twice a year on the characteristics of individuals participating in or receiving services from programs ODJFS operates.
- Eliminates provisions specifying certain procedures ODJFS is permitted or required to follow in preparing and submitting reports on its programs.
- Requires ODJFS to prepare an annual (rather than biennial) Title XX social services plan and to report on the use of Title XX funds each federal fiscal year (rather than each state fiscal year).

### II. Child Care

- Permits ODJFS to suspend a contract to provide publicly funded child care if (1) ODJFS has evidence that the provider received an improper payment as a result of the provider's intentional act, or (2) ODJFS receives notice that the provider has been charged with certain criminal offenses.
- Prohibits a suspended provider from providing publicly funded child care and requires ODJFS to withhold payment for publicly funded child care provided by a suspended provider.
- Permits a child care provider to appeal a proposed suspension within 15 days of being notified of the suspension.

### III. Child Welfare

- Authorizes a public children services agency, pending a hearing of a complaint filed under R.C. 2151.27 or a motion for temporary orders in a case with respect to an alleged or adjudicated abused, neglected, or dependent child, to request a criminal records check of a parent, guardian, custodian, prospective custodian, or prospective placement whose actions resulted in the juvenile court issuing a temporary disposition of the child.



- Authorizes a public children services agency, a prosecuting attorney, or an assistant prosecuting attorney, at any time after a child has been found in specified circumstances to be an abused, neglected, or dependent child, to request a criminal records check of a parent, guardian, custodian, prospective custodian, or prospective placement whose actions resulted in the finding.
- Requires the Bureau of Criminal Identification and Investigation to conduct the records check.
- Specifies that a person who is the subject of the request and who fails to complete the documentation necessary for the records check may be held in contempt of court.

#### **IV. Temporary Assistance for Needy Families**

- Permits ODJFS to adopt rules specifying circumstances under which a county department of job and family services (CDJFS) is not required to take action to recover erroneous payments made under Ohio Works First (OWF).
- Requires an OWF assistance group member who causes a sanction to complete all compliance activities, which are to be specified in rules, in order for the member's failure or refusal to comply with a self-sufficiency contract to be considered to have ceased.
- Requires an assistance group to reapply for OWF as a condition of resuming participation following a sanction if a member's failure or refusal to comply with a self-sufficiency contract is not considered to have ceased until after the minimum number of months the sanction must last.
- Requires an assistance group member who causes a sanction to enter into a new, or amend an existing, self-sufficiency contract as a condition of resuming participation in OWF following the sanction if required to do so by rules the ODJFS Director is to adopt.

#### **V. Health Programs (including Medicaid)**

- Requires the ODJFS Director to submit Medicaid reports to the General Assembly semiannually, rather than quarterly, on programs for cost containment, efficiency, and health promotion, and eliminates provisions requiring that each report include information on specified topics.
- Revises the law governing criminal records checks of non-waiver Medicaid providers, applicants for non-waiver Medicaid provider agreements, and owners

and prospective owners, officers and prospective officers, board members and prospective board members, and employees and prospective employees of the providers and applicants.

- Permits ODJFS to require a non-waiver Medicaid provider or applicant to determine whether an employee or prospective employee is included in databases specified in rules before requiring the provider or applicant to require the employee or prospective employee to undergo a criminal records check.
- Authorizes the ODJFS Director to adopt rules specifying the circumstances under which a non-waiver Medicaid provider or applicant is prohibited from employing a person who is found by a database review to be included in a database.
- Revises the list of disqualifying offenses that may make an individual ineligible to be a non-waiver Medicaid provider or employee, owner, officer, or board member of a provider or applicant.
- Permits a criminal records check to be made available to a non-waiver Medicaid provider or applicant that requires the criminal records check and to a court, hearing officer, or other necessary individual involved in a case dealing with a civil or criminal action regarding Medicaid.
- Revises the law governing criminal records checks for employment positions that involve providing home and community-based services provided by waiver agencies under ODJFS-administered Medicaid waiver programs.
- Establishes a database review system to precede a criminal records check regarding such positions.
- Permits the ODJFS Director to adopt rules requiring employees to undergo database reviews and criminal records checks as a condition of continuing employment in such positions.
- Revises the list of disqualifying offenses for which a criminal records check regarding such a position is to search.
- Eliminates obsolete provisions regarding existing employees in such positions but provides that the elimination does not preclude ODJFS from taking action against a person who failed to comply with the provisions.
- Revises the law governing criminal records checks of persons seeking or holding Medicaid provider agreements as independent providers under ODJFS-



administered Medicaid waivers, including by revising the list of disqualifying offenses for which such a criminal records check is to search.

- Extends the period during which certain aged, blind, or disabled individuals receiving services through the Bureau for Children with Medical Handicaps (BCMh) are excluded from being permitted or required to participate in the Medicaid care management system.
- Eliminates a provision that excludes the Medicaid managed care system in general from a requirement that ODJFS issue orders regarding Medicaid provider agreements and final fiscal audits pursuant to an administrative adjudication and, instead, provides that the adjudication requirement does not apply to any action or decision by ODJFS regarding whether to contract with a Medicaid managed care organization.
- Requires the ODJFS Director to include quality factors and quality-based incentive payments in rules to be adopted under the Medicaid program that modify the hospital inpatient capital reimbursement methodology, establish new diagnosis-related groups, and implement other changes to hospital inpatient and outpatient reimbursement methodologies.
- Permits, rather than requires, ODJFS to designate the Department of Aging to perform assessments of whether Medicaid applicants and recipients need the level of care provided by nursing facilities.
- Requires ODJFS to recalculate franchise permit fees charged nursing homes, hospital long-term care units, and intermediate care facilities for the mentally retarded (ICFs/MR) when conditions of continuing law are met and 75% or more of the total number of nursing homes, hospital long-term care units, and ICFs/MR receive enhanced Medicaid payments or other state payments equal to 75% or more of their franchise permit fees.
- Requires ODJFS, if during the period beginning May 1 and ending January 1 of the next year an ICF/MR converts one or more of its beds to providing home and community-based services, to (1) terminate the ICF/MR's franchise permit fee if the ICF/MR's Medicaid certification is terminated because of the conversion or (2) redetermine the ICF/MR's franchise permit fee for the second half of a fiscal year if the ICF/MR's Medicaid-certified capacity is reduced because of the conversion.
- Provides for all of the ICF/MR franchise permit fees and associated penalties to be deposited into the Home and Community-Based Services for the Mentally Retarded and Developmentally Disabled Fund.



- Requires ODJFS to certify quarterly to the Director of Budget and Management the amount in the Home and Community-Based Services for the Mentally Retarded and Developmentally Disabled Fund as of the last day of each quarter and requires the Director to transfer the amount so certified to the Department of Developmental Disabilities Operating and Services Fund.
- Makes a nursing facility's wheelchair and resident transportation costs reimbursable under Medicaid as part of direct care costs rather than ancillary and support costs.
- Clarifies that certain tax costs are a separate category for purposes of nursing facilities' Medicaid rates.
- Provides that all days for which payments are made under the Medicaid program to reserve ICF/MR beds during Medicaid recipients' temporary absences are considered inpatient days and Medicaid days for the purpose of the formulas used to determine Medicaid rates for ICFs/MR.
- Provides that 50% of the days for which payments are made under the Medicaid program to reserve nursing facility beds during Medicaid recipients' temporary absences are considered inpatient days and Medicaid days for the purpose of the formulas used to determine nursing facilities' Medicaid rates.
- Provides for qualifying nursing facilities to receive critical access incentive payments as part of their Medicaid rates.
- Would have provided for a total of \$30 million to be spent in fiscal year 2013 to pay quality bonuses under Medicaid to qualifying nursing facilities and provided for those quality bonuses to be in addition to the quality bonuses that qualifying nursing facilities may receive under continuing law (VETOED).
- Permits the ODJFS Director to seek federal approval for converting up to 500 beds from providing ICF/MR services to home and community-based services.
- Requires that such a conversion of beds be approved only by the Director of Developmental Disabilities rather than both that Director and the ODJFS Director.
- Requires ODJFS, subject to federal approval, to increase the Medicaid rate paid to a provider under the Individual Options waiver by 52¢ for each 15 minutes of routine homemaker/personal care provided to an individual for up to a year if (1) the individual was a resident of an ICF/MR, or former ICF/MR, that converted some or all of its beds to providing services under the Individual Options waiver immediately before enrolling in the waiver, (2) the provider begins serving the individual on or after July 1, 2011, and (3) the Director of Developmental Disabilities

determines that the increased rate is warranted by the individual's special circumstances and that serving the individual through the waiver is fiscally prudent for the Medicaid program.

- Repeals an obsolete law that exempted a nursing facility or ICF/MR from laws regarding the collection of Medicaid debts if the facility underwent a change of operator, closed, or voluntarily ceased participating in Medicaid or on or before September 30, 2005, and provided written notice of the action by June 30, 2005.
- Provides that an individual participating in the Money Follows the Person demonstration project may potentially qualify for the Home First component of the Ohio Home Care Program by residing, at the time the individual applies for the program, in an institution for children certified by ODJFS.
- Expresses in statute the authority of the ODJFS Director to operate the preexisting HOME Choice demonstration component of the Medicaid program to the extent that funds are available under a federal Money Follows the Person demonstration project and authorizes the Director to adopt rules for administration and operation of the component.
- Permits a contract between ODJFS and an entity regarding Ohio Access Success Project fiscal management services to provide for the contracting entity to receive a portion of a project participant's benefits.
- Renames the Medicaid Revenue and Collections Fund the Health Care/Medicaid Support and Recoveries Fund.
- Provides for both of the following to be credited to the Health Care/Medicaid Support and Recoveries Fund: (1) federal reimbursement received for disproportionate share hospital payment adjustments made under Medicaid to state mental health hospitals and (2) revenues ODJFS receives from another state agency for Medicaid services pursuant to an interagency agreement, other than revenues required to be deposited into the Health Care Services Administration Fund.
- Provides for the first \$750,000 that ODJFS receives in a fiscal year for performing eligibility verification services necessary for compliance with a federal regulation regarding independent, certified audits for disproportionate share hospital payments to be credited the Health Care/Medicaid Support and Recoveries Fund and for the remainder to be credited to the Health Care Compliance Fund.
- Permits ODJFS, for fiscal years 2012 and 2013, to deposit into the OHP Health Care Grants Fund federal grants for the administration of health care programs that ODJFS receives under the federal health care reform laws enacted in 2010 and



requires ODJFS to use the money in the fund to pay for expenses incurred in carrying out duties that ODJFS assumes by accepting the federal grants.

- Establishes the Office of Medical Assistance in ODJFS.
- Provides for the Governor to appoint the Medical Assistance Director and for the Director to serve at the Governor's pleasure.
- Transfers ODJFS's duties and authorities regarding Medicaid and the Children's Health Insurance Program to the Office of Medical Assistance.

## **VI. Unemployment Compensation**

- Permits the ODJFS Director to file an action to collect unemployment compensation benefits that were procured by fraudulent misrepresentation in any court of competent jurisdiction, instead of in any Ohio court as under former law.
- Requires that the time limit for filing to collect benefits that were procured by fraudulent misrepresentation and the time limit for recovering benefits to which the applicant was otherwise not entitled be extended by the period of any stay to the collection or any other period to which the parties mutually agree.

### **I. General**

#### **Reports on Ohio Department of Job and Family Services (ODJFS) programs**

(R.C. 5101.97 (repealed))

The act eliminates a requirement that the Ohio Department of Job and Family Services (ODJFS) report twice a year on the characteristics of the individuals who participate in or receive services through the programs operated by ODJFS and the outcomes of their participation in or receipt of services through the programs. The reports had to include information on (1) work activities, developmental activities, and alternative work activities established under the Ohio Works First Program, (2) programs of publicly funded child care, (3) child support enforcement programs, and (4) births to Medicaid recipients.

The act also eliminates a provision specifying that, whenever the federal government requires ODJFS to submit a report on a program, the report was to be prepared and submitted in accordance with the federal requirements applicable to that report. To the extent possible, prior law permitted ODJFS to coordinate the preparation



and submission of a particular report with any other report, plan, or other document required to be submitted to the federal government, as well as with any report required to be submitted to the General Assembly. The reports required by the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 were required to be submitted as an annual summary.

## **Title XX state plan and reporting**

(R.C. 5101.46)

Continuing law requires ODJFS, the Department of Mental Health, and the Department of Developmental Disabilities, with their respective local agencies, to provide social services funded by Title XX of the Social Security Act, also known as the Social Services Block Grant. Under prior law, ODJFS was required to prepare a biennial comprehensive Title XX social services plan on the intended use of Title XX funds. For each state fiscal year, ODJFS was required to prepare a report on the actual use of Title XX funds.

The act requires that ODJFS prepare an annual (rather than biennial) Title XX social services plan. Additionally, it requires that ODJFS's report on the actual use of Title XX funds be prepared for each federal fiscal year (rather than state fiscal year). The act makes corresponding changes to the duties of the Department of Mental Health, Department of Developmental Disabilities, and local agencies with respect to their portions of the annual plan and report.

## **II. Child Care**

### **Publicly funded child care contracts suspended for improper payments or criminal activity**

(R.C. 5104.37)

Purchases of publicly funded child care are made pursuant to contracts entered into between ODJFS and an eligible child care provider. Under continuing law, ODJFS may withhold any money due for providing publicly funded child care, and may recover any money erroneously paid, if evidence exists of less than full compliance with the child day-care statutes and rules.

The act permits ODJFS, subject to the act's notice and appeal provisions, to suspend a contract to provide publicly funded child care when ODJFS initiates an investigation concerning the provider for either of the following reasons: (1) ODJFS has evidence that the provider received an improper child care payment as a result of the provider's intentional act, or (2) ODJFS receives notice and a copy of an indictment,



information, or complaint charging the provider or the owner or operator of the provider with committing either of the following:

(a) An act that is a felony or misdemeanor relating to providing or billing for publicly funded child care or providing management or administrative services relating to providing publicly funded child care;

(b) An act that would constitute one of the offenses that under continuing law disqualify a person from being a child care provider: a violation of the laws prohibiting extortion, aggravated arson, arson, disrupting public services, vandalism, inciting to violence, aggravated riot, riot, inducing panic, intimidation, escape, or aiding escape or resistance to lawful authority, or two violations of the laws against operating a vehicle under the influence of alcohol or drugs if committed while providing child care.

The contract suspension continues until ODJFS completes its investigation or all criminal charges are disposed of through dismissal, a finding of not guilty, conviction, or a plea of guilty. If ODJFS initiates the termination of a contract that has been suspended, the suspension continues until the termination process is completed.

The act prohibits a provider from providing publicly funded child care while the provider's contract is under suspension. Further, ODJFS must withhold payment to the provider for publicly funded child care as of the date the contract is suspended.

The act requires ODJFS to notify the provider before suspending the contract. The notice must include all of the following:

(1) A description of the reason ODJFS initiated its investigation of the provider, which need not disclose specific information concerning any ongoing administrative or criminal investigation;

(2) A statement that the provider will be prohibited from providing publicly funded child care while the contract is under suspension;

(3) A statement that the suspension will continue until ODJFS completes its investigation or all criminal charges are disposed of through dismissal, a finding of not guilty, conviction, or a plea of guilty, and that if ODJFS initiates the termination of the contract, the suspension will continue until the termination process is completed.

The act permits an eligible provider to appeal the proposed suspension within 15 days of receiving ODJFS's notice of the suspension. ODJFS must review the evidence and issue a decision not later than 30 days after receiving the appeal. The act prohibits ODJFS from suspending a contract until the time for filing an appeal has elapsed or, if the provider files a timely appeal, until ODJFS issues a decision on the appeal.



### **III. Child Welfare**

#### **Criminal records check request by public children services agency**

(R.C. 109.572, 2151.33, and 2151.412)

The act authorizes a public children services agency, pending the hearing of a complaint alleging that a child is a juvenile traffic offender, is an unruly, abused, neglected, or dependent child, or violated any prohibition against using or possessing cigarettes or tobacco products, a complaint against a child and the child's parent, guardian, or custodian alleging that the child is an unruly child for being an habitual truant, or a motion seeking a temporary order in a case with respect to an alleged or adjudicated abused, neglected, or dependent child, to request the Superintendent of the Bureau of Criminal Identification and Investigation (BCII) to conduct a criminal records check of a parent, guardian, custodian, prospective custodian, or prospective placement whose actions resulted in the juvenile court issuing a temporary disposition of the child that the court considered necessary to protect the best interest of the child and that is of a specified nature. In this situation, the agency may request that the Superintendent obtain information from the Federal Bureau of Investigation (FBI) as part of the records check.

The act also authorizes a public children services agency, a prosecuting attorney, or an assistant prosecuting attorney appointed under R.C. 309.06, at any time after a child has been found in specified circumstances to be an abused, neglected, or dependent child, to request that the Superintendent conduct a criminal records check of a parent, guardian, custodian, prospective custodian, or prospective placement whose actions resulted in the finding. A request by a prosecuting attorney or assistant prosecuting attorney may be made at any time on or after the date that is 90 days after September 10, 2012 (the provision's effective date) and must request the records check for each such parent, guardian, custodian, prospective custodian, or prospective placement. In this situation, the agency, prosecuting attorney, or assistant prosecuting attorney must request that the Superintendent obtain information from the FBI as part of the records check.

With respect to a request made in any of the situations described above, the agency, prosecuting attorney, or assistant prosecuting attorney must provide to each parent, guardian, custodian, prospective custodian, or prospective placement for whom a criminal records check is requested a copy of the form for criminal record checks and a standard fingerprint impression sheet, both as prescribed by BCII. The agency, prosecuting attorney, or assistant prosecuting attorney must obtain the completed form and impression sheet from the parent, guardian, custodian, prospective custodian, or prospective placement and forward them to the Superintendent. The act indicates that



the fee for the records check is to be paid in the manner specified under the act's provisions that authorize the making of the request for the records check, but those provisions do not address the payment of the fee.

The act provides that a parent, guardian, custodian, prospective custodian, or prospective placement who is given a form and fingerprint impression sheet in any of the situations described above and who fails to complete the form or provide fingerprint impressions may be held in contempt of court.

The act requires the Superintendent, upon receipt of a request made in any of the situations described above, the completed form, and a set of fingerprint impressions to conduct the criminal records check in the manner in which other mandatory criminal records checks are conducted by the Superintendent to determine if the person who is the subject of the records check previously has been convicted of or pleaded guilty to any of the following:

(1) A violation of R.C. 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 2905.01, 2905.02, 2905.11, 2905.12, 2907.02, 2907.03, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.12, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2911.01, 2911.02, 2911.11, 2911.12, 2911.13, 2913.02, 2913.03, 2913.04, 2913.11, 2913.21, 2913.31, 2913.40, 2913.43, 2913.47, 2913.51, 2919.25, 2921.36, 2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.11, 2925.13, 2925.22, 2925.23, or 3716.11;

(2) An existing or former law of Ohio, any other state, or the United States that is substantially equivalent to any of the offenses listed in (1) above.

#### **IV. Temporary Assistance for Needy Families**

##### **Rules governing Ohio Works First erroneous payments**

(R.C. 5107.05)

Prior law authorized ODJFS to adopt rules providing that a county department of job and family services (CDJFS) is not required to take action to recover an erroneous payment made under Ohio Works First (OWF) that is below an amount ODJFS specifies. The act provides instead that ODJFS may adopt rules providing that a CDJFS is not required to take action to recover an erroneous payment under circumstances the rules specify.



## Ohio Works First sanctions

(R.C. 5107.16 (primary), 5107.05, and 5107.17)

The act requires an OWF assistance group member who fails or refuses, without good cause, to comply in full with a provision of a self-sufficiency contract to complete all compliance activities, which are to be specified in rules the ODJFS Director is to adopt, in order for the failure or refusal to be considered to have ceased. Prior law, in contrast, provided that a member's failure or refusal, without good cause, to comply in full with a self-sufficiency contract provision was deemed to have ceased on the date a CDJFS received a compliance form from the member if the compliance form was completed and provided to the CDJFS in the manner specified in rules adopted by the ODJFS Director.

Under prior law, an assistance group that resumed participation in OWF following a sanction was not required to reapply unless (1) it was the assistance group's regularly scheduled time for an eligibility redetermination or (2) a CDJFS did not receive the completed compliance form within the period of time specified in the ODJFS rules. The act provides instead that an assistance group must reapply as a condition of resuming participation following a sanction if (1) it is the assistance group's regularly scheduled time for an eligibility redetermination or (2) the member who caused the sanction is not considered to have ceased the failure or refusal to comply with the self-sufficiency contract provision until after the minimum number of months the sanction must last. (Continuing law provides for a sanction to last at least one, three, or six payment months depending on whether it is the assistance group member's first, second, or subsequent failure to comply with a provision of the self-sufficiency contract.)

Prior law provided that an assistance group that resumed participation following a sanction was not required to enter into a new self-sufficiency contract unless a CDJFS determined that it was time for a new appraisal or the assistance group's circumstances had changed in a manner necessitating an amendment to the self-sufficiency contract as determined using procedures included in the self-sufficiency contract. The act provides instead that, before an assistance group may resume participation following a sanction, the adult member of the assistance group or the assistance group's minor head of household who caused the sanction must enter into a new, or amend an existing, self-sufficiency contract if required to do so by rules the ODJFS Director is to adopt.



## **V. Health Programs (including Medicaid)**

### **Medicaid cost containment reports**

(R.C. 5111.091)

Rather than quarterly, as prior law required, the act requires the ODJFS Director to submit semiannual reports to the President and Minority Leader of the Senate, Speaker and Minority Leader of the House of Representatives, and chairpersons of the finance committees of the Senate and House of Representatives on the establishment and implementation of programs designed to control the increase of the cost of the Medicaid program, increase the efficiency of the program, and promote better health outcomes. Each calendar year, one report is due not later than June 30 and the other not later than December 31.

The act eliminates the prior law requirement that each report include information regarding the following: provider network management, electronic claims submission and payment systems, limited provider contracts and payments based on performance, efforts to enforce third party liability, implementation of the Medicaid Information Technology System, expansion of the Medicaid Data Warehouse and Decision Support System, and development of infrastructure policies for electronic health records and e-prescribing.

### **Criminal records checks for Medicaid providers**

(R.C. 5111.032 (primary), 109.57, 109.572, and 5111.031; Sections 751.31, 812.11, and 812.12)

The act revises the law that permits ODJFS to require any of the following to submit to a criminal records check: Medicaid providers, applicants to be providers, employees and prospective employees of providers, owners and prospective owners of providers, officers and prospective officers of providers, and board members and prospective board members of providers. The act also permits ODJFS to require Medicaid providers and applicants to be providers to conduct database reviews of employees and prospective employees. These provisions take effect January 1, 2013.

#### **Inapplicability**

The provisions discussed below do not apply to individuals who are subject to criminal records checks under other provisions of law regarding hospice care programs, nursing homes, residential care facilities, county and district homes, adult day-care programs, Medicaid waiver agencies and independent providers providing home and community-based services available under ODJFS-administered waivers, the



Department of Developmental Disabilities, county boards of developmental disabilities, providers and subcontractors of specialized services for individuals with mental retardation or developmental disabilities, chief executive officers of businesses that provide supported living, independent providers of supported living, and community-based long-term care agencies.

### **ODJFS authority to require criminal records checks and database reviews**

ODJFS is permitted to do any of the following:

(1) Require that a Medicaid provider or applicant to be a provider submit to a criminal records check as a condition of having a Medicaid provider agreement;

(2) Require that a Medicaid provider or applicant to be a provider require an owner or prospective owner, officer or prospective officer, or board member or prospective board member of the provider or applicant submit to a criminal records check as a condition of being an owner, officer, or board member of the provider or applicant;

(3) Require that any Medicaid provider or applicant to be a provider (a) conduct, if so required by rules the ODJFS Director may adopt, a database review of any employee or prospective employee of the provider or applicant and (b) require the employee or prospective employee to submit to a criminal records check as a condition of being an employee of the provider or applicant unless the provider or applicant is prohibited from employing the employee or prospective employee because of the results of a database review.

### **Notice of criminal records check and database review requirements**

ODJFS must inform each Medicaid provider and applicant for a Medicaid provider agreement whether the provider or applicant must undergo a criminal records check. The notice must specify which of the provider's or applicant's employees or prospective employees, owners or prospective owners, officers or prospective officers, or board members or prospective board members must undergo criminal records checks. A notice also must specify which of a provider's or applicant's employees are to undergo database reviews.

If ODJFS requires a person who is an owner or prospective owner, officer or prospective officer, or board member or prospective board member of a provider or applicant to undergo a criminal records check, the provider or applicant must inform the person of the requirement. If ODJFS requires an employee or prospective employee of a provider or applicant to undergo a database review or criminal records check, the



provider or applicant must notify the employee or prospective employer of the requirement.

### **Termination or denial of Medicaid provider agreement**

ODJFS or its designee must terminate a Medicaid provider's provider agreement or deny an applicant's application for a provider agreement if the provider or applicant is required to undergo a criminal records check and either of the following applies:

(1) The provider or applicant fails to obtain the criminal records check after being given information about accessing and completing the criminal records check form prescribed by the Bureau of Criminal Identification and Investigation (BCII) and the standard fingerprint impression sheet prescribed by BCII.

(2) Except as otherwise provided in rules to be adopted by the ODJFS Director, the provider or applicant is found by the criminal records check to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense, regardless of the date of the conviction, date of entry of the guilty plea, or the date the provider or applicant was found eligible for intervention in lieu of conviction.

### **Restrictions on being an owner, officer, or board member**

A Medicaid provider or applicant for a Medicaid provider agreement may not permit a person to be an owner, officer, or board member of the provider or applicant if the person is required to undergo a criminal records check and either of the following applies:

(1) The person fails to obtain the criminal records check after being given information about accessing and completing the BCII criminal records check form and the BCII standard fingerprint impression sheet.

(2) Except as otherwise provided in rules to be adopted by the ODJFS Director, the person is found by the criminal records check to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense, regardless of the date of the conviction, date of entry of the guilty plea, or the date the person was found eligible for intervention in lieu of conviction.

### **Restrictions on being an employee**

A Medicaid provider or applicant for a Medicaid provider agreement may not employ a person if any of the following apply:



(1) The person has been excluded from providing services or items under Medicaid, Medicare, or any other federal health care program;

(2) If the person is required to undergo a database review, the person is found by the review to be included in a database and rules the ODJFS Director is to adopt prohibit the provider or applicant from employing a person included in that database;

(3) If the person is required to undergo a criminal records check, either of the following apply:

(a) The person fails to obtain the criminal records check after being given information about accessing and completing the BCII criminal records check form and the BCII standard fingerprint impression sheet.

(b) Except as otherwise provided in rules to be adopted by the ODJFS Director, the person is found by the criminal records check to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense, regardless of the date of the conviction, date of entry of the guilty plea, or the date the person was found eligible for intervention in lieu of conviction.

### **Conditional employment**

A Medicaid provider or applicant for a Medicaid provider agreement is permitted to employ conditionally a person required to undergo a criminal records check before the provider or applicant obtains the results of the criminal records check if both of the following apply:

(1) The provider or applicant is not prohibited from employing the person because of the results of a database review;

(2) The person submits a request for the criminal records check not later than five business days after the person begins conditional employment.

A provider or applicant that employs a person conditionally must terminate the person's employment if the results of the criminal records check are not obtained within the period ending 60 days after the date the request is made. Regardless of when the results are obtained, if the results indicate that the person has been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense, the provider or applicant must terminate the person's employment unless rules to be adopted by the ODJFS Director permit the provider or applicant to employ the person and the provider or applicant chooses to employ the person.

## Disqualifying offenses

The following table compares prior law's list of disqualifying offenses to the act's list of disqualifying offenses. The number preceding an offense is the Revised Code section that establishes the offense.

Prior Law	The Act
959.13 (cruelty to animals)	Same.
No provision.	959.131 (cruelty against companion animal)
2903.01 (aggravated murder)	Same.
2903.02 (murder)	Same.
2903.03 (voluntary manslaughter)	Same.
2903.04 (involuntary manslaughter)	Same.
2903.041 (reckless homicide)	Same.
2903.11 (felonious assault)	Same.
2903.12 (aggravated assault)	Same.
2903.13 (assault)	Same.
2903.15 (permitting child abuse)	Same.
2903.16 (Failing to provide for a functionally impaired person)	Same.
2903.21 (aggravated menacing)	Same.
2903.211 (menacing by stalking)	Same.
2903.22 (menacing)	Same.
2903.34 (patient abuse or neglect)	Same.
No provision.	2903.341 (patient endangerment)
2905.01 (kidnapping)	Same.
2905.02 (abduction)	Same.
A violation of former 2905.04 (child stealing) as it existed before July 1, 1996.	Same.
2905.05 (criminal child enticement)	Same.
2905.11 (extortion)	Same.
2905.12 (coercion)	Same.
No provision.	2905.32 (trafficking in persons)
No provision.	2905.33 (unlawful conduct with respect to documents)
2907.02 (rape)	Same.



Prior Law	The Act
2907.03 (sexual battery)	Same.
2907.04 (unlawful sexual conduct with a minor)	Same.
2907.05 (gross sexual imposition)	Same.
2907.06 (sexual imposition)	Same.
2907.07 (importuning)	Same.
2907.08 (voyeurism)	Same.
2907.09 (public indecency)	Same.
Felonious sexual penetration in violation of former 2907.12.	Same.
2907.21 (compelling prostitution)	Same.
2907.22 (promoting prostitution)	Same.
2907.23 (procuring)	Same.
2907.24 (soliciting and solicitation after a positive HIV test)	Same.
2907.25 (prostitution and prostitution after a positive HIV test)	Same.
2907.31 (disseminating matter harmful to juveniles)	Same.
2907.32 (pandering obscenity)	Same.
2907.321 (pandering obscenity involving a minor)	Same.
2907.322 (pandering sexually oriented matter involving a minor)	Same.
2907.323 (illegal use of a minor in nudity-oriented material or performance)	Same.
No provision.	2907.33 (deception to obtain matter harmful to juveniles)
2909.02 (aggravated arson)	Same.
2909.03 (arson)	Same.
2909.04 (disrupting public services)	Same.
2909.05 (vandalism)	No provision.
2909.22 (support of terrorism)	Same.
2909.23 (terroristic threats)	Same.
2909.24 (terrorism)	Same.
2911.01 (aggravated robbery)	Same.



Prior Law	The Act
2911.02 (robbery)	Same.
2911.11 (aggravated burglary)	Same.
2911.12 (burglary and trespass in a habitation when a person is present or likely to be present)	Same.
2911.13 (breaking and entering)	Same.
2913.02 (theft)	Same.
2913.03 (unauthorized use of a vehicle)	Same.
2913.04 (unauthorized use of property; unauthorized use of computer, cable, or telecommunication property; unauthorized use of LEADS; and unauthorized use of OHLEG)	Same.
2913.05 (telecommunications fraud)	Same.
2913.11 (passing bad checks)	Same.
2913.21 (misuse of credit cards)	Same.
2913.31 (forgery and forging identification cards)	Same.
2913.32 (criminal simulation)	Same.
2913.40 (Medicaid fraud)	Same.
2913.41 (prima facie evidence of purpose to defraud [This is not an offense but rather specifies what constitutes prima facie evidence of purpose to defraud under certain circumstances.])	Same.
2913.42 (tampering with records)	Same.
2913.43 (securing writing by deception)	Same.
2913.44 (personating an officer)	Same.
2913.441 (unauthorized display of emblems related to law enforcement on motor vehicles)	Same.
2913.45 (defrauding creditors)	Same.
2913.46 (illegal use of Supplemental Nutrition Assistance Program or WIC program benefits)	Same.
2913.47 (insurance fraud)	Same.
2913.48 (Workers' Compensation fraud)	Same.
2913.49 (identity fraud)	Same.



Prior Law	The Act
2913.51 (receiving stolen property)	Same.
2917.01 (inciting to violence)	Same.
2917.02 (aggravated riot)	Same.
2917.03 (riot)	Same.
2917.11 (disorderly conduct)	No provision.
2917.31 (inducing panic)	Same.
2919.12 (unlawful abortion)	Same.
No provision.	2919.121 (unlawful abortion [on a minor])
No provision.	2919.123 (unlawful distribution of an abortion-inducing drug)
2919.22 (endangering children)	Same.
2919.23 (interference with custody) and a violation of 2919.23 that would have been a violation of 2905.04 (child stealing) as it existed before July 1, 1996, had the violation been committed before that date.	2919.23 (interference with custody)
2919.24 (contributing to unruliness or delinquency)	Same.
2919.25 (domestic violence)	Same.
2921.03 (intimidation)	Same.
2921.11 (perjury)	Same.
No provision.	2921.12 (tampering with evidence)
2921.13 (falsification)	Same.
No provision.	2921.21 (compounding a crime)
No provision.	2921.24 (disclosure of confidential information)
No provision.	2921.32 (obstructing justice)
No provision.	2921.321 (assaulting a police dog, horse, or assistance dog)
2921.34 (escape)	Same.
2921.35 (aiding escape or resistance to authority)	Same.
2921.36 (prohibited conveying of certain items onto property of state facilities)	Same.
2923.01 (conspiracy)	A violation of 2923.01 when the underlying offense that is the object of the conspiracy is one of the offenses included in this list.



Prior Law	The Act
2923.02 (attempt to commit an offense)	A violation of 2923.02 when the underlying offense that is the object of the attempt is one of the offenses included in this list.
2923.03 (complicity)	A violation of 2923.03 when the underlying offense that is the object of the complicity is one of the offenses included in this list.
No provision.	2921.51 (impersonation of certain officers)
2923.12 (carrying concealed weapons)	Same.
No provision.	2923.122 (illegal conveyance or possession of a deadly weapon or dangerous ordnance in a school safety zone and illegal possession of an object indistinguishable from a firearm in a school safety zone)
No provision.	2923.123 (illegal conveyance of a deadly weapon or dangerous ordnance into a courthouse and illegal possession or control of a deadly weapon or dangerous ordnance in a courthouse)
2923.13 (having weapons while under disability)	Same.
2923.161 (improperly discharging firearm at or into habitation or school safety zone)	Same.
No provision.	2923.162 (discharge of firearm on or near prohibited premises)
No provision.	2923.21 (improperly furnishing firearms to a minor)
2923.32 (engaging in a pattern of corrupt activity)	Same.
No provision.	2923.42 (criminal gang activity)
2925.02 (corrupting another with drugs)	Same.
2925.03 (trafficking offenses)	Same.
2925.04 (illegal manufacture of drugs and cultivation of marihuana)	Same.
No provision.	2925.041 (illegal assembly or possession of chemicals for the manufacture of drugs)
2925.05 (funding of drug or marihuana trafficking)	Same.
2925.06 (illegal administration or distribution of anabolic steroids)	Same.



Prior Law	The Act
No provision.	2925.09 (sale or use of drugs not approved by U.S. Food and Drug Administration)
2925.11 (drug possession offenses)	Same.
2925.13 (permitting drug abuse)	Same.
2925.14 (use, possession, or sale of drug paraphernalia)	Same.
2925.22 (deception to obtain a dangerous drug)	Same.
2925.23 (illegal processing of drug documents)	Same.
No provision.	2925.24 (tampering with drugs)
No provision.	2925.36 (illegal dispensing of sample drugs)
No provision.	2925.55 (unlawful purchase or receipt of pseudoephedrine product)
No provision.	2925.56 (unlawful sale of pseudoephedrine product)
2927.12 (ethnic intimidation)	Same.
3716.11 (adulteration of food)	Same.
A violation of an existing or former municipal ordinance or law of this state, any other state, or the United States that is substantially equivalent to any of the offenses listed above.	Same.

### Release of criminal records check report

The report of a criminal records check is not a public record and is not to be available to any person other than the following:

- (1) The subject of the report;
- (2) The ODJFS Director and the ODJFS staff who are involved in the administration of Medicaid;
- (3) ODJFS's designee;
- (4) The Medicaid provider or applicant for a Medicaid provider agreement who required the subject of the report to undergo the criminal records check;



(5) A court, hearing officer, or other necessary individual involved in a case dealing with (a) the denial or termination of a Medicaid provider agreement, (b) a person's denial of employment, termination of employment, or employment or unemployment benefits, or (c) a civil or criminal action regarding Medicaid.

## **Rules**

The ODJFS Director is permitted to adopt rules to implement the provisions discussed above. If the Director adopts such rules, the rules must designate the times at which a criminal records check must be conducted. The rules may do any of the following:

(1) Designate the categories of persons who are to undergo criminal records checks;

(2) Specify circumstances under which ODJFS or its designee may continue or issue a Medicaid provider agreement when the Medicaid provider or applicant for the Medicaid provider agreement is found by a criminal records check to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense;

(3) Specify circumstances under which a provider or applicant may permit a person to be an employee, owner, officer, or board member of the provider or applicant, when the person is found by a criminal records check to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense;

(4) Specify all of the following:

(a) The circumstances under which a database review must be conducted to determine whether an employee or prospective employee of a provider or applicant is included in a database;

(b) The procedures for conducting the database review;

(c) The databases that are to be checked;

(d) The circumstances under which a provider or applicant is prohibited from employing a person who is found by the database review to be included in a database.

## **Collaboration on rules**

The act requires the ODJFS Director and the Directors of Aging, Developmental Disabilities, and Health to collaborate with each other when adopting the initial rules to



be adopted for the purpose of implementing provisions of the act regarding criminal records checks. In the collaboration, the Directors must strive to (1) balance the risk mitigation that the database reviews and criminal records checks to be conducted under those provisions are expected to realize with the costs of conducting the database reviews and criminal records checks and (2) make the policies established by the rules as similar as possible among ODJFS and the Departments of Aging, Developmental Disabilities, and Health.

### **Medicaid waiver agency criminal records checks**

(R.C. 5111.033 (primary), 109.57, and 109.572; Sections 751.31, 812.11, and 812.12)

The act revises the law that requires the chief administrator of a waiver agency providing home and community-based services under a Medicaid waiver administered by ODJFS to have employees and applicants for employment undergo criminal records checks conducted by BCII. The act also establishes a database review process for such employees and applicants. These provisions take effect January 1, 2013.

#### **Inapplicability**

The provisions discussed below do not apply to an agency certified under Medicare. The provisions also do not apply to any individual who is subject to a database review or criminal records check under the act's provisions regarding home health agencies. If a waiver agency also is a community-based long-term care agency, the waiver agency may provide for applicants and employees to undergo database reviews and criminal records checks in accordance with the act's provisions regarding community-based long-term care agencies rather than the provisions discussed below.

#### **Database reviews**

As a condition of employing an applicant in a position that involves providing home and community-based services available under an ODJFS-administered Medicaid waiver, the chief administrator of a waiver agency must conduct a database review of the applicant in accordance with rules to be adopted by the ODJFS Director. If the rules so require, the waiver agency's chief administrator must conduct a database review of an employee in accordance with the rules as a condition of continuing to employ the employee in a position that involves providing home and community-based services under an ODJFS-administered Medicaid waiver. A database review must determine whether an applicant or employee is included in any of the following:

(1) The excluded parties list system operated by the United States General Services Administration (GSA);



(2) The list of excluded individuals and entities operated by the Office of Inspector General (OIG) in the United States Department of Health and Human Services;

(3) The registry of MR/DD employees operated by the Department of Developmental Disabilities;

(4) The Internet-based sex offender and child-victim offender database operated by BCII;

(5) The Internet-based database of inmates operated by the Department of Rehabilitation and Correction (DRC);

(6) The state nurse aide registry operated by the Department of Health;

(7) Any other database, if any, the ODJFS Director is permitted to specify in rules.

A waiver agency may not employ an applicant or continue to employ an employee in a position that involves providing home and community-based services under an ODJFS-administered Medicaid waiver if a database review reveals any of the following:

(1) The applicant or employee is included in GSA's excluded parties list system, OIG's list of excluded individuals and entities, the registry of MR/DD employees, BCII's Internet-based sex offender and child-victim offender database, or DRC's Internet-based database of inmates;

(2) There is in the state nurse aide registry a statement detailing findings by the Director of Health that the applicant or employee neglected or abused a long-term care facility or residential care facility resident or misappropriated property of such a resident;

(3) The applicant or employee is included in one or more of the other databases that the ODJFS Director may specify in rules and the rules prohibit the waiver agency from employing the applicant or employee.

### **Criminal records check**

The chief administrator of a waiver agency must require an applicant to request that BCII conduct a criminal records check of the applicant. A chief administrator is to require an employee to request that BCII conduct a criminal records check of the employee if rules adopted by the ODJFS Director so require. However, neither an



applicant nor an employee is to undergo a criminal records check if a waiver agency is prohibited from employing the applicant or employee as a result of a database review.

A waiver agency's chief administrator must provide each applicant and employee required to undergo a criminal records check information about accessing, completing, and forwarding the form that BCII has prescribed for requesting criminal records checks and BCII's standard fingerprint impression sheet. A chief administrator also must notify such applicants and employees that they must instruct BCII to submit the results of the criminal records check directly to the chief administrator. A waiver agency is prohibited from employing an applicant or employee who fails to access, complete, or forward the criminal records check form or impression sheet or to instruct BCII to submit the results directly to the chief administrator.

A waiver agency may require an applicant to pay to BCII the fee for conducting the criminal records check. Alternately, a waiver agency may charge the applicant a fee if the waiver agency pays the BCII fee and notifies the applicant at the time of initial application for employment of the amount of the fee and that, unless the fee is paid, the applicant will not be considered for employment. The amount a waiver agency charges an applicant may not exceed the amount of the BCII fee that the waiver agency pays. A waiver agency is not authorized to charge an employee for the BCII fee.

### **Notice to applicants**

At the time of each applicant's initial application, the chief administrator or a waiver agency must inform the applicant of both of the following:

- (1) That a database review will be conducted to determine whether the waiver agency is prohibited from employing the applicant;
- (2) That, unless the database review reveals that the applicant may not be employed, a criminal records check will be conducted and the applicant must provide a set of the applicant's fingerprint impressions as part of the criminal records check.

### **Conditional employment**

A waiver agency is permitted to employ conditionally an applicant required to undergo a criminal records check before obtaining the results of the criminal records check if both of the following apply:

- (1) A database review does not reveal that the waiver agency is prohibited from employing the applicant;



(2) The waiver agency's chief administrator requires the applicant to request a criminal records check not later than five business days after the applicant begins the conditional employment.

A waiver agency that employs an applicant conditionally must terminate the employment if the results of the criminal records check, other than results of any request for information from the Federal Bureau of Investigation, are not obtained within the period ending 60 days after the date the request for the criminal records check is made. Regardless of when the results are obtained, if the results indicate that the applicant has been convicted of, pleaded guilty to, or has been found eligible for intervention in lieu of conviction for a disqualifying offense, the waiver agency must terminate the applicant's employment unless circumstances specified in rules adopted by the ODJFS Director exist that permit the waiver agency to employ the applicant and the waiver agency chooses to employ the applicant.

### **Disqualifying offenses**

Except as provided in rules adopted by the ODJFS Director, a waiver agency may not employ an applicant or continue to employ an employee in a position that involves providing home and community-based services available under an ODJFS-administered Medicaid waiver if the applicant or employee is found by a criminal records check to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense, regardless of the date of the conviction, date of entry of the guilty plea, or the date the applicant or employee was found eligible for intervention in lieu of conviction.

The following table compares prior law's list of disqualifying offenses to the act's list of disqualifying offenses. The number preceding an offense is the Revised Code section that establishes the offense.

<b>Prior Law</b>	<b>The Act</b>
959.13 (cruelty to animals)	Same.
No provision.	959.131 (cruelty against companion animal)
2903.01 (aggravated murder)	Same.
2903.02 (murder)	Same.
2903.03 (voluntary manslaughter)	Same.
2903.04 (involuntary manslaughter)	Same.
2903.041 (reckless homicide)	Same.
2903.11 (felonious assault)	Same.



Prior Law	The Act
2903.12 (aggravated assault)	Same.
2903.13 (assault)	Same.
2903.15 (permitting child abuse)	Same.
2903.16 (Failing to provide for a functionally impaired person)	Same.
2903.21 (aggravated menacing)	Same.
2903.211 (menacing by stalking)	Same.
2903.22 (menacing)	Same.
2903.34 (patient abuse or neglect)	Same.
No provision.	2903.341 (patient endangerment)
2905.01 (kidnapping)	Same.
2905.02 (abduction)	Same.
A violation of former 2905.04 (child stealing) as it existed before July 1, 1996.	Same.
2905.05 (criminal child enticement)	Same.
2905.11 (extortion)	Same.
2905.12 (coercion)	Same.
No provision.	2905.32 (trafficking in persons)
No provision.	2905.33 (unlawful conduct with respect to documents)
2907.02 (rape)	Same.
2907.03 (sexual battery)	Same.
2907.04 (unlawful sexual conduct with a minor)	Same.
2907.05 (gross sexual imposition)	Same.
2907.06 (sexual imposition)	Same.
2907.07 (importuning)	Same.
2907.08 (voyeurism)	Same.
2907.09 (public indecency)	Same.
Felonious sexual penetration in violation of former 2907.12.	Same.
2907.21 (compelling prostitution)	Same.
2907.22 (promoting prostitution)	Same.
2907.23 (procuring)	Same.



Prior Law	The Act
2907.24 (soliciting and solicitation after a positive HIV test)	Same.
2907.25 (prostitution and prostitution after a positive HIV test)	Same.
2907.31 (disseminating matter harmful to juveniles)	Same.
2907.32 (pandering obscenity)	Same.
2907.321 (pandering obscenity involving a minor)	Same.
2907.322 (pandering sexually oriented matter involving a minor)	Same.
2907.323 (illegal use of a minor in nudity-oriented material or performance)	Same.
No provision.	2907.33 (deception to obtain matter harmful to juveniles)
2909.02 (aggravated arson)	Same.
2909.03 (arson)	Same.
2909.04 (disrupting public services)	Same.
2909.05 (vandalism)	No provision.
2909.22 (support of terrorism)	Same.
2909.23 (terroristic threats)	Same.
2909.24 (terrorism)	Same.
2911.01 (aggravated robbery)	Same.
2911.02 (robbery)	Same.
2911.11 (aggravated burglary)	Same.
2911.12 (burglary and trespass in a habitation when a person is present or likely to be present)	Same.
2911.13 (breaking and entering)	Same.
2913.02 (theft)	Same.
2913.03 (unauthorized use of a vehicle)	Same.
2913.04 (unauthorized use of property; unauthorized use of computer, cable, or telecommunication property; unauthorized use of LEADS; and unauthorized use of OHLEG)	Same.
2913.05 (telecommunications fraud)	Same.



Prior Law	The Act
2913.11 (passing bad checks)	Same.
2913.21 (misuse of credit cards)	Same.
2913.31 (forgery and forging identification cards)	Same.
2913.32 (criminal simulation)	Same.
2913.40 (Medicaid fraud)	Same.
2913.41 (prima facie evidence of purpose to defraud [This is not an offense but rather specifies what constitutes prima facie evidence of purpose to defraud under certain circumstances.])	Same.
2913.42 (tampering with records)	Same.
2913.43 (securing writing by deception)	Same.
2913.44 (personating an officer)	Same.
2913.441 (unauthorized display of emblems related to law enforcement on motor vehicles)	Same.
2913.45 (defrauding creditors)	Same.
2913.46 (illegal use of Supplemental Nutrition Assistance Program or WIC program benefits)	Same.
2913.47 (insurance fraud)	Same.
2913.48 (Workers' Compensation fraud)	Same.
2913.49 (identity fraud)	Same.
2913.51 (receiving stolen property)	Same.
2917.01 (inciting to violence)	Same.
2917.02 (aggravated riot)	Same.
2917.03 (riot)	Same.
2917.11 (disorderly conduct)	No provision.
2917.31 (inducing panic)	Same.
2919.12 (unlawful abortion)	Same.
No provision.	2919.121 (unlawful abortion [on a minor])
No provision.	2919.123 (unlawful distribution of an abortion-inducing drug)
2919.22 (endangering children)	Same.



Prior Law	The Act
2919.23 (interference with custody) and a violation of 2919.23 that would have been a violation of 2905.04 (child stealing) as it existed before July 1, 1996, had the violation been committed before that date.	2919.23 (interference with custody)
2919.24 (contributing to unruliness or delinquency)	Same.
2919.25 (domestic violence)	Same.
2921.03 (intimidation)	Same.
2921.11 (perjury)	Same.
No provision.	2921.12 (tampering with evidence)
2921.13 (falsification)	Same.
No provision.	2921.21 (compounding a crime)
No provision.	2921.24 (disclosure of confidential information)
No provision.	2921.32 (obstructing justice)
No provision.	2921.321 (assaulting a police dog, horse, or assistance dog)
2921.34 (escape)	Same.
2921.35 (aiding escape or resistance to authority)	Same.
2921.36 (prohibited conveying of certain items onto property of state facilities)	Same.
2923.01 (conspiracy)	A violation of 2923.01 when the underlying offense that is the object of the conspiracy is one of the offenses included in this list.
2923.02 (attempt to commit an offense)	A violation of 2923.02 when the underlying offense that is the object of the attempt is one of the offenses included in this list.
2923.03 (complicity)	A violation of 2923.03 when the underlying offense that is the object of the complicity is one of the offenses included in this list.
No provision.	2921.51 (impersonation of certain officers)
2923.12 (carrying concealed weapons)	Same.
No provision.	2923.122 (illegal conveyance or possession of a deadly weapon or dangerous ordnance in a school safety zone and illegal possession of an object indistinguishable from a firearm in a school safety zone)

Prior Law	The Act
No provision.	2923.123 (illegal conveyance of a deadly weapon or dangerous ordnance into a courthouse and illegal possession or control of a deadly weapon or dangerous ordnance in a courthouse)
2923.13 (having weapons while under disability)	Same.
2923.161 (improperly discharging firearm at or into habitation or school safety zone)	Same.
No provision.	2923.162 (discharge of firearm on or near prohibited premises)
No provision.	2923.21 (improperly furnishing firearms to a minor)
2923.32 (engaging in a pattern of corrupt activity)	Same.
No provision.	2923.42 (criminal gang activity)
2925.02 (corrupting another with drugs)	Same.
2925.03 (trafficking offenses)	Same.
2925.04 (illegal manufacture of drugs and cultivation of marihuana)	Same.
No provision.	2925.041 (illegal assembly or possession of chemicals for the manufacture of drugs)
2925.05 (Funding of drug or marihuana trafficking)	Same.
2925.06 (Illegal administration or distribution of anabolic steroids)	Same.
No provision.	2925.09 (sale or use of drugs not approved by U.S. Food and Drug Administration)
2925.11 (drug possession offenses)	Same.
2925.13 (permitting drug abuse)	Same.
2925.14 (use, possession, or sale of drug paraphernalia)	Same.
2925.22 (deception to obtain a dangerous drug)	Same.
2925.23 (illegal processing of drug documents)	Same.
No provision.	2925.24 (tampering with drugs)
No provision.	2925.36 (illegal dispensing of sample drugs)



Prior Law	The Act
No provision.	2925.55 (unlawful purchase or receipt of pseudoephedrine product)
No provision.	2925.56 (unlawful sale of pseudoephedrine product)
2927.12 (ethnic intimidation)	Same.
3716.11 (adulteration of food)	Same.
A violation of an existing or former municipal ordinance or law of this state, any other state, or the United States that is substantially equivalent to any of the offenses listed above.	Same.

### Release of criminal records check report

The report of a criminal records check is not a public record and is not to be available to any person other than the following:

- (1) The applicant or employee who is the subject of the report or the representative of the applicant or employee;
- (2) The waiver agency's chief administrator or the administrator's representative;
- (3) The ODJFS Director and the ODJFS staff who are involved in the administration of Medicaid;
- (4) The Director of Aging or the Director's designee if the waiver agency also is a community-based long-term care agency;
- (5) A court, hearing officer, or other necessary individual involved in a case dealing with (a) an applicant's or employee's denial of employment, (b) an applicant's or employee's employment or unemployment benefits, (c) a civil or criminal action regarding Medicaid.

### Rules

The ODJFS Director is to adopt rules to implement the provisions discussed above.

The rules may do the following:

- (1) Require employees to undergo database reviews and criminal records checks;



(2) If the rules require employees to undergo database reviews and criminal records checks, exempt one or more classes of employees from the requirements;

(3) Specify additional databases that are to be checked as part of a database review.

The rules must specify all of the following:

(1) The procedures for conducting a database review;

(2) If the rules require employees to undergo database reviews and criminal records checks, the times at which the database reviews and criminal records checks are to be conducted;

(3) If the rules specify other databases to be checked as part of a database review, the circumstances under which a waiver agency is prohibited from employing an applicant or continuing to employ an employee who is found by the database review to be included in one or more of those databases;

(4) The circumstances under which a waiver agency may employ an applicant or employee who is found by a criminal records check to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense.

### **Collaboration on rules**

The act requires the ODJFS Director and the Directors of Aging, Developmental Disabilities, and Health to collaborate with each other when adopting the initial rules to be adopted for the purpose of implementing provisions of the act regarding criminal records checks. In the collaboration, the Directors must strive to (1) balance the risk mitigation that the database reviews and criminal records checks to be conducted under those provisions are expected to realize with the costs of conducting the database reviews and criminal records checks and (2) make the policies established by the rules as similar as possible among ODJFS and the Departments of Aging, Developmental Disabilities, and Health.

### **ODJFS not precluded from taking action authorized under former law**

The act eliminates an obsolete law that required a person who, on September 26, 2003, was employed by a waiver agency in a position that involved providing home and community-based services available under an ODJFS-administered Medicaid waiver to comply with the law governing criminal records checks for waiver agencies unless the person previously underwent a criminal records check relating to that position. Although the obsolete provision is eliminated, the act provides that ODJFS is



not precluded from taking action against a person who failed to comply with the provision.

### **Independent provider criminal records checks**

(R.C. 5111.034 (primary), 109.57, and 109.572; Sections 751.31, 812.11, and 812.12)

The act revises the law that requires ODJFS to have the following undergo criminal records checks conducted by BCII: (1) an individual applying for a Medicaid provider agreement to provide home and community-based services as an independent provider under an ODJFS-administered Medicaid waiver, and (2) an independent provider holding such a Medicaid provider agreement. The revisions take effect January 1, 2013.

#### **Restriction on issuing or renewing Medicaid provider agreement**

ODJFS or its designee must require an individual who applies for a Medicaid provider agreement as an independent provider to complete a criminal records check conducted by BCII before entering into the provider agreement with the applicant. ODJFS or its designee must require an individual holding a Medicaid provider agreement as an independent provider to complete a BCII-conducted criminal records check at least annually.

ODJFS or its designee must provide certain information to each applicant and independent provider required to undergo a criminal records check. They are to receive information about accessing, completing, and forwarding to BCII the form prescribed by BCII for requesting a criminal records check and BCII's standard fingerprint impression sheet. They are also to receive information about instructing BCII to submit the results of the criminal records check directly to ODJFS or its designee. ODJFS or its designee must deny an application for a Medicaid provider agreement and must terminate an independent provider's provider agreement if the applicant or provider fails to access, complete, or forward to BCII the form or impression sheet or fails to instruct BCII to submit the results directly to ODJFS or its designee.

#### **Disqualifying offenses**

Except as provided in rules adopted by the ODJFS Director, ODJFS or its designee must deny an application for a Medicaid provider agreement as an independent provider and must terminate an independent provider's provider agreement if the applicant or provider is found by a criminal records check to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense, regardless of the date of the conviction, date of



entry of the guilty plea, or the date the applicant or employee was found eligible for intervention in lieu of conviction.

The following table compares prior law's list of disqualifying offenses to the act's list of disqualifying offenses. The number preceding an offense is the Revised Code section that establishes the offense.

Prior Law	The Act
959.13 (cruelty to animals)	Same.
No provision.	959.131 (cruelty against companion animal)
2903.01 (aggravated murder)	Same.
2903.02 (murder)	Same.
2903.03 (voluntary manslaughter)	Same.
2903.04 (involuntary manslaughter)	Same.
2903.041 (reckless homicide)	Same.
2903.11 (felonious assault)	Same.
2903.12 (aggravated assault)	Same.
2903.13 (assault)	Same.
2903.15 (permitting child abuse)	Same.
2903.16 (Failing to provide for a functionally impaired person)	Same.
2903.21 (aggravated menacing)	Same.
2903.211 (menacing by stalking)	Same.
2903.22 (menacing)	Same.
2903.34 (patient abuse or neglect)	Same.
No provision.	2903.341 (patient endangerment)
2905.01 (kidnapping)	Same.
2905.02 (abduction)	Same.
A violation of former 2905.04 (child stealing) as it existed before July 1, 1996.	Same.
2905.05 (criminal child enticement)	Same.
2905.11 (extortion)	Same.
2905.12 (coercion)	Same.
No provision.	2905.32 (trafficking in persons)
No provision.	2905.33 (unlawful conduct with respect to documents)



Prior Law	The Act
2907.02 (rape)	Same.
2907.03 (sexual battery)	Same.
2907.04 (unlawful sexual conduct with a minor)	Same.
2907.05 (gross sexual imposition)	Same.
2907.06 (sexual imposition)	Same.
2907.07 (importuning)	Same.
2907.08 (voyeurism)	Same.
2907.09 (public indecency)	Same.
Felonious sexual penetration in violation of former 2907.12.	Same.
2907.21 (compelling prostitution)	Same.
2907.22 (promoting prostitution)	Same.
2907.23 (procuring)	Same.
2907.24 (soliciting and solicitation after a positive HIV test)	Same.
2907.25 (prostitution and prostitution after a positive HIV test)	Same.
2907.31 (disseminating matter harmful to juveniles)	Same.
2907.32 (pandering obscenity)	Same.
2907.321 (pandering obscenity involving a minor)	Same.
2907.322 (pandering sexually oriented matter involving a minor)	Same.
2907.323 (illegal use of a minor in nudity-oriented material or performance)	Same.
No provision.	2907.33 (deception to obtain matter harmful to juveniles)
2909.02 (aggravated arson)	Same.
2909.03 (arson)	Same.
2909.04 (disrupting public services)	Same.
2909.05 (vandalism)	No provision.
2909.22 (support of terrorism)	Same.
2909.23 (terroristic threats)	Same.
2909.24 (terrorism)	Same.



Prior Law	The Act
2911.01 (aggravated robbery)	Same.
2911.02 (robbery)	Same.
2911.11 (aggravated burglary)	Same.
2911.12 (burglary and trespass in a habitation when a person is present or likely to be present)	Same.
2911.13 (breaking and entering)	Same.
2913.02 (theft)	Same.
2913.03 (unauthorized use of a vehicle)	Same.
2913.04 (unauthorized use of property; unauthorized use of computer, cable, or telecommunication property; unauthorized use of LEADS; and unauthorized use of OHLEG)	Same.
2913.05 (telecommunications fraud)	Same.
2913.11 (passing bad checks)	Same.
2913.21 (misuse of credit cards)	Same.
2913.31 (forgery and forging identification cards)	Same.
2913.32 (criminal simulation)	Same.
2913.40 (Medicaid fraud)	Same.
2913.41 (prima facie evidence of purpose to defraud [This is not an offense but rather specifies what constitutes prima facie evidence of purpose to defraud under certain circumstances.])	Same.
2913.42 (tampering with records)	Same.
2913.43 (securing writing by deception)	Same.
2913.44 (personating an officer)	Same.
2913.441 (unauthorized display of emblems related to law enforcement on motor vehicles)	Same.
2913.45 (defrauding creditors)	Same.
2913.46 (illegal use of Supplemental Nutrition Assistance Program or WIC program benefits)	Same.
2913.47 (insurance fraud)	Same.
2913.48 (Workers' Compensation fraud)	Same.



Prior Law	The Act
2913.49 (identity fraud)	Same.
2913.51 (receiving stolen property)	Same.
2917.01 (inciting to violence)	Same.
2917.02 (aggravated riot)	Same.
2917.03 (riot)	Same.
2917.11 (disorderly conduct)	No provision.
2917.31 (inducing panic)	Same.
2919.12 (unlawful abortion)	Same.
No provision.	2919.121 (unlawful abortion [on a minor])
No provision.	2919.123 (unlawful distribution of an abortion-inducing drug)
2919.22 (endangering children)	Same.
2919.23 (interference with custody) and a violation of 2919.23 that would have been a violation of 2905.04 (child stealing) as it existed before July 1, 1996, had the violation been committed before that date.	2919.23 (interference with custody)
2919.24 (contributing to unruliness or delinquency)	Same.
2919.25 (domestic violence)	Same.
2921.03 (intimidation)	Same.
2921.11 (perjury)	Same.
No provision.	2921.12 (tampering with evidence)
2921.13 (falsification)	Same.
No provision.	2921.21 (compounding a crime)
No provision.	2921.24 (disclosure of confidential information)
No provision.	2921.32 (obstructing justice)
No provision.	2921.321 (assaulting a police dog, horse, or assistance dog)
2921.34 (escape)	Same.
2921.35 (aiding escape or resistance to authority)	Same.
2921.36 (prohibited conveying of certain items onto property of state facilities)	Same.



Prior Law	The Act
2923.01 (conspiracy)	A violation of 2923.01 when the underlying offense that is the object of the conspiracy is one of the offenses included in this list.
2923.02 (attempt to commit an offense)	A violation of 2923.02 when the underlying offense that is the object of the attempt is one of the offenses included in this list.
2923.03 (complicity)	A violation of 2923.03 when the underlying offense that is the object of the complicity is one of the offenses included in this list.
No provision.	2921.51 (impersonation of certain officers)
2923.12 (carrying concealed weapons)	Same.
No provision.	2923.122 (illegal conveyance or possession of a deadly weapon or dangerous ordnance in a school safety zone and illegal possession of an object indistinguishable from a firearm in a school safety zone)
No provision.	2923.123 (illegal conveyance of a deadly weapon or dangerous ordnance into a courthouse and illegal possession or control of a deadly weapon or dangerous ordnance in a courthouse)
2923.13 (having weapons while under disability)	Same.
2923.161 (improperly discharging firearm at or into habitation or school safety zone)	Same.
No provision.	2923.162 (discharge of firearm on or near prohibited premises)
No provision.	2923.21 (improperly furnishing firearms to a minor)
2923.32 (engaging in a pattern of corrupt activity)	Same.
No provision.	2923.42 (criminal gang activity)
2925.02 (corrupting another with drugs)	Same.
2925.03 (trafficking offenses)	Same.
2925.04 (illegal manufacture of drugs and cultivation of marihuana)	Same.
No provision.	2925.041 (illegal assembly or possession of chemicals for the manufacture of drugs)
2925.05 (Funding of drug or marihuana trafficking)	Same.



Prior Law	The Act
2925.06 (Illegal administration or distribution of anabolic steroids)	Same.
No provision.	2925.09 (sale or use of drugs not approved by U.S. Food and Drug Administration)
2925.11 (drug possession offenses)	Same.
2925.13 (permitting drug abuse)	Same.
2925.14 (use, possession, or sale of drug paraphernalia)	Same.
2925.22 (deception to obtain a dangerous drug)	Same.
2925.23 (illegal processing of drug documents)	Same.
No provision.	2925.24 (tampering with drugs)
No provision.	2925.36 (illegal dispensing of sample drugs)
No provision.	2925.55 (unlawful purchase or receipt of pseudoephedrine product)
No provision.	2925.56 (unlawful sale of pseudoephedrine product)
2927.12 (ethnic intimidation)	Same.
3716.11 (adulteration of food)	Same.
A violation of an existing or former municipal ordinance or law of this state, any other state, or the United States that is substantially equivalent to any of the offenses listed above.	Same.

### Release of criminal records check report

The report of a criminal records check is not a public record and is not to be available to any person other than the following:

- (1) The person who is the subject of the report or the person's representative;
- (2) The ODJFS Director and the ODJFS staff who are involved in the administration of Medicaid;
- (3) ODJFS's designee;



(4) An individual who receives home and community-based services from the person who is the subject of the report;

(5) A court, hearing officer, or other necessary individual involved in a case dealing with (a) a denial or termination of a Medicaid provider agreement related to the criminal records check or (b) a civil or criminal action regarding Medicaid.

## **Rules**

The ODJFS Director is to adopt rules to implement the provisions discussed above. The rules must specify circumstances under which ODJFS or its designee may approve an applicant's application for a Medicaid provider agreement as an independent provider or allow an independent provider to maintain a provider agreement even though the applicant or independent provider is found by a criminal records check to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense.

## **Exclusion of BCMH participants from Medicaid managed care**

(Section 309.30.53 of Am. Sub. H.B. 153 of the 129th General Assembly; Sections 601.40 and 601.41)

Am. Sub. H.B. 153 of the 129th General Assembly (the biennial budget act) expands the group of individuals required or permitted to participate in the Medicaid care management system, including certain individuals in the Medicaid coverage group known as the "aged, blind, or disabled." However, H.B. 153 prohibits, in fiscal years 2012 and 2013, certain individuals receiving services through the program for medically handicapped children, also known as the Bureau for Children with Medical Handicaps (BCMh), from being included in the Medicaid care management system. The excluded BCMh participants are those who were not already enrolled in the Medicaid care management system and have one or more of the following: (1) cystic fibrosis, (2) hemophilia, or (3) cancer.

The act extends the exclusion period to provide that the BCMh participants described above are to be excluded from the Medicaid care management system until the later of the following: (1) January 1, 2014, or (2) one year after the date that ODJFS first designates any individual who receives Medicaid on the basis of being aged, blind, or disabled who is under age 21 as an individual who is permitted or required to participate in the care management system.



## **Medicaid managed care contract decisions**

(R.C. 5111.06)

The act eliminates a provision of prior law that excluded the Medicaid managed care system in general from the requirement that ODJFS issue orders regarding Medicaid provider agreements and final fiscal audits pursuant to an adjudication under the Administrative Procedure Act (R.C. Chapter 119.). Instead, the act provides that the adjudication requirement does not apply to any action taken or decision made by ODJFS with respect to entering into or refusing to enter into a contract with a managed care organization.

## **Hospital quality factors and incentive payments under Medicaid**

(Section 309.30.30 of Am. Sub. H.B. 153 of the 129th General Assembly; Sections 601.40 and 601.41)

The act revises a provision of Am. Sub. H.B. 153 of the 129th General Assembly (the biennial budget act) regarding Medicaid payments to hospitals for fiscal years 2012 and 2013. H.B. 153 requires the ODJFS Director to implement purchasing strategies and rate reductions for hospital and other Medicaid-covered services that result in payment rates for those services being at least 2% less than the respective payment rates for fiscal year 2011. In implementing the purchasing strategies and rate reductions, the Director is required to modernize hospital inpatient and outpatient reimbursement methodologies by (1) modifying the hospital inpatient capital reimbursement methodology, (2) establishing new diagnosis-related groups in a cost-neutral manner, and (3) implementing other changes the Director considers appropriate. The act requires that the Director's rules regarding these three provisions include quality factors and quality-based incentive payments.

## **Designation of agency to perform level of care assessments**

(Section 209.20 of Am. Sub. H.B. 153 of the 129th General Assembly; Sections 601.40 and 601.41)

The act provides that ODJFS is permitted rather than required to designate the Department of Aging to perform assessments of whether Medicaid applicants and recipients need the level of care provided by nursing facilities.



## Franchise permit fees

### Federal guarantee test

(R.C. 3721.51 and 5112.31)

Continuing law requires nursing homes and hospital long-term care units to pay franchise permit fees. Intermediate care facilities for the mentally retarded (ICFs/MR) must also pay franchise permit fees.

To avoid causing a reduction in federal funds for Medicaid, the franchise permit fees must meet certain federal requirements. One requirement is that there cannot be a hold harmless provision with respect to a fee, which means that a state cannot directly or indirectly reimburse nursing facilities, hospital long-term care units, or ICFs/MR for the fees they pay. However, the hold harmless prohibition does not apply if the fee passes a two-part guarantee test. The fee passes the first part of the test if it is applied at a rate that produces revenues not exceeding 6% of the net patient revenues received by the nursing facilities, hospital long-term care units, and ICFs/MR. A fee that fails the first part still passes the guarantee test if it passes the second part. The second part is passed if less than 75% of nursing facilities, hospital long-term care units, and ICFs/MR receive no more in enhanced Medicaid payments or other state payments than an amount equal to 75% of the franchise permit fees they pay.<sup>157</sup>

Prior state law required ODJFS to recalculate the franchise permit fees using rates that differ from the rates otherwise required by state law if those rates caused the fees to fail the first part of the guarantee test. Under the act, ODJFS is not required to make the recalculation unless that the fees fail to pass both parts of the guarantee test.

### Redetermining a converted ICF/MR's franchise permit fee

(R.C. 5112.331 (primary), 5112.31, 5112.33, and 5112.341)

The act revises the law governing the ICF/MR franchise permit fee to reflect continuing law that authorizes an ICF/MR to convert some or all of its beds from providing ICF/MR services to providing home and community-based services under a Medicaid waiver administered by the Department of Developmental Disabilities.

Continuing law requires ODJFS to determine each ICF/MR's franchise permit fee for a fiscal year not later than August 15. The determination is based in part on the number of beds an ICF/MR has on May 1 of that year. If, during the period beginning on May 1 of a calendar year and ending on January 1 of the immediately following

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<sup>157</sup> 42 C.F.R. 433.68(f).



calendar year, an ICF/MR converts one or more of its beds, ODJFS is required by the act either to terminate or redetermine the ICF/MR's franchise permit fee.

ODJFS is to terminate an ICF/MR's franchise permit fee if the ICF/MR's Medicaid certification is terminated because of the conversion. (Continuing law provides for an ICF/MR's Medicaid certification to be terminated if it converts all of its beds.) The franchise permit fee is to be terminated effective on the first day of the quarter immediately following the quarter in which ODJFS receives notice of the conversion from the Director of Health.

ODJFS is to redetermine an ICF/MR's franchise permit fee for the second half of the fiscal year for which the fee is assessed if the ICF/MR's Medicaid-certified capacity is reduced because of the conversion. (Continuing law provides for an ICF/MR's Medicaid certification to be reduced by the number of beds it converts if it does not convert all of its beds.) To redetermine the ICF/MR's franchise permit fee, ODJFS must multiply the franchise permit fee rate (\$17.99 for fiscal year 2012 and \$18.32 for each fiscal year thereafter) by the product of (1) the number of the ICF/MR's beds that remain certified under Medicaid as of the date the conversion takes effect and (2) the number of days in the second half of the fiscal year for which the redetermination is made. The ICF/MR is required to pay its franchise permit fee as redetermined in installment payments not later than 45 days after the last day of March and June of the fiscal year for which the redetermination is made.

### **Use of money raised by ICF/MR franchise permit fee**

(R.C. 5112.37 (primary), 5112.31, 5112.371, and 5112.39)

The act revises the law governing the funds into which money raised by the ICF/MR franchise permit fee is deposited. Prior law required that 81.77% of the franchise permit fees and penalties associated with the fees that ICFs/MR pay for fiscal year 2012 be deposited into the Home and Community-Based Services for the Mentally Retarded and Developmentally Disabled Fund. 82.2% of all such fees and penalties paid for fiscal year 2013 and thereafter were to be deposited into that fund. The remaining amount of the fees and penalties paid for a fiscal year had to be deposited into the Department of Developmental Disabilities Operating and Services Fund. The act requires instead that all the fees and penalties be deposited into the Home and Community-Based Services for the Mentally Retarded and Developmentally Disabled Fund and that the ODJFS Director, as soon as possible after the end of each quarter, certify to the Director of Budget and Management the amount of money in that fund as of the last day of that quarter. On receipt of the certification, the Director must transfer the amount certified to the Department of Developmental Disabilities Operating and Services Fund.



## **Nursing facilities' wheelchair, resident transportation, and tax costs**

(R.C. 5111.20, 5111.242, and 5111.254)

Continuing law establishes formulas that are used to calculate Medicaid rates for services provided by nursing facilities and ICFs/MR. There are different formulas for the various groups of costs that nursing facilities and ICFs/MR incur, such as ancillary and support costs, direct care costs, and tax costs.

The act makes a nursing facility's wheelchair and resident transportation costs reimbursable under Medicaid as part of direct care costs rather than ancillary and support costs. This means that wheelchair and resident transportation costs are to be calculated in accordance with the formula governing direct care costs rather than the formula governing ancillary and support costs.

The act also clarifies that certain tax costs are a separate category for purposes of nursing facilities' Medicaid rates. "Ancillary and support costs" is defined in part, as all reasonable costs incurred by nursing facilities other than direct care and capital costs. The act revises the definition by adding tax costs with direct care and capital costs as costs that are not ancillary and support costs. Continuing law establishes a formula for determining Medicaid rates for nursing facilities' tax costs that is separate from the formula used to determine Medicaid rates for nursing facilities' ancillary and support costs. "Tax costs" are defined as the commercial activity tax, real estate taxes, personal property taxes, and corporate franchise taxes.

## **Inpatient days and Medicaid days**

(R.C. 5111.20 (primary), 3721.50, and 5111.23)

The act revises the definitions of "inpatient days" and "Medicaid days" in the law governing the formulas used to determine Medicaid rates for nursing facilities and ICFs/MR. The amount Medicaid pays a nursing facility or ICF/MR is based in part on the number of the nursing facility's or ICF/MR's inpatient days and Medicaid days.

Prior law defined "inpatient days" as all days during which a resident, regardless of payment source, occupies a bed in a nursing facility or ICF/MR that is included in the facility's Medicaid certified capacity. Therapeutic or hospital leave days for which payment was made to reserve a nursing facility or ICF/MR bed during a Medicaid recipient's temporary absence were considered inpatient days proportionate to the percentage of the nursing facility's or ICF/MR's per resident per day rate paid for those days.



Under the act, the term "inpatient days" is defined separately for nursing facilities and ICFs/MR. In the context of nursing facilities, inpatient days are (1) all days during which a resident, regardless of payment source, occupies a bed in a nursing facility that is included in the facility's Medicaid certified capacity and (2) 50% of the days for which payment is made to reserve a nursing facility bed during a Medicaid recipient's temporary absence. In the context of ICFs/MR, inpatient days are (1) all days during which a resident, regardless of payment source, occupies a bed in an ICF/MR that is included in the ICF/MR's Medicaid certified capacity and (2) all days for which payment is made to reserve an ICF/MR bed during a Medicaid recipient's temporary absence.

Medicaid days are similar to inpatient days, but Medicaid days concern only days in which Medicaid recipients (rather than any individuals) occupy beds. Prior law defined "Medicaid days" as all days during which a resident who was a Medicaid recipient eligible for nursing facility services occupied a bed in a nursing facility included in the facility's Medicaid certified capacity. Therapeutic or hospital leave days for which payment was made to reserve a bed during a Medicaid recipient's temporary absence were considered inpatient days proportionate to the percentage of the nursing facility's per resident per day rate paid for those days.

The act revises the definition of "Medicaid days" in a manner similar to the revision of the definition of "inpatient days." In the context of nursing facilities, Medicaid days are (1) all days during which a resident who is a Medicaid recipient eligible for nursing facility services occupies a bed in a nursing facility that is included in the facility's Medicaid certified capacity and (2) 50% of the days for which payment is made to reserve a nursing facility bed during a Medicaid recipient's temporary absence. Regarding ICFs/MR, Medicaid days are (1) all days during which a resident who is a Medicaid recipient eligible for ICF/MR services occupies a bed in an ICF/MR that is included in the ICF/MR's Medicaid certified capacity and (2) all days for which payment is made to reserve an ICF/MR bed during a Medicaid recipient's temporary absence.

The act resolves an ambiguity in the law governing Medicaid rates for the direct care costs of ICFs/MR. Under prior law, the formula for determining the rates used the term "Medicaid inpatient day." This term however, was not defined and the terms "Medicaid days" and "inpatient days" have different meanings. The act replaces the term "Medicaid inpatient days" with the term "Medicaid days."<sup>158</sup>

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<sup>158</sup> Prior law included in the definition of "Medicaid days" a statutory cross-reference to the law that authorized Medicaid payments to reserve ICF/MR beds, as well as the section of law authorizing

## **Critical access incentive payments**

(R.C. 5111.246 (primary) and 5111.222)

The act requires ODJFS to pay, each fiscal year, a critical access incentive payment to each nursing facility that qualifies as a critical access nursing facility. A nursing facility qualifies as a critical access nursing facility for a fiscal year if it meets all of the following requirements:

(1) Is located in an area that, on December 31, 2011, was designated as an empowerment zone under the federal Internal Revenue Code;

(2) Has an occupancy rate of at least 85% as of the last day of the calendar year preceding the fiscal year;

(3) Has a Medicaid utilization rate of at least 65% as of the last day of the calendar year preceding the fiscal year.

A critical access nursing facility's critical access incentive payment for a fiscal year is to equal 5% of the other parts of its Medicaid rate for the fiscal year. The following are the other parts of a nursing facility's Medicaid rate: (1) the direct care costs rate, (2) the ancillary and support costs rate, (3) the tax costs rate, (4) the capital costs rate, and (5) the quality incentive payment.

## **Fiscal year 2013 quality bonuses to nursing facilities (VETOED)**

(Section 751.05)

The Governor vetoed a provision that would have provided for a total of \$30 million to be spent in fiscal year 2013 to pay quality bonuses under Medicaid to qualifying nursing facilities. This quality bonus was to be in addition to the quality bonus that continuing law provides for a qualifying nursing facility to receive for a fiscal year if the entire amount budgeted for quality incentive payments (a component of nursing facilities' Medicaid rates) for the fiscal year is not expended.

To qualify for the quality bonus, a nursing facility would have to have been awarded more than five points for meeting various accountability measures related to nursing facilities' quality incentive payments and at least one of the points would have to have been awarded because of any of the following:

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payments to reserve nursing facility beds, even though the definition otherwise referenced only nursing facilities.



(1) Not more than a certain percentage of the nursing facility's long-stay residents reported severe to moderate pain during the assessment process known as the minimum data set (MDS);

(2) Not more than a certain percentage of the nursing facility's long-stay, high-risk residents had been assessed as having one or more stage two, three, or four pressure ulcers during the MDS assessment process;

(3) Not more than a certain percentage of the nursing facility's long-stay residents were physically restrained as reported during the MDS assessment process;

(4) Less than a certain percentage of the nursing facility's long-stay residents had a urinary tract infection as reported during the MDS assessment process;

(5) The nursing facility used a tool for tracking residents' admissions to hospitals.

A qualifying nursing facility's quality bonus would have been equal to the product of (1) the quality bonus per Medicaid day for fiscal year 2013 determined for the facility and (2) the number of the facility's Medicaid days in fiscal year 2012. A qualifying nursing facility's quality bonus per Medicaid day for fiscal year 2013 was to be the product of (1) the facility's quality bonus points for the fiscal year 2013 (an amount determined by subtracting five from the number of points awarded to the facility for meeting accountability measures) and (2) the quality bonus per point for fiscal year 2013. The quality bonus per point was to be determined as follows:

(1) Determine the number of each qualifying nursing facility's point days for fiscal year 2013 (an amount determined by multiplying a facility's quality bonus points by the number of the facility's Medicaid days);

(2) Determine the sum of all qualifying nursing facility's point days for fiscal year 2013;

(3) Divide \$30 million by the sum determined under (2).

The amount calculated for a nursing facility's quality bonus would not have been subject to appeal under the Administrative Procedure Act (R.C. Chapter 119.).

### **Conversion of ICF/MR beds**

(R.C. 5111.874, 5111.877, and 5111.878)

To increase the number of slots available for home and community-based services provided under a Medicaid waiver administered by the Department of



Developmental Disabilities, continuing law authorizes the operator of an ICF/MR to convert some or all of its beds to providing those services. Under prior law, the maximum number of beds that could be converted by ICFs/MR was 100; however, the ODJFS Director was authorized to seek federal approval for up to 200 slots under the waiver. The act increases to 500 both the total number of ICF/MR beds that may be converted and the maximum number of slots for which the ODJFS Director may seek federal approval.

When some or all of an ICF/MR's beds are to be converted, prior law required the operator to notify the Directors of Health, ODJFS, and Developmental Disabilities of the operator's intent to make the conversion. The act eliminates the requirement to notify the ODJFS Director. The act continues the requirement that the conversion be approved by the Director of Developmental Disabilities but eliminates the requirement that the conversion also be approved by the ODJFS Director.

### **Rates for waiver providers serving converted facility residents**

(Section 263.20.70 of Am. Sub. H.B. 153 of the 129th General Assembly; Sections 601.40 and 601.41)

The main operating budget for fiscal years 2012 and 2013, Am. Sub. H.B. 153 of the 129th General Assembly, requires ODJFS to increase, subject to approval by the U.S. Centers for Medicare and Medicaid Services, the Medicaid rate paid to a provider under the Individual Options waiver program for up to a year if (1) the individual was a resident of a developmental center immediately before enrolling in the waiver, (2) the provider begins serving the individual on or after July 1, 2011, and (3) the Director of Developmental Disabilities determines that the increased rate is warranted by the individual's special circumstances and serving the individual through the Individual Options waiver is fiscally prudent for the Medicaid program. The rate is to be increased by 52¢ for each 15 minutes of routine homemaker/personal care provided to an individual.

The act provides for the rate increase also to apply when an individual was a resident of a converted facility immediately before enrolling in the Individual Options waiver. A converted facility is an ICF/MR, or former ICF/MR, that converted some or all of its beds to providing home and community-based services under the Individual Options waiver pursuant to continuing law that authorizes such conversions.



## **Collection of long-term care facility Medicaid debts**

(R.C. 5111.651 (repealed))

The act repeals an obsolete law regarding the collection of Medicaid debts owed by nursing facilities and ICFs/MR. Continuing law establishes Medicaid debt collection procedures for nursing facilities and ICFs/MR that undergo a change of operator, close, or voluntarily cease to participate in Medicaid.

The obsolete law that the act repeals provided that the Medicaid debt collection requirements did not apply to a nursing facility or ICF/MR that underwent a change of operator, closed, or voluntarily ceased to participate in Medicaid on or before September 30, 2005, and provided written notice of the action to ODJFS on or before June 30, 2005.

## **Ohio Home Care Program's Home First component**

(R.C. 5111.862)

The act revises the eligibility requirements for the Home First component of the Ohio Home Care Program. The program is authorized by a federal Medicaid waiver and offers home and community-based services to eligible, disabled individuals under age 60 who require the level of care provided by nursing facilities or hospitals. The Home First component enables individuals meeting certain requirements to be enrolled in the program ahead of others.

To qualify for the Home First component, an individual must be eligible for the Ohio Home Care Program and meet one of various sets of requirements. One of the sets of requirements concerns individuals who participate in the Money Follows the Person demonstration project at the time they apply for the Ohio Home Care Program. Such an individual may qualify for the Home First component if the individual resides in a residential treatment facility or inpatient hospital setting. Prior law defined "residential treatment facility" solely as a residential facility licensed by the Department of Mental Health that serves children and either has more than 16 beds or is part of a campus of multiple facilities that, combined, have more than 16 beds. The act provides that a residential treatment facility also is an institution for children that is certified by ODJFS and either has more than 16 beds or is part of a campus of multiple institutions that, combined, have more than 16 beds.



## **HOME Choice demonstration component of Medicaid**

(R.C. 5111.96)

The act codifies (i.e., places in the Revised Code) the existing Helping Ohioans Move, Expanding (HOME) Choice demonstration component of the Medicaid program. Under the act, the ODJFS Director is permitted, to the extent funds are available under a Money Follows the Person demonstration project, to operate the HOME Choice demonstration component to transition Medicaid recipients to community settings. Federal law authorizes the U.S. Secretary of Health and Human Services to award grants to states for demonstration projects that are designed to achieve certain objectives with respect to institutional and home and community-based long-term care services provided under a state's Medicaid program.

The ODJFS Director is permitted to adopt rules for the administration and operation of the HOME Choice demonstration component. The Director is to follow the Administrative Procedure Act (R.C. Chapter 119.) in adopting the rules.

## **Ohio Access Success Project**

(R.C. 5111.97)

The act revises the law governing the Ohio Access Success Project. Continuing law permits the ODJFS Director to establish the project to help Medicaid recipients transition from residing in a nursing facility to residing in a community setting. The benefits provided under the project may include payment for the first month's rent in a community setting, rental deposits, utility deposits, moving expenses, and other expenses not covered by the Medicaid program that facilitate a Medicaid recipient's move from a nursing facility to a community setting. If the project is established as a non-Medicaid program (as opposed to being integrated into a Medicaid waiver component that provides home and community-based services), no participant may receive more than \$2,000 worth of benefits.

The act provides that if ODJFS enters into a contract with an entity to provide fiscal management services regarding the Ohio Access Success Project, the contract may provide for a portion of a participant's benefits to be paid to the contracting entity. The contract must specify the portion to be paid to the contracting entity.

The act revises terms used in the law governing the Ohio Access Success Project to make them more consistent with other Medicaid law. Specifically, the act uses the term "home and community-based services Medicaid waiver component" instead of referring to a program of Medicaid-funded home and community-based services authorized by the United States Department of Health and Human Services.



Continuing law defines "home and community-based services Medicaid waiver component" as a Medicaid waiver component under which home and community-based services are provided as an alternative to hospital, nursing facility, or intermediate care facility for the mentally retarded services. The act also provides that if the project is integrated into a home and community-based services Medicaid waiver component, the rules the ODJFS Director adopts regarding the project are to be adopted under continuing law governing rules for Medicaid waiver components.

### **Health Care/Medicaid Support and Recoveries Fund and Health Care Compliance Fund**

(R.C. 5111.941 (primary), 5111.171, and 5111.946; Section 309.35.73 of Am. Sub. H.B. 153 of the 129th General Assembly; Sections 512.50, 601.40, and 601.41)

The act renames the Medicaid Revenue and Collections Fund the Health Care/Medicaid Support and Recoveries Fund. Continuing law provides for the nonfederal share of all Medicaid-related revenues, collections, and recoveries to be deposited into the fund unless another statute or the Controlling Board provides otherwise. The act provides for the following also to be credited to the fund:

(1) Federal reimbursement received for disproportionate share hospital payment adjustments made under Medicaid to state mental health hospitals;

(2) Revenues ODJFS receives from another state agency for Medicaid services pursuant to an interagency agreement, other than such revenues required to be deposited into the Health Care Services Administration Fund;

(3) The first \$750,000 that ODJFS receives in a fiscal year for performing eligibility verification services necessary for compliance with a federal regulation regarding independent, certified audits for disproportionate share hospital payments.

The remainder of the money that ODJFS receives in a fiscal year for performing those eligibility verification services is to be credited to the Health Care Compliance Fund. Continuing law provides for that fund also to receive (1) all fines imposed on and collected from Medicaid managed care organizations for failure to meet performance standards or other requirements specified in provider agreements or ODJFS's rules and (2) all of the fund's investment earnings.



## OHP Health Care Grants Fund

(Section 506.10)

The act authorizes ODJFS, for fiscal years 2012 and 2013, to deposit into the OHP Health Care Grants Fund federal grants for the administration of health care programs that ODJFS receives under the federal health care reform laws enacted in 2010. ODJFS is required to use the money in the fund to pay for expenses incurred in carrying out duties that ODJFS assumes by accepting the federal grants, including expenses for the administration of health care programs.

### Office of Medical Assistance

(R.C. 5111.01 (primary), 185.03 (3701.924), 3742.31, 3742.32, 5107.16, 5111.013, 5111.014, 5111.0115, 5111.0120, 5111.16, and 5111.161; Sections 601.40, 601.41, and 751.03)

The act establishes the Office of Medical Assistance as a work unit within ODJFS. The chief of the Office is to hold the title of Medical Assistance Director. Notwithstanding a law that provides for the ODJFS Director to appoint the chief of each ODJFS work unit, the Governor is to appoint the Medical Assistance Director who is to serve at the Governor's pleasure. The Medical Assistance Director is not an assistant director of ODJFS for any purpose. ODJFS is required, subject to appropriations for Medicaid and the Children's Health Insurance Program (CHIP), to provide staff and support services as necessary for the operation of the Office.

The Office of Medical Assistance is to replace ODJFS as the single state agency to supervise the administration of Medicaid once the replacement is approved by the United States Centers for Medicare and Medicaid Services (CMS) if such approval is needed. The Office also is to assume ODJFS's responsibilities regarding CHIP. If a statute, rule, contract, or other legal authority *requires* the ODJFS Director or ODJFS to take an action regarding Medicaid or CHIP, the Medical Assistance Director or Office of Medical Assistance must take the action in place of the ODJFS Director or ODJFS. If a statute, rule, contract, or other legal authority *permits* the ODJFS Director or ODJFS to take an action regarding Medicaid or CHIP, the Medical Assistance Director or Office of Medical Assistance is to take the action in place of the ODJFS Director or ODJFS if the action is to be taken. However, a contract regarding Medicaid or CHIP that is in effect on September 10, 2012 (the act's 90-day effective date) is to continue to be operated in accordance with the contract's terms until the contract is amended, expires, or is terminated. Subject to CMS's approval, any ODJFS rules regarding Medicaid or CHIP that are in effect on September 10, 2012, become rules of the Office of Medical Assistance and the Medical Assistance Director is permitted to amend or rescind the rules in a manner consistent with the statutes that authorize the rules.



The act states the General Assembly's intent to amend the laws governing Medicaid and CHIP to replace references to the ODJFS Director with references to the Medical Assistance Director and to replace references to ODJFS with references to the Office of Medical Assistance as appropriate in the context of transferring authority for Medicaid and CHIP from ODJFS to the Office.

ODJFS has a work unit called the Office of Ohio Health Plans. This work unit was created administratively rather than statutorily but there are a few references to the Office of Ohio Health Plans in various laws. The act replaces the statutory references to the Office of Ohio Health Plans with references to the Office of Medical Assistance.

## **VI. Unemployment Compensation**

### **Recovery of unemployment compensation benefits overpayments**

(R.C. 4141.35)

Under the act, the ODJFS Director may file an action to collect unemployment compensation benefits that were procured by fraudulent misrepresentation in any court of competent jurisdiction. Formerly, the Director was permitted to file that action only in an Ohio court. Under continuing law, the Director must file an administrative or legal proceeding to collect unemployment compensation benefits procured by fraudulent misrepresentation not later than six years from the date on which the Director's order requiring repayment became final. The act extends that time limit by the period of any stay to the collection or by any other time period to which the parties mutually agree. The act also extends the continuing law three-year time limit for collecting unemployment compensation benefits to which the applicant was not entitled for reasons other than fraudulent misrepresentation by the period of any stay to the collection or by any other time period to which the parties mutually agree.

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## **JOINT COMMITTEE ON AGENCY RULE REVIEW (JCARR)**

- Eliminates the exemption from the five-year cyclical rule review requirement for rules adopted, amended, or rescinded by the Department of Taxation.



## **Five-year cyclical rule review for Department of Taxation's rules**

(R.C. 119.032)

The act eliminates the exemption from the five-year cyclical rule review requirement for rules adopted, amended, or rescinded by the Department of Taxation. Therefore, the Department is required to assign a five-year cyclical review date to each of its existing rules and to rules that are adopted after September 10, 2012, and to notify the Joint Committee on Agency Rule Review of the review date for each rule. Continuing law requires an agency to assign review dates to its rules so that approximately one-fifth of its rules are scheduled for review each calendar year to determine if they are necessary, need to be amended or rescinded, or have an adverse impact on businesses. Removal of the exemption will require the Department to review its rules cyclically according to such a schedule.

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### **JUDICIARY, SUPREME COURT (JSC)**

- Modifies the experience qualification for a municipal judge, a judge of the court of common pleas, a judge of the court of appeals, and the Chief Justice and a justice of the Supreme Court to hold judicial office by requiring six or more years of prior practice of law in Ohio or prior service as a judge of a court of record in any jurisdiction in the United States.
- Modifies the experience qualification generally for a county court judge to hold judicial office by requiring that the minimum of six years of prior practice of law be in Ohio.
- Eliminates references to shorthand reporters, stenographers, and stenographic records and notes, replaces the procedure for paying for transcribed records with a procedure for providing copies of records and electronic records, and adds references to electronic records, reporters, assistant reporters, and electronically recording actions in statutes relating to court reporters.

### **Qualifications of judges and justices**

(R.C. 1901.06, 1907.13, 2301.01, 2501.02, and 2503.01)

The act modifies one of the qualifications under continuing law for a municipal judge, a judge of the court of common pleas, a judge of the court of appeals, and the Chief Justice and a justice of the Supreme Court to hold judicial office by requiring that



the judge, Chief Justice, or justice has been, for a total of at least six years preceding appointment or the commencement of the judge's, Chief Justice's, or justice's term, engaged in the practice of law in Ohio or served as a judge of a court of record in any jurisdiction in the United States, or both. The act's requirement of six years of prior practice of law in Ohio replaces prior law's requirement of six years of prior practice with only two years required to be in Ohio.

The act also revises one of the qualifications under continuing law for a county court judge to hold judicial office by providing that the judge has been engaged, for a total of at least six years preceding the judge's appointment or the commencement of the judge's term, in the practice of law in this state rather than in any jurisdiction in the United States as under existing law. Prior law required that only two of the six years be in Ohio. The act provides that the six-year legal practice requirement does not apply to a county court judge who is holding office on the effective date of the amendment of R.C. 1907.13 by the act (September 10, 2012), instead of July 2, 2010 (prior law), and who subsequently is a candidate for that office.

### **Modernization of language in court reporter statutes**

(R.C. 1509.36, 1571.14, 2301.03, 2301.18, 2301.19, 2301.20, 2301.21, 2301.22, 2301.23, 2301.24, 2301.25, 2301.26, 2319.27, 2501.16, 2501.17, 2743.09, 2746.03, 2746.04, 2939.11, and 3745.05)

The act modernizes the language of Revised Code sections related to court reporting by eliminating references to shorthand reporters, stenographers, and stenographic records and notes, eliminating the payment procedure for transcribing copies of transcripts of testimony, adding a procedure for making copies of transcripts at cost or providing an electronic copy free, and adding references to electronic records, reporters, assistant reporters, and electronically recording actions. The act repeals the section (R.C. 2301.19) that authorizes a court of common pleas to appoint assistant shorthand reporters.

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## **LEGAL RIGHTS SERVICE (LRS)**

- Continues as members of the Public Employees Retirement System (PERS) employees of the Legal Rights Service (LRS) on September 30, 2012 (the day before LRS is abolished) who continue as employees of the nonprofit entity that replaces LRS on October 1, 2012.
- Specifies that employees of the nonprofit entity whose employment begins on or after October 1, 2012 are not members of PERS.



## **Legal Rights Service employees**

(R.C. 145.01 and 145.012)

Effective October 1, 2012, Am. Sub. H.B. 153 of the 129th General Assembly (the main operating budget for the biennium) abolishes the Legal Rights Service (LRS) and replaces it with a nonprofit entity that has as its purpose providing advocacy services and client assistance for people with disabilities.

The act provides that employees of LRS on September 30, 2012 (the day before LRS is abolished) who continue as employees of the nonprofit entity that replaces LRS are to continue as members of the Public Employees Retirement System (PERS) as long as they continue employment with the nonprofit entity. The act specifies that employees of the nonprofit entity whose employment begins on or after October 1, 2012, are not PERS members.

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## **LEGISLATIVE SERVICE COMMISSION (LSC)**

- Authorizes the Director of the Legislative Service Commission to publish the Administrative Code.

## **Director of Legislative Service Commission authorized to publish Administrative Code**

(R.C. 103.05)

The act authorizes, but does not require, the Director of the Legislative Service Commission to publish the Administrative Code. Under prior law, the Director was prohibited from publishing the Administrative Code unless no one else published an acceptable Administrative Code. The Director also was prohibited from publishing the Administrative Code "in a print mode or any other [presumably electronic] mode" unless no else was "willing and qualified to publish" an acceptable Administrative Code in that mode. Both of these prohibitions applied because acceptable Administrative Codes were, and continue to be, published by private publishers in both print and electronic modes. The act removes both prohibitions, and thus authorizes the Director to publish an acceptable Administrative Code in addition to the ones published by the private publishers. The act also clarifies that any person may publish an acceptable Administrative Code.



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## LOCAL GOVERNMENT (LOC)

### Governance of municipal hospitals

- Provides that the board of hospital commissioners of a municipal hospital must consist of the mayor and at least three mayor-appointed members, rather than four mayor-appointed members.
- Provides that the municipal members of the board of governors of a municipal hospital must consist of the mayor and at least three mayor-appointed members, rather than four mayor-appointed members.
- Eliminates a requirement that the mayor serve as the president of the board of hospital commissioners or board of governors of a municipal hospital.
- Establishes a process for filling vacancies on a municipal hospital's board of hospital commissioners or board of governors.

### County home reserve fund

- Increases to \$5,000 (from \$400) the maximum amount that may be in a county home's reserve fund at one time.

### County investment authority

- Modifies the maturity-date restrictions of county investments.

### Joint county departments of job and family services

- Permits the boards of county commissioners of any two or more counties to enter into a written agreement to form a joint county department of job and family services.

### Ethics Law financial disclosure statement filing fees

- Increases the general filing fee that a candidate or officer must pay when filing a financial disclosure statement under the Ethics Law.
- Increases the specially prescribed filing fee that a candidate for or member of the State Board of Education must pay when filing a financial disclosure statement under the Ethics Law.



- Clarifies that a member of the Ohio Livestock Care Standards Board is required to pay the general filing fee when filing a financial disclosure statement under the Ethics Law.

### **Other provisions**

- Authorizes a board of library trustees to contract with an architect, professional engineer, energy services company, contractor, or other person experienced in the design and implementation of energy conservation measures for an energy conservation report, and to proceed with energy conservation measures under certain specified methods.
- Authorizes a board of library trustees to contract for the purchase and installation of energy conservation measures.
- Authorizes the legislative authority of a municipal corporation in Stark County to conduct a pilot program whereby in fiscal years 2013 and 2014 the legislative authority may use up to 5% of the municipal corporation's water and sewer funds for sewerage or water system extensions, as applicable, if: (1) the system is being extended for economic development purposes, and (2) the areas to which the system is being extended are the subject of a cooperative economic development agreement.
- Provides that, beginning on July 1, 2013, the city of Cincinnati's fiscal year begins on July 1 of a calendar year and ends on June 30 of the following calendar year.
- Requires township representation on a county land reutilization corporation board of trustees only if the county that created the corporation has two or more townships with populations of at least 10,000 in their respective unincorporated territories.
- Declares that, for purposes of the County Sewer Districts Law and the Regional Water and Sewer Districts Law, a public exigency exists when an improvement is required as a result of a federally imposed or state-imposed consent decree that prohibits future sewer inflows, combined sewer overflows, or sewer back-ups.
- Authorizes a board of county commissioners of a county sewer district or board of trustees of a regional water and sewer district to appropriate and to take possession of land without a prior jury assessment of compensation and damages to the residue (quick-take) when such a public exigency exists.



## **Governance of municipal hospitals**

(R.C. 749.04, 749.05, and 749.18)

### **Board membership**

The act makes changes to the membership of the board of hospital commissioners of a municipal hospital and the membership of a municipal hospital's board of governors, which exists when the hospital participates with a joint township hospital district or county. Under the act, a board of hospital commissioners or the municipal members of a board of governors of a municipal hospital must consist of the mayor and at least three members appointed by the mayor. As a result, the number of board members is no longer fixed at five, which under prior law included the mayor and four mayor-appointed members.

The act eliminates a requirement that the mayor serve as the president of the board of hospital commissioners or board of governors of a municipal hospital.

### **Process for filling board vacancies**

The act establishes a process for filling vacancies on a municipal hospital's board of hospital commissioners. Under the act, the mayor, with the consent of the legislative authority of a municipal corporation, must fill any vacancy not later than 60 days after the vacancy occurs. If the vacancy remains unfilled on that date, the legislative authority has 30 additional days to fill the vacancy. If the vacancy remains unfilled for 90 days after the vacancy occurs, the remaining members of the board, by majority vote, must fill the vacancy. Any member appointed to fill a vacancy occurring prior to the expiration date of the term for which the member's predecessor was appointed must hold office as a member for the remainder of that term.

The act establishes a similar process for filling vacancies on a municipal hospital's board of governors. For a municipal member of the board, the board must follow the same procedure that is required for filling vacancies on a municipal hospital's board of governors described above. However, for a member appointed by a participating joint township hospital district or county, any vacancy must be filled by the appointing body not later than 90 days after the vacancy occurs unless otherwise provided in the agreement for participation with the district or county. If the vacancy remains unfilled on that date, the remaining members of the board, by majority vote, must fill the vacancy. For any other members of the board, vacancies must be filled by the remaining members of the board, by majority vote, unless otherwise provided in the agreement. Any member appointed to fill a vacancy occurring prior to the expiration date of the term for which the member's predecessor was appointed must hold office as a member for the remainder of that term.



## **County home reserve fund**

(R.C. 5155.14)

The act increases the maximum amount that may be in a county home's reserve fund at one time. Continuing law requires a board of county commissioners or board of county hospital trustees, whichever is responsible for the operational control of a county home, to set a reserve fund apart from the county home fund at the request of the county home's administrator. The reserve fund is to be used for emergency supplies and expenses. Previously, \$400 was the maximum amount that could be in a reserve fund. This amount was set by the General Assembly in 1980.<sup>159</sup> The act raises the maximum amount to \$5,000.<sup>160</sup>

## **County investment authority**

(R.C. 135.35)

Prior law required that most county investments of inactive moneys or money in the county public library fund mature within ten years from the date of settlement. The act reduces that maturity date to five years. It also eliminates an exemption from that maturity-date restriction by removing a county's authority to invest (with county investment advisory committee approval) up to 25% of the county's total average portfolio in securities and obligations that mature on a date that is more than ten years from the date of settlement. The act specifies, however, that an investment held in the county portfolio on the act's effective date (September 10, 2012) that was a legal investment under the law as it existed before that date may be held until maturity.

## **Joint county departments of job and family services**

(R.C. 329.01, 329.40, 329.41, 329.42, 329.43, 329.44, 329.45, 329.46, 330.04, and 5101.01)

### **Authority to form a joint department**

Under Sub. H.B. 225 of the 129th General Assembly, the boards of county commissioners of Hocking, Ross, and Vinton counties were permitted to form a county department of job and family services (CDJFS) as a joint CDJFS. The joint CDJFS was to be formed as a pilot project, without a specified ending date.

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<sup>159</sup> Am. H.B. 561 of the 113th General Assembly.

<sup>160</sup> According to the U.S. Bureau of Labor Statistics' consumer price index inflation calculator, \$400 in 1980 has the same buying power as \$1,105.16 in 2012 ([http://www.bls.gov/data/inflation\\_calculator.htm](http://www.bls.gov/data/inflation_calculator.htm)).



The act expands the authority to establish a joint CDJFS beyond the counties of Hocking, Ross, and Vinton and eliminates the qualification that a joint CDJFS be formed as a pilot project. Under the act, any two or more counties may form a joint CDJFS. The procedures for forming and operating a joint CDJFS are the same as the procedures in H.B. 225 and are described below.

### **Agreement by boards of county commissioners**

By entering into an agreement, the boards of county commissioners of any two or more counties may form a joint CDJFS to perform the duties, provide the services, and operate the programs required of a single CDJFS. The agreement must be ratified by resolution of the board of county commissioners of each county that entered into the agreement.

### **Notice of the agreement**

Each board of county commissioners that enters into an agreement to form a joint CDJFS must give notice of the agreement to the Ohio Department of Job and Family Services (ODJFS) at least 90 days before the agreement's effective date. The agreement takes effect not earlier than the first day of the calendar quarter following the 90-day notice period. The ODJFS Director is required to adopt, as an internal management rule under the abbreviated rulemaking procedure, the form in which the notice must be given.

### **Components of the agreement**

An agreement to establish a joint CDJFS must specify all of the following:

- The obligations of each board of county commissioners in operating the joint CDJFS, including requiring each board to provide state, federal, and county funds to the operation of the joint CDJFS and the schedule for providing those funds;
- How and which facilities, equipment, and personnel will be shared;
- Procedures for the division of resources and obligations if one or more counties withdraw from the joint CDJFS or if the CDJFS ceases to exist;
- Any contributions of participating counties establishing the joint CDJFS and the rights of those counties in lands or personal property, or rights or



interests therein, contributed to or otherwise acquired by the joint CDJFS.<sup>161</sup>

The agreement also may set forth any or all of the following:

- Quality, timeliness, and other standards to be met by each county;
- Which family service programs and functions are to be included in the joint CDJFS;
- Procedures for the operation of the board of directors (described below), including procedures governing the frequency of meetings and the number of members of the board required to constitute a quorum to take action;
- Any other procedures or standards necessary for the joint CDJFS to perform its duties and operate efficiently.

### **Board of directors**

The boards of county commissioners of the counties forming a joint CDJFS constitute, collectively, the board of directors of the joint CDJFS. On the effective date of the agreement, the board of directors takes control of and manages the joint CDJFS subject to all laws that govern the authority and responsibilities of a single board of county commissioners in the operation of a single CDJFS. Costs incurred in operating the joint CDJFS must be paid from a joint general fund created by the board of directors, except as may be otherwise provided in the agreement.

The board of directors, by a majority vote, may amend the agreement, but no amendment may divest a participating county of any right or interest in lands or personal property without its consent. The board of directors of the joint CDJFS must appoint and fix the compensation of a director of the joint CDJFS. The director serves at the pleasure of the board of directors. Under the direction and control of the board, the director has full charge of the joint CDJFS as set forth in continuing law for the director of a single CDJFS. The board of directors also may appoint up to three administrators to oversee services provided by the joint CDJFS. Administrators are in the unclassified service.

The board of directors may acquire, by purchase or lease, real property, equipment, and systems to improve, maintain, or operate family service programs within the territory served by the joint CDJFS. A board of county commissioners may

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<sup>161</sup> R.C. 329.40(B)(1).



acquire, within its county, real property or any estate, interest, or right therein, by appropriation or any other method, for use by the joint CDJFS in connection with its provision of services. Appropriation proceedings must be conducted under continuing laws regarding property appropriation (R.C. Chapter 163.).

A board of county commissioners that formed the joint CDJFS may contribute lands or rights or interests therein, money, other personal property or rights or interests therein, or services to the joint CDJFS. The board of county commissioners may issue bonds or bond anticipation notes of the county to pay the cost of acquiring real property and of constructing, modifying, or upgrading a facility to house employees of the joint CDJFS. The board of directors may reimburse the county for the use of such a facility if it is required to do so under the agreement forming the joint CDJFS.

### **Employees**

Employees of a joint CDJFS must be appointed by the director of the joint CDJFS and are in the classified service. The employees must be considered county employees for the purposes of the Department of Administrative Services civil service law (R.C. Chapter 124.) and all other provisions of state law applicable to county employees. Instead of or in addition to appointing these employees, the board of directors may agree to use the employees of one or more of the counties that formed the joint CDJFS in the service of the joint CDJFS and to share in their compensation in any manner that may be agreed upon.

Notwithstanding any other state law, if an employee's separation from county service occurs in connection with a county joining or withdrawing from a joint CDJFS, the board of county commissioners that initially appointed the employee has no obligation to pay any compensation with respect to unused vacation or sick leave accrued to the credit of the employee if the employee accepts employment with the joint CDJFS or a withdrawing county (discussed below). At the effective time of separation from county service, the joint CDJFS or the withdrawing county, as the case may be, must assume such unused vacation and sick leave accrued to the employee's credit.

### **Fiscal officer and treasurer**

The county auditor of the county with the largest population that formed a joint CDJFS must serve as the fiscal officer of the CDJFS, and the county treasurer of that county must serve as the treasurer of the CDJFS, unless the counties forming the joint CDJFS agree to appoint the county auditor and county treasurer of another county that formed the CDJFS. In either case, these county officers are required to perform any applicable duties for the joint CDJFS as each typically performs for the county of which the individual is an officer. The board of directors of the joint CDJFS may pay to that



county any amount agreed upon by the board of directors and the board of county commissioners of that county to reimburse the county for the costs that are properly allocable to the service of its officers as fiscal officer and treasurer of the CDJFS. A joint CDJFS is a public office subject to audit by the Auditor of State.

### **Prosecuting attorney**

The prosecuting attorney of the county with the largest population that formed a joint CDJFS must serve as the legal advisor of the board of directors of the joint CDJFS, unless the counties that formed the joint CDJFS agree to appoint the prosecuting attorney of another county that formed the joint CDJFS as legal advisor of the board. As reimbursement for this service, the board of directors may pay to the county of the prosecuting attorney who is the legal advisor of the board any amount agreed upon by the board of directors and the board of county commissioners of that county. The prosecuting attorney must provide such services to the board of directors as are required or authorized to be provided to other county boards.<sup>162</sup>

If the board of directors of the joint CDJFS wishes to employ other legal counsel on an annual basis to serve as the board's legal advisor in place of the prosecuting attorney, the board may do so with the agreement of the prosecuting attorney. And if the board of directors of the joint CDJFS wishes to employ other legal counsel to represent or advise the board on a particular matter in place of the prosecuting attorney, the board may do so with the agreement of the prosecuting attorney. If the prosecuting attorney does not agree, the board of directors may apply to the court of common pleas of the county with the largest population that formed the joint CDJFS for authority to employ other legal counsel on an annual basis or for that particular matter.

The prosecuting attorney who is the legal advisor of the board of directors must be given notice of an application to employ other legal counsel on an annual basis to serve as the board's legal advisor, or an application to employ other legal counsel to represent or advise the board on a particular matter, in place of the prosecuting attorney, and must be afforded an opportunity to be heard. After the hearing, the court may authorize the board of directors to employ other legal counsel on an annual basis or for a particular matter only if it finds that the prosecuting attorney refuses or is unable to provide the legal services that the board requires. If the board of directors employs other legal counsel on an annual basis or for a particular matter, the board may not require the prosecuting attorney to provide legal advice, opinions, or other legal services during the period or to the extent that the board employs the other legal counsel.

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<sup>162</sup> R.C. 329.43(A) and (B).



## Withdrawal and dissolution

A board of county commissioners that entered into an agreement to form a joint CDJFS may pass a resolution requesting to withdraw from the agreement. The board of county commissioners must deliver a copy of the resolution to the board of directors of the joint CDJFS. The board of directors must deliver written notice of the requested withdrawal to the boards of county commissioners of the other county or counties that formed the joint CDJFS. Within 30 days after receiving the notice, each of those boards of county commissioners must adopt a resolution either accepting the withdrawal or objecting to the withdrawal, and deliver a copy of the resolution to the board of directors.<sup>163</sup>

If any of the boards of county commissioners that formed a joint CDJFS adopts a resolution objecting to the requested withdrawal, the board of directors must deliver written notice of the objection to each other board of county commissioners of the counties that formed the joint CDJFS, including the board of county commissioners of the county proposing withdrawal. Not later than 30 days after sending the notice, the board of directors must hold a meeting to discuss the objection. After the meeting, the board of directors must determine whether the county requesting withdrawal desires to proceed with the withdrawal and, if the county does, the board of directors is required to accept the withdrawal. Not later than 30 days after the determination was made, the board of directors must deliver written notice of the withdrawal to the boards of county commissioners that formed the joint CDJFS and to the board of county commissioners that requested withdrawal, and commence the withdrawal process.

If all of the boards of county commissioners that formed a joint CDJFS, except for the board of county commissioners requesting the withdrawal, each adopt a resolution accepting the withdrawal, the board of directors must declare the withdrawal to be accepted. Not later than 30 days after the declaration, the board of directors must deliver written notice of the withdrawal to all of the boards of county commissioners that formed the joint CDJFS, including the board of county commissioners of the county requesting withdrawal, and commence the withdrawal process.

If a county requesting to withdraw decides to remain as a party to the agreement establishing a joint CDJFS, the board of county commissioners of that county must rescind its original resolution requesting withdrawal and must deliver a copy of the rescission to the board of directors of the joint CDJFS not later than 30 days after adopting the rescission.<sup>164</sup>

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<sup>163</sup> R.C. 329.45(A)(1).

<sup>164</sup> R.C. 329.45(A)(5).



If a county withdraws from an agreement, under the withdrawal process, the board of directors must ascertain, apportion, and order a division of the funds on hand, credits, and real and personal property of the joint CDJFS, either in money or in kind, on an equitable basis between the joint CDJFS and the withdrawing county according to the agreement forming the joint CDJFS and consistent with any prior contributions of the withdrawing county to the CDJFS. Any debt incurred individually remains the responsibility of that county, unless otherwise specified in the agreement.<sup>165</sup>

The board of directors is required to give notice to ODJFS of the withdrawal of a county at least 90 days before the withdrawal becomes final. The ODJFS Director must adopt, as an internal management rule, the form in which the notice must be given. The withdrawal becomes final not earlier than the first day of the calendar quarter following the 90-day notice period. On and after that day, the withdrawing county ceases to be a part of the joint CDJFS, and its members of the board of directors cease to be members of that board.

If the withdrawal of one or more counties would leave only one county participating in a joint CDJFS, the board of directors must ascertain, apportion, and order a final division of the funds on hand, credits, and real and personal property of the joint CDJFS. On and after the day on which the latest withdrawal of a county becomes final, the joint CDJFS is dissolved. When a joint CDJFS is dissolved and any indebtedness remains unpaid, the boards of county commissioners that formed the joint CDJFS must pay the indebtedness of the joint CDJFS in the amounts established by the agreement at the time the indebtedness was incurred.

### **Removal of a county**

A board of county commissioners that formed a joint CDJFS, by adopting a resolution, may propose the removal of another county that formed the joint CDJFS. The board of county commissioners must send a copy of the resolution to the board of directors of the joint CDJFS. Not later than ten days after receiving the copy of the resolution, the board of directors must send a copy of the resolution to each board of county commissioners that formed the joint CDJFS, except the board of county commissioners proposing removal. Not later than 30 days after sending a copy of the resolution, the board of directors must hold a hearing at which any county commissioner whose county formed the joint CDJFS may present arguments for or against the removal. At the hearing, approval or disapproval of the removal must be determined by a two-thirds vote of the county commissioners of the counties that

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<sup>165</sup> R.C. 329.45(B).

formed the joint CDJFS, with the exception of the county commissioners of the county proposed for removal.

In addition, the board of directors of a joint CDJFS, by adopting a resolution by a majority vote of the members of the board, may propose removal of a county that formed the joint CDJFS. Not later than ten days after adopting the resolution, the board of directors must send a copy of the resolution to the board of county commissioners of each county that formed the joint CDJFS, including the board of county commissioners of the county proposed for removal. Not later than 30 days after sending the copy of the resolution, the board of directors must hold a hearing at which any member of the board may present arguments for or against the removal. At this hearing, approval or disapproval of the resolution proposing removal must be determined by a two-thirds vote of the members of the board of directors, with the exception of the board members who represent the county proposed for removal.

If removal of a county is approved, the board of directors must give written notice of the approval to ODJFS at least 90 days before the removal takes effect. The ODJFS Director must adopt, as an internal management rule, the form in which the notice must be given. Removal of a county takes effect not earlier than the first day of the calendar quarter following the 90-day notice period. If, at any time, the county proposed for removal notifies the board of directors, by a majority vote of that county's board of county commissioners, that it chooses to withdraw from the joint CDJFS, the withdrawal procedure described above must be put immediately into motion.

## **Board of library trustees contracting for energy conservation measures**

(R.C. 3375.405)

### **Energy conservation report**

The act authorizes a board of library trustees that has been appointed by a county, township, municipal corporation, school district, or regional library district, to contract with an architect, professional engineer, energy services company, contractor, or other person experienced in the design and implementation of energy conservation measures for an energy conservation report.

Under the act, "energy conservation measure" means the construction of, installation or modification of an installation in, or remodeling of, a new or existing building, to reduce energy consumption.<sup>166</sup> The term includes:

- (1) Insulation of the building structure and of systems within the building;

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<sup>166</sup> R.C. 3375.405(A).



(2) Storm windows and doors, multiglazed windows and doors, heat-absorbing or heat-reflective glazed and coated window and door systems, additional glazing, reductions in glass area, and other window and door system modifications that reduce energy consumption;

(3) Automatic energy control systems;

(4) Heating, ventilating, or air conditioning system modifications or replacements;

(5) Caulking and weather-stripping;

(6) Replacement or modification of lighting fixtures to increase the energy efficiency of the system without increasing the overall illumination of a facility, unless such an increase in illumination is necessary to conform to the applicable state or local building code for the proposed lighting system;

(7) Energy recovery systems;

(8) Cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings;

(9) Acquiring, constructing, furnishing, equipping, improving the site of, or otherwise improving a central utility plant to provide heating and cooling services to a building together with distribution piping and ancillary distribution controls, equipment, and related facilities from the central utility plant to the building; and

(10) Any other construction, modification, installation, or remodeling approved by a board of library trustees as an energy conservation measure.

An energy conservation report must include all of the following:<sup>167</sup>

(1) Analyses of the energy needs of library buildings and recommendations for building installations, modifications of existing installations, or building remodeling that would significantly reduce energy consumption in the buildings;

(2) Estimates of all costs of the recommended installations, modifications, or remodeling, including costs of design, engineering, installation, maintenance, and repair;

(3) Estimates of the amounts by which energy consumption could be reduced;

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<sup>167</sup> R.C. 3375.405(B).

(4) The interest rate used to estimate the costs of any energy conservation measures that are to be financed by the library;

(5) The average system life of the energy conservation measures;

(6) Estimates of the likely savings that will result from the reduction in energy consumption over the average system life of the energy conservation measures, including the methods used to estimate the savings; and

(7) A certification under the seal of a registered professional engineer that the energy conservation report uses reasonable methods of analysis and estimation.

### **Implementation of energy conservation measures**

If a board of library trustees desires to implement energy conservation measures, the board may proceed under any of the following methods:

(1) Procure the energy conservation measures in any manner authorized by existing authority, specifically including continuing law that authorizes a board of library trustees to purchase, lease, construct, remodel, renovate, or otherwise improve, equip, and furnish buildings.<sup>168</sup>

(2) Advertise for bids using an energy conservation report or any part of an energy conservation report and comply with competitive bidding requirements applicable to the board of library trustees. Upon receiving bids, the board must analyze them and select the lowest and best bid or bids that are most likely to result in the greatest energy savings considering the cost of the project and the board of library trustees' ability to pay for the improvements with current revenues or by financing the improvements.<sup>169</sup>

(3) Request proposals from at least three vendors for the implementation of energy conservation measures. (This authority supersedes any requirement in the Revised Code that requires competitive bidding or specifies bidding procedures.) A request for proposals must require the vendor that is awarded a contract to prepare an energy conservation report as described above. Upon receiving proposals, the board of library trustees must analyze the proposals and the vendors' qualifications and select the most qualified vendor to prepare an energy conservation report. After receipt and review of the energy conservation report, the board may award a contract to the selected vendor to install the energy conservation measures that are most likely to result

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<sup>168</sup> R.C. 3375.40 and 3375.405(D).

<sup>169</sup> R.C. 3375.405(C)(1)(b) and (C)(2)(a).



in the greatest energy savings considering the cost of the project and the board's ability to pay for the improvements with current revenues or by financing the improvements.<sup>170</sup>

The awarding of a contract to install energy conservation measures is conditioned upon a finding by the board that the amount of money spent on energy conservation measures is not likely to exceed the amount of money the library would save in energy, operating, maintenance, and avoided capital costs over the average system life of the energy conservation measures as specified in the energy conservation report. In making such a finding, the board may take into account the increased costs due to inflation as shown in the energy conservation report. These requirements do not prohibit a board from rejecting all bids or proposals received or from selecting more than one bid or proposal.<sup>171</sup>

Prior to sending any vendor a copy of any request for proposals, the board of library trustees must advertise its intent to request proposals for the installation of energy conservation measures in a newspaper of general circulation within the territorial boundaries of the political subdivision or district over which it has jurisdiction of free public library services once a week for two consecutive weeks. The notice must state that the board of library trustees intends to request proposals for the installation of energy conservation measures, indicate the date on which the request for proposals will be mailed to vendors, which must be at least ten days after the second publication in the newspaper, and state that any vendor interested in receiving the request for proposals must submit written notice to the board not later than noon of the day on which the request for proposals is to be mailed.<sup>172</sup>

### **Pilot program regarding municipal sewage and water extensions**

(Section 707.10)

The act authorizes a municipal corporation in Stark County to conduct a pilot project under which it may provide for water or sewer system extensions under certain circumstances. The act provides that the pilot program applies only for fiscal years 2013 and 2014 and only to a municipal corporation in a county with a population between 375,000 and 400,000 according to the most recent federal decennial census; only Stark County meets that population requirement. Under the pilot program, the legislative authority of a municipal corporation may use up to 5% of the aggregate amount of

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<sup>170</sup> R.C. 3375.405(C)(1)(c) and (C)(2)(b).

<sup>171</sup> R.C. 3375.405(C)(2)(c).

<sup>172</sup> R.C. 3375.405(C)(1).



money deposited in the municipal corporation's sewer fund and up to 5% of the aggregate amount of money deposited in a fund created by the municipal corporation for water-works for the purpose of extending the municipal corporation's water or sewerage system, as applicable, if both of the following apply:

(1) The water or sewerage system is being extended to areas for economic development purposes; and

(2) The areas into which the water or sewerage system is being extended are the subject of a cooperative economic development agreement entered into by the municipal corporation.

With regard to either fund, the legislative authority cannot exceed the 5% limit established by the act.

### **Alternative fiscal year for the city of Cincinnati**

(R.C. 9.34, 705.18, 5705.08, 5705.28, 5705.30, 5705.34, 5705.35, and 5705.38)

The act provides that, beginning on July 1, 2013, the city of Cincinnati's fiscal year will begin on July 1 of a calendar year and end on June 30 of the following calendar year.<sup>173</sup> Under continuing law, school districts and the state also use a July 1-June 30 fiscal year. The fiscal years of all other local governments, including all other municipal corporations, begin on January 1 and end on December 31 of the same calendar year. Local governments are authorized to adopt alternative fiscal periods for specific funds.

Under the act, the city of Cincinnati's use of an alternative fiscal year will affect the timing of actions related to the city's budget process, including deadlines for the adoption and submission of a tax budget, the submission of a certificate of estimated resources, the adoption of an annual appropriation measure, and the certification of tax levies.

### **County land reutilization corporation board of trustees membership**

(R.C. 1724.03)

Continuing law authorizes counties having a population of more than 60,000 to create a county land reutilization corporation (CLRC). A CLRC is a nonprofit corporation created for the purposes of promoting development and managing and

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<sup>173</sup> The Ohio Constitution requires that "[a]ll laws, of a general nature, shall have a uniform operation throughout the state." Art. II, Sec. 26. If laws governing the fiscal affairs of municipal corporations would be held to be general laws, the act's provision may conflict with this constitutional uniformity requirement.



facilitating the reclamation, rehabilitation, and reutilization of vacant, abandoned, or tax-foreclosed real property in a county.

The board of directors of a CLRC may be composed of five, seven, or nine members. Under prior law, the membership of the board must have included the county treasurer, at least two of the members of the board of county commissioners, one representative of the most populated municipal corporation in the county according to the most recent federal decennial census, and one representative of a township with a population of at least 10,000 in its unincorporated territory according to the most recent federal decennial census, if such a township existed in the county. Continuing law allows the treasurer and the county commissioners who are members of the CLRC's board to select additional board members.

The act provides that a CLRC board's membership must include a township representative only if the county that creates the CLRC has two or more townships with populations of at least 10,000 in their respective unincorporated territories. If two or more such townships exist in the county, at least one member of the CLRC board must represent one of those townships. Alternatively, if there are not two or more such townships in the county, the treasurer and the county commissioners who are members of the CLRC's board may select an additional board member in lieu of the township representative.

### **Quick-take authority related to consent decrees**

(R.C. 6117.39 and 6119.11)

The act expands the quick-take authority of county sewer districts and regional water and sewer districts by expanding the circumstances under which a board of county commissioners of a county sewer district or a board of trustees of a regional water and sewer district may declare a public exigency. Specifically, the act declares that a public exigency exists when an improvement is required as a result of a federally imposed or state-imposed consent decree that prohibits future sewer inflows, combined sewer overflows, or sewer back-ups. The act then authorizes a board of county commissioners or board of trustees, as applicable, to appropriate and to take possession of land without a prior jury assessment of compensation and damages to the residue (quick-take) when such a public exigency exists.

Under continuing law, a public exigency also exists in the following two circumstances:

(1) When the Director of Environmental Protection makes a finding that a public health nuisance caused by an occasion of unavoidable urgency and suddenness due to



unsanitary conditions compels the immediate construction of sewers for the protection of the public health and welfare; and

(2) When a board of health of a health district issues an order to mitigate or abate a public health nuisance that is caused by an occasion of unavoidable urgency and suddenness due to unsanitary conditions and compels the immediate construction of sewers for the protection of the public health and welfare.

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## **OHIO LOTTERY COMMISSION (LOT)**

- Changes from the Director of Budget and Management to the Director of the State Lottery Commission, the person who judges whether there are excess proceeds or net proceeds in the State Lottery Fund that may be transferred to the Lottery Profits Education Fund.

### **Transfer of state lottery fund excesses or net proceeds**

(R.C. 3770.06(B))

The act changes from the Director of Budget and Management (OBM Director) to the Director of the State Lottery Commission, the person who judges whether there are amounts in the State Lottery Fund, not including amounts that represent proceeds from statewide joint lottery games, that are in excess of the amount needed to meet the maturing obligations and working capital of the Commission, and amounts in the State Lottery Fund that represent net proceeds from statewide joint lottery games, that are to be transferred to the Lottery Profits Education Fund. The Director of the State Lottery Commission is required to recommend the amounts to be transferred, but the OBM Director may, but is not required, to transfer the excess proceeds or net proceeds to the Lottery Profits Education Fund. Former law required the OBM Director to transfer whatever excess proceeds or net proceeds the OBM Director judged should have been transferred.

The act eliminates the crediting to the Lottery Profits Education Fund of repayments of loans from the Educational Excellence Investment Fund. The Educational Excellence Investment Fund, according to the Office of Budget and Management, is defunct.



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## STATE MEDICAL BOARD (MED)

### Certificates of conceded eminence

- Requires the State Medical Board to issue a certificate of conceded eminence to a physician licensed in another state or country who has been appointed to serve as a faculty member at a medical center in Ohio and demonstrates to the Board unique talents and extraordinary abilities.
- Permits a physician holding a certificate of conceded eminence to practice medicine as part of the physician's employment with the academic medical center or an affiliated physician group practice.

### Treatment of chronic pain

- Narrows the class of drugs for which physicians are subject to certain conditions when treating chronic pain from all dangerous drugs to only controlled substances and products containing tramadol.
- Requires a physician's plan of treatment for a patient diagnosed with chronic pain to be in writing and include specific items.
- Eliminates a requirement that a patient be evaluated by one or more other physicians with a certain expertise before being diagnosed as having chronic pain, and replaces it with a provision specifying that it is recommended that such an evaluation be done.
- Prohibits a physician from prescribing, administering, or personally furnishing a controlled substance or product containing tramadol to a patient without taking into account all of the following: (1) the potential for the drug to be abused, (2) the possibility the drug may lead to dependence, (3) the possibility the patient will obtain the drug for a nontherapeutic use or distribute it to other persons, and (4) the potential existence of an illicit market for the drug.
- Requires a physician to address with a patient the physician treats for chronic pain with a controlled substance or product containing tramadol the risks associated with protracted treatment with those drugs.
- Specifies that an advanced practice nurse or physician assistant who is authorized to prescribe controlled substances or products containing tramadol is subject to the same restrictions a physician is subject to when treating chronic pain with those drugs.



## **Certificate of conceded eminence**

(R.C. 4731.297)

The act requires the State Medical Board to issue, without examination, to an applicant who meets the act's requirements, a certificate of conceded eminence authorizing the practice of medicine and surgery or osteopathic medicine and surgery as part of an applicant's employment with an academic medical center or affiliated physician group practice. The act defines "academic medical center" as a medical school and its affiliated teaching hospitals and clinics partnering to (1) provide the highest quality of patient care from expert physicians, (2) conduct groundbreaking research leading to medical advancements for current and future patients, and (3) provide medical education and graduate medical education to educate and train physicians. An "affiliated physician group practice" is defined as a medical practice consisting of one or more physicians authorized to practice medicine and surgery or osteopathic medicine and surgery that is affiliated with an academic medical center.

### **Eligibility for certificate**

To be eligible for a certificate of conceded eminence, an applicant must provide to the Board all of the following:

- (1) A fee of \$1,000;
- (2) An affidavit from the applicant agreeing to practice only within the clinical setting of the academic medical center or for the affiliated physician group practice;
- (3) Three letters of reference from distinguished experts in the applicant's specialty attesting to the unique capabilities of the applicant, at least one of which must be from outside the academic medical center or affiliated physician group practice;
- (4) An affidavit from the dean of the medical school where the applicant has been appointed to serve as a faculty member stating that the applicant meets the eligibility requirements for the certificate and that the letters of reference are from distinguished experts in the applicant's specialty;
- (5) Evidence satisfactory to the Board that the applicant meets all of the following requirements:
  - (a) Is an international medical graduate who holds a medical degree from an educational institution in the International Medical Education Directory;



(b) Has been appointed to serve in Ohio as a full-time faculty member of a medical school accredited by the Liaison Committee on Medical Education or an osteopathic medical school accredited by the American Osteopathic Association;

(c) Has accepted an offer of employment with an academic medical center in Ohio or an affiliated physician group practice in Ohio;

(d) Holds a medical license in good standing in another state or country;

(e) Has unique talents and extraordinary abilities not generally found within the applicant's specialty, as demonstrated by satisfying at least four of the following:

- Has achieved educational qualifications beyond those that are required for entry into the applicant's specialty, including advanced degrees, special certifications, or other academic credentials;
- Has written multiple articles in journals listed in the Index Medicus or an equivalent scholarly publication acceptable to the Board;
- Has a sustained record of excellence in original research, at least some of which involves serving as principal investigator or co-principal investigator for a research project;
- Has received nationally or internationally recognized prizes or awards for excellence;
- Has participated in peer review in a field of specialization that is the same as or similar to the applicant's specialty;
- Has developed new procedures or treatments for complex medical problems that are recognized by peers as a significant advancement in the applicable field of medicine;
- Has held previous academic appointments with or been employed by a health care organization that has a distinguished national or international reputation;
- Has been the recipient of a National Institutes of Health or other competitive grant award.

(f) Has received staff membership or professional privileges from the academic medical center on a basis that requires the applicant's medical education and graduate medical education to be at least equivalent to that of a physician educated and trained in the United States;



(g) Has sufficient written and oral English skills to communicate effectively and reliably with patients, their families, and other medical professionals;

(h) Will have professional liability insurance through the applicant's employment with the academic medical center or affiliated practice.

### **Duration of certificate**

A certificate of conceded eminence is valid for the shorter of two years or the duration of the certificate holder's employment with the academic medical center or affiliated physician group practice. The certificate ceases to be valid if the certificate holder resigns or is otherwise terminated from the center or practice.

A certificate may be renewed for an unlimited number of additional two-year periods. A person seeking renewal must apply to the Board and is eligible for renewal if the applicant does all of the following:

- (1) Pays a renewal fee of \$1,000;
- (2) Provides to the Board an affidavit and supporting documentation from the academic medical center or affiliated physician group practice of all of the following:
  - That the applicant's initial appointment to the medical faculty is still valid or has been renewed;
  - That the applicant's clinical practice is consistent with the established standards in the field;
  - That the applicant has demonstrated continued scholarly achievement;
  - That the applicant has demonstrated continued professional achievement consistent with the academic medical center's requirements for physicians with staff membership or professional privileges.
- (3) Satisfies the same continuing medical education requirements that other Ohio physicians must fulfill;
- (4) Complies with any other requirements the Board establishes.

### **Scope of practice**

The holder of a certificate of conceded eminence may practice medicine and surgery or osteopathic medicine and surgery only within the clinical setting of the academic medical center or for the affiliated physician group practice. A certificate holder is authorized to supervise medical students, physicians participating in graduate



medical education, advanced practice nurses, and physician assistants when performing clinical services in the certificate holder's area of specialty.

### **Authority to revoke**

The Board may revoke a certificate of conceded eminence on receiving proof that (1) the certificate holder has engaged in practice in Ohio outside the scope of the certificate, or (2) there are grounds for disciplinary action against the certificate holder for any of the reasons that an Ohio physician could be disciplined.

### **Treatment of chronic pain**

(R.C. 4731.052 (primary), 4723.481, and 4730.42)

#### **Standards**

Pursuant to continuing law, the State Medical Board must adopt rules that establish standards and procedures to be followed by physicians in the diagnosis and treatment of chronic pain. Previously, the standards had to include those for managing chronic pain by prescribing, personally furnishing, or administering dangerous drugs in amounts or combinations that may not be appropriate when treating other medical conditions. Under the act, the standards instead must include those for a physician's consultation with one or more other physicians who specialize in the treatment of the area, system, or organ of the body perceived as the source of pain.

#### **Drugs subject to restrictions**

The act narrows the class of drugs for which physicians are subject to conditions on the use of drugs to treat chronic pain. Under prior law, the restrictions applied to all dangerous drugs. Under the act, the restrictions apply to controlled substances and products containing tramadol. As previously provided relative to treating chronic pain with dangerous drugs, the act provides that a physician is not subject to disciplinary action by the Board solely because of treating the pain with controlled substances or products containing tramadol.

#### **Conditions on treatment**

The act specifies that when a physician diagnoses a patient as having chronic pain, the physician may treat the pain by managing it with controlled substances and products containing tramadol subject to a requirement that a written record of certain items be maintained (see "**Maintenance of written record**," below). Pursuant to continuing law, the physician must make diagnosis and treatment decisions concerning chronic pain according to accepted and prevailing standards for medical care. The act specifies that this includes, for the purpose of assisting with the diagnosis of chronic



pain, a requirement that the physician obtain and review all available medical records or detailed written summaries of the patient's treatment for chronic pain or the condition causing the chronic pain. The act also specifies that it is recommended that the physician consider having the patient evaluated by one or more other physicians who specialize in the treatment of the area, system, or organ of the body perceived as the source of the pain. Under prior law, a physician's diagnosis of chronic pain could not be made until the patient had been evaluated by one or more physicians with such appropriate expertise.

The act requires that the physician address with the patient the risks associated with protracted treatment with controlled substances or products containing tramadol. This must include informing the patient of the potential for dependence, tolerance, and addiction and the clinical or monitoring tools the physician may use if signs of addiction, abuse, or drug diversion are present.

The act prohibits a physician from prescribing, personally furnishing, or administering to a patient a controlled substance or product containing tramadol without taking into account (1) the potential for abuse of the controlled substance or product, (2) the possibility the controlled substance or product may lead to dependence, (3) the possibility the patient will obtain the controlled substance or product for a nontherapeutic use or distribute it to other persons, and (4) the potential existence of an illicit market for the controlled substance or product.

### **Maintenance of written record**

Continuing law requires a physician who treats a patient for chronic pain to maintain a record on the patient that includes, among other items, the plan of treatment proposed, the patient's response to the treatment, and any modification to the plan of treatment. The act adds that the plan of treatment must be in writing and include all of the following:

(1) Documentation that other medically reasonable treatments for relief of the patient's chronic pain have been offered or attempted without adequate or reasonable success;

(2) Periodic assessment and documentation of the patient's functional status, including the ability to engage in work or other purposeful activities, the pain intensity and its interference with activities of daily living, quality of family life and social activities, and physical activity of the patient;

(3) Periodic assessment and documentation of the patient's progress toward treatment objectives, including the intended role of controlled substances or products containing tramadol within the overall plan of treatment;



(4) Periodic assessment and documentation for indicators of possible addiction, drug abuse, or drug diversion;

(5) Notation of any adverse drug effects.

The act requires the written record the physician maintains on the patient to include a copy of any record or report made by another physician that was used or consulted for the purpose of diagnosing the patient's chronic pain or treating the patient for chronic pain. Under prior law, the record had to include a copy of the report made by the physician or the physician to whom the required referral for evaluation was made.

### **Advanced practice nurses and physician assistants**

Relative to the prescriptive authority of advanced practice nurses and physician assistants, the act specifies the following:

- The prohibition in continuing law against an advanced practice nurse exceeding the prescriptive authority of the nurse's collaborating physician or podiatrist includes a prohibition on the nurse exceeding the collaborating physician's authority to treat chronic pain with controlled substances and products containing tramadol, as specified by the act.
- The prohibition in continuing law against a physician assistant's supervising physician granting physician-delegated prescriptive authority to the physician assistant in a manner that exceeds the supervising physician's prescriptive authority includes a prohibition on the physician granting to the physician assistant prescriptive authority that exceeds the physician's authority to treat chronic pain with controlled substances and tramadol, as specified by the act.

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### **MANUFACTURED HOMES COMMISSION (MHC)**

- Transfers regulatory authority related to manufactured home parks from the Department of Health and the Public Health Council to the Manufactured Homes Commission.
- Replaces the member of the Commission who represents the Department of Health with a member who is a registered sanitarian.
- Requires the local board of health to issue a report of the inspection of a flood event at a manufactured home park to the Commission.



- Creates the Manufactured Homes Commission Regulatory Fund and requires certain fees to be deposited into that fund.
- Diverts certain fees from the General Operations Fund to the Occupational Licensing and Regulatory Fund for the administration and enforcement of the Manufactured Home Park Law.
- Requires the Commission to develop a policy regarding the maintenance of records for any inspections and specifies that those records are public records.
- Removes the requirement that a manufactured home owner and park operator jointly obtain the permit required for alterations, repairs, or changes to a damaged manufactured home in a flood plain.
- Establishes adjudication procedures for violations of the Manufactured Home Park Law.
- Allows licensed real estate brokers and salespersons to broker manufactured homes without a manufactured housing broker license.
- Prohibits a person who is not licensed as a manufactured housing dealer from purchasing a manufactured home directly from the manufacturer.

## **Licensing and inspection of manufactured home parks**

### **Transfer of regulatory authority over manufactured home parks**

(R.C. 4781.26 to 4781.54, numerous cross-reference changes; Section 747.10.10)<sup>174</sup>

The act transfers the authority to do all of the following from the Department of Health and the Public Health Council to the Manufactured Homes Commission:

- Adopt rules governing the review of plans, issuance of flood plain management permits, and issuance of licenses for manufactured home parks, as well as the location, layout, density, construction, drainage, sanitation, safety, and operation of those parks, and notices of flood events concerning, and flood protection at, those parks;

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<sup>174</sup> R.C. 3733.01 to 3733.20 under prior law were renumbered within the range of 4781.26 to 4781.52 by the act.

- Inspect the installation, blocking, tiedown, foundation, and base support systems of manufactured housing in a park;
- License persons who operate a park;
- Inspect each park for compliance with the Manufactured Home Park Law;
- Approve any development in a park;
- Approve any park development in a 100-year flood plain;
- Receive notification of a flood event and notify the Director of Health (under the act, the board of health will be responsible for causing a post-flood inspection to occur);
- Provide permits for the repair/alteration of homes damaged in a flood event;
- Compel a county prosecuting attorney, city director of law, or the Attorney General to prosecute to termination, or bring an action for injunction against a person, that has violated Manufactured Home Park Law.

The act requires the Commission to adopt rules regulating manufactured home parks not later than December 1, 2012. After adopting the rules, the Commission immediately must notify the Director of Health. The rules governing manufactured home parks adopted by the Public Health Council under prior law will remain in effect in a health district until the Commission adopts the required rules.

The act prohibits a board of health of a city or general health district from invoicing or collecting manufactured home park licensing fees for calendar year 2013.

The act also revises who may inspect the installation, blocking, tiedown, foundation, and base support systems of manufactured housing in a manufactured home park. Under the act, the person must be certified by the Commission pursuant to rules the Commission adopts. Under prior law, the person was required to have completed an installation training course approved by the Commission.

### **Commission membership**

(R.C. 4781.02; Section 747.10.30)

The act replaces the member of the Manufactured Homes Commission who represents the Department of Health with a member who is a registered sanitarian, has



experience with the regulation of manufactured homes, and is an employee of a health district. The term of the Department of Health representative ends on the effective date of this provision (September 10, 2012). The initial term of the registered sanitarian ends on the date when the term of the Department of Health's representative would have expired.

### **Board of health responsibilities**

(R.C. 4781.26(D), 4781.04(C), and 4781.33)

Under the act, the Commission may enter into contracts to fulfill the Commission's annual inspection responsibilities for manufactured home parks. The act provides boards of health of city or general health districts the right of first refusal for those contracts.

The act also provides that the Commission's expanded authority does not limit the authority of a board of health to enforce plumbing, sewage treatment, and building standards law.

The board of health also is responsible, under preexisting law and under the act, for causing a post-flood inspection to occur. When a flood event affects a manufactured home park, the act requires the park operator to notify the Manufactured Homes Commission in addition to the board of health that has jurisdiction at that location as under continuing law. After receiving notification from the park operator, the act requires the Commission to notify the board of health, and the board of health must cause a post-flood inspection to occur. The board of health then must issue a report of the inspection to the Commission within ten days after the inspection is completed.

The act removes the requirements that a local board of health notify the Director of Health within 24 hours of being notified by a park operator and that the Director of Health cause the inspection to occur within 48 hours after receiving notification from the local board of health.

### **Manufactured Homes Commission Regulatory Fund**

(R.C. 4743.05, 4781.121, 4781.28, and 4781.54; Section 747.10.20)

The act establishes in the state treasury the Manufactured Homes Commission Regulatory Fund and requires that the annual manufactured home park licensing fee be credited to that fund and be used for the administration and enforcement of the Manufactured Home Park Law.

Under the act, any manufactured home park license and inspection fees collected under prior law by a board of health prior to the transition of the annual license and



inspection program to the Commission as required under the act in the amount of \$2,000 or less may be transferred to the health fund of the city or general health district. Any of those funds in excess of \$2,000 must be transferred to the Manufactured Homes Commission Regulatory Fund.

### **Occupational Licensing and Regulatory Fund**

(R.C. 4743.05, 4781.31, 4781.32, and 4781.34)

Preexisting law establishes the General Operations Fund and also the Occupational Licensing and Regulatory Fund in the state treasury. The former fund is used for various purposes, and was previously used for administration and enforcement of the Manufactured Home Park Law. The latter fund is used to administer the regulatory provisions of various Revised Code chapters, including the chapters that contain the law governing manufactured homes. The act diverts the deposit of the following fees from the General Operations Fund into the Occupational Licensing and Regulatory Fund and limits their use for administration and enforcement of the Manufactured Home Park Law: (1) fees for reviewing development plans for a manufactured home park and for inspecting plan compliance, (2) fees for the issuance of a permit for development of, or replacement of a mobile or manufactured home in, any portion of a manufactured home park located in a 100-year flood plain, (3) fees for the issuance of a permit for the alteration, change, or repair of a substantially damaged mobile or manufactured home located in a 100-year flood plain or the manufactured home park lot on which the home sits, and (4) fees for inspection for compliance with the permits described in (2) and (3).

### **Maintenance of records**

(R.C. 4781.04(A)(13))

The act requires the Commission to develop a policy regarding the maintenance of records for any inspection authorized or conducted under the Manufactured Home Park Law. Under the act, those records are public records.

### **Permits for alterations, repairs, or changes**

(R.C. 4781.34)

The act removes the requirement that a manufactured home owner and park operator jointly obtain the permit required for alterations, repairs, or changes to a damaged manufactured home in a flood plain. Under prior law, each of the persons to whom a permit is jointly issued was responsible for compliance with the provisions of



the approved permit. However, the act maintains the requirement that the person making those alterations, repairs, or changes obtain a permit.

## **Investigation and adjudication regarding violations of manufactured home and mobile home laws**

(R.C. 4781.121 and 4781.09)

The act authorizes the Manufactured Homes Commission to investigate any person who allegedly has violated the following: (1) licensure requirements for the installation of manufactured housing, (2) licensure requirements for the display or sale of manufactured or mobile homes, (3) licensure requirements for the operation of manufactured home parks, or (4) any rule adopted by the Commission.

The act sets forth the following adjudication procedures for when, after investigation, the Commission determines that reasonable evidence exists that a person has committed a violation. First, within seven days after the Commission makes such a determination, the Commission must send a written notice to that person. The notice must conform with the Administrative Procedure Act (APA), except that it must specify that a hearing will be held and specify the date, time, and place of the hearing.

If the Commission, after a hearing conducted as provided under the APA, determines that a violation has occurred, the Commission, upon an affirmative vote of five of its members, may impose a fine of up to \$1,000 per violation per day. The Commission's determination is an order that the person may appeal pursuant to the APA.

If the person who allegedly committed a violation fails to appear for a hearing, the Commission may request the court of common pleas of the county where the alleged violation occurred to compel the person to appear before the Commission for a hearing.

If the Commission assesses a person a civil penalty for a violation and the person fails to pay that civil penalty within the time period prescribed by the Commission, the Commission must forward to the Attorney General the name of the person and the amount of the civil penalty for the purpose of collecting that civil penalty. In addition to the civil penalty assessed, the person also will be required to pay any fee assessed by the Attorney General for collection of the civil penalty. The act stipulates that the authority provided to the Commission, and any fine imposed, will be in addition to, and not in lieu of, all penalties and other remedies provided in the Manufactured Home Park Law.



Any fines collected must be used solely to administer and enforce the Manufactured Home Park Law and the rules adopted under it. Any fees collected must be credited to the Manufactured Homes Commission Regulatory Fund created under the act and must be used only for the purpose of administering and enforcing the Manufactured Home Park Law.

The civil penalty that the act allows the Commission to assess replaces the authority of the Commission under prior law to impose a civil penalty of not less than \$100 or more than \$500 per violation of the laws governing manufactured housing installers as an alternative to suspending, revoking, or refusing to renew a manufactured housing installer's license.

### **Manufactured housing broker licensure prohibitions**

(R.C. 4781.16 and 4781.99)

The act exempts currently licensed real estate brokers and salespersons from the continuing law prohibition on the practice of engaging in the business of brokering manufactured homes without a manufactured housing broker license. The act also prohibits persons who are not licensed as manufactured housing dealers from purchasing manufactured homes directly from the manufacturer. A person who violates either prohibition is guilty of a minor misdemeanor on a first offense and is subject to a mandatory \$100 fine and a first degree misdemeanor on a subsequent offense and subject to a mandatory \$1,000 fine.

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## **DEPARTMENT OF MENTAL HEALTH (DMH)**

### **Adult care facilities and adult foster homes**

- Makes adult care facilities and adult foster homes types of residential facilities for purposes of licensure by the Ohio Department of Mental Health (ODMH), in place of prior law that provided for ODMH to license and certify them under separate statutes.
- Requires ODMH licensure as a residential facility to serve children with serious emotional disturbances or in need of mental health services.
- Adds certain provisions to the law governing ODMH-licensed residential facilities that are based on prior law governing adult care facilities.
- Requires the operator of a residential facility to be the applicant for an initial or renewed license to operate a facility and to pay a nonrefundable application fee.



- Permits, rather than requires, imposition of a monetary penalty against a person for violating any of the ODMH residential facility licensing laws; refers to the penalty as a fine, rather than a civil penalty; and increases the monetary penalty to \$500 (from \$100) for a first offense and to \$1,000 (from \$500) for each subsequent offense.
- Grants qualified immunity from civil liability and criminal prosecution to a person making a complaint regarding the licensing or operation of an ODMH-licensed residential facility.
- Requires the ODMH Director to adopt additional rules regarding residential facilities that establish: (1) procedures for conducting criminal records checks for residential facility operators and staff, (2) fees for initial and renewed licenses, and (3) standards and procedures permitting the Director to waive any of the residential facility licensure rules.

### **Residential State Supplement Program**

- Specifies that, if ODMH does not designate an entity to serve as an area's residential state supplement administrative agency, ODMH is responsible for administering the Residential State Supplement (RSS) Program in that area.
- Make clarifying changes regarding the process for approval of living arrangements under the RSS Program for persons with mental disabilities.

### **Exchange of confidential health information**

- Authorizes ODMH to exchange psychiatric hospitalization records, other mental health treatment records, and other pertinent information with boards of alcohol, drug addiction, and mental health services and community mental health agencies to ensure continuity of care for inmates or offenders who are receiving mental health services in an Ohio Department of Rehabilitation and Correction (ODRC) institution and are scheduled for release within six months.
- Eliminates ODMH's duty to notify an inmate and receive consent before disclosing the inmate's psychiatric hospitalization records, other mental health treatment records, and other pertinent information to ODRC for purposes of ensuring the inmate's continuity of mental health care.
- Eliminates a requirement that the custodian of records in an ODMH hospital, institution, or facility, a community mental health agency, or an ODMH-licensed hospital attempt to obtain patient consent before disclosing the patient's records to a payer or health care provider if the purpose of the exchange is to facilitate continuity of care.

## **Contract dispute process**

- Restores a law regarding the involvement of ODMH in a contract dispute between a board of alcohol, drug addiction, and mental health services and a community mental health agency or facility.

## **Commitment for treatment of defendants**

- Eliminates the requirement that an examiner who is appointed to evaluate the mental condition of a defendant and who believes that the defendant is mentally ill or retarded and incapable of understanding the criminal proceedings or assisting in the defense make a recommendation as to whether the defendant is amenable to engagement in mental health treatment or developmental disability services.
- Authorizes additional commitment options for certain criminal defendants who are found incompetent to stand trial or not guilty by reason of insanity.
- Eliminates the prosecutor's authority, in the case of a defendant who is charged with a misdemeanor that is not an offense of violence and who is incompetent to stand trial, to hold the charges in abeyance while the defendant engages in mental health treatment or developmental disability services.
- Requires the place of commitment to which certain persons found incompetent to stand trial or not guilty by reason of insanity are committed to provide to the board of alcohol, drug addiction, and mental health services or the local community mental health board information received from the prosecutor.
- Authorizes involvement of community mental health boards in the development of a plan to implement recommendations for a termination or change in conditions of commitment of certain persons found incompetent to stand trial or not guilty by reason of insanity and requires the Department of Mental Health to consult with the board of alcohol, drug addiction, and mental health services or the local community mental health board serving the area before the recommendation and plan are sent to the court.
- Makes changes to conform to the foregoing provisions, changes "developmental disability" to "mental retardation" in certain places, and makes changes to clarify existing references to the program to which a defendant is committed.



## **Inclusion of adult care facilities and adult foster homes as ODMH-licensed residential facilities**

(R.C. 5119.22 (primary), 340.03, 340.05, 5119.61, 5119.692 (repealed), 5119.70 (repealed), 5119.701 (repealed), 5119.71 (repealed), 5119.711 (repealed), 5119.712 (repealed), 5119.72 (repealed), 5119.73 (repealed), 5119.731 (repealed), 5119.74 (repealed), 5119.75 (repealed), 5119.76 (repealed), 5119.77 (repealed), 5119.78 (repealed), 5119.79 (repealed), 5119.80 (repealed), 5119.81 (repealed), 5119.82 (repealed), 5119.83 (repealed), 5119.84 (repealed), 5119.85 (repealed), 5119.86 (repealed), 5119.87 (repealed), 5119.88 (repealed), 5119.99; conforming changes in 109.57, 109.572, 140.01, 140.08, 173.14, 173.21, 173.26, 173.42, 173.45, 173.46, 2317.02, 2317.422, 2903.33, 3313.65, 3701.07, 3701.74, 3721.01, 3721.02, 3737.83, 3737.841, 3781.183 (repealed), 3791.04, 3791.043 (repealed), 3794.01, 3794.03, 5101.60, 5101.61, 5111.113, 5119.61, 5119.614 (repealed), 5119.69, 5119.693 (repealed), 5123.19, 5123.61, 5701.13, 5709.12, and 5731.39; Sections 110.10 to 110.32, 751.10.10, and 751.12)

### **Background**

Prior to the act, the Ohio Department of Mental Health (ODMH) did the following under separate statutes: (1) licensed residential facilities serving persons with mental illness and mental disabilities, (2) licensed adult care facilities, which provided accommodations, supervision, and personal care services to three to 16 unrelated adults, and (3) certified adult foster homes, which provided accommodations and personal care services to one or two unrelated adults. The biennial budget act, Am. Sub. H.B. 153 of the 129th General Assembly, transferred responsibility for licensing adult care facilities to ODMH from the Ohio Department of Health and for certifying adult foster homes to ODMH from the Ohio Department of Aging.

**Licensure as a residential facility** – Under law retained in part by the act, a publicly or privately operated home or facility that provided one of the following was required to be licensed by ODMH as a residential facility:

- Room and board, personal care services, and community mental health services to one or more persons with mental illness or persons with severe mental disabilities who are referred by or are receiving community mental health services from a community mental health agency, hospital, or practitioner;
- Room and board and personal care services to one or two persons with mental illness or persons with severe mental disabilities who are referred by or are receiving community mental health services from a community mental health agency, hospital, or practitioner;

- Room and board to five or more persons with mental illness or persons with severe mental disabilities who are referred by or are receiving community mental health services from a community mental health agency, hospital, or practitioner.

**Licensure as an adult care facility** – Prior law provided that any residence, facility, institution, hotel, congregate housing project, or similar facility that provided accommodations and supervision to three to 16 unrelated adults, at least three of whom required personal care services, was an adult care facility and had to be licensed as such by ODMH, regardless of how the facility held itself out to the public. Adult care facilities were identified as follows:

- An adult family home – a residence or facility providing accommodations and supervision to three to five unrelated adults, with at least three requiring personal care services;
- An adult group home – a residence or facility providing accommodations and supervision to six to 16 unrelated adults, with at least three requiring personal care services.

**Certification as an adult foster home** – Under prior law, any residence that provided accommodations and personal care services to one or two unrelated adults that were unrelated to the owner of the residence had to be certified by ODMH as an adult foster home.

### **Licensure of residential facilities**

The act eliminates ODMH's separate licensing and certification procedures for (1) adult care facilities and residential facilities and (2) adult foster homes and residential facilities. With modifications and without being referred to as an adult care facility or an adult foster home, the act makes such a facility or home a type of residential facility for purposes of ODMH licensure.

The act modifies and expands the types of facilities that must be licensed by ODMH as residential facilities. Under the act, a publicly or privately operated home or facility that provides one of the following is required to be licensed:

- Accommodations, supervision, personal care services, and community mental health services for one or more of the following unrelated persons who are referred by or are receiving community mental health services from a community mental health agency, hospital, or practitioner:

--Adults with mental illness;



- Persons of any age with severe mental disabilities;
- Children with serious emotional disturbances or in need of mental health services.
- Accommodations and personal care services for only one or two unrelated adults; accommodations, supervision, and personal care services for three to 16 unrelated adults; or accommodations, supervision, and personal care services for one or two of the following unrelated persons:
  - Persons of any age with mental illness who are referred by or are receiving community mental health services from a community mental health agency, hospital, or practitioner;
  - Persons of any age with severe mental disabilities who are referred by or are receiving community mental health services from a community mental health agency, hospital, or practitioner.
- Room and board for five or more of the following unrelated persons:
  - Adults with mental illness who are referred by or are receiving community mental health services from a community mental health agency, hospital, or practitioner;
  - Adults with severe mental disabilities who are referred by or are receiving community mental health services from a community mental health agency, hospital, or practitioner.

For all residential facilities, the licensing requirement applies when the residents are unrelated. The act defines "unrelated" as meaning that a resident is not related to the owner or operator of a residential facility or to the owner's or operator's spouse as a parent, grandparent, child, stepchild, grandchild, brother, sister, niece, nephew, aunt, or uncle, or as the child of an aunt or uncle.

The act adds definitions of "child" and "adult." "Child" is defined as a person who is under age 18 or a person with a mental disability who is under age 21. "Adult" is defined as a person who is age 18 or older, other than a person with a mental disability who is between the ages of 18 and 21.

In addition to continuing provisions that exclude certain facilities from ODMH licensure as residential facilities, the act specifies that the following are not residential facilities: (1) a facility operated by a hospice care program used exclusively for care of hospice patients, (2) an alcohol or drug addiction program, (3) a facility licensed to



provide methadone treatment, (4) any facility that receives funding from the Ohio Department of Development to provide emergency shelter housing or transitional housing for the homeless, (5) a terminal care facility for the homeless that has entered into an agreement with a hospice care program, and (6) a facility approved by the federal Veterans Administration and used exclusively for the placement and care of veterans.

### **Services provided by residential facilities**

As described above, the act modifies the services that are provided by the various types of residential facilities licensed by ODMH. With respect to the services, the act defines the following terms:

--"Accommodations" – housing, daily meal preparation, laundry, housekeeping, arranging for transportation, social and recreational activities, maintenance, security, and other services that do not constitute personal care services or skilled nursing care.

--"Room and board" – the provision of sleeping and living space, meals or meal preparation, laundry services, housekeeping services, or any combination of those.

--"Supervision" – (1) observing a resident to ensure the resident's health, safety, and welfare while the resident engages in activities of daily living or other activities, (2) reminding a resident to perform or complete an activity, and (3) assisting a resident in making or keeping an appointment.

### **Transition from adult care facility license to residential facility license**

For purposes of the transition from being licensed as an adult care facility to licensure as a residential facility, the act authorizes the ODMH Director to convert an adult care facility license that is in effect immediately before September 10, 2012 (the act's 90-day effective date) to a residential facility license. Until the Director converts the license or issues an order denying the conversion, the adult care facility license is deemed to be a residential facility license. All rules, orders, and determinations pertaining to the adult care facility license continue in effect as rules, orders, and determinations pertaining to the residential facility license.

### **Transition from adult foster home certification to residential facility license**

For purposes of the transition from being certified as an adult foster home to licensure as a residential facility, the act authorizes the ODMH Director to convert an adult foster home certification that is in effect immediately before September 10, 2012 (the act's 90-day effective date) to a residential facility license. Until the Director converts the certification or issues an order denying the conversion, the adult foster



home certification is deemed to be a residential facility license. All rules, orders, and determinations pertaining to the adult foster home certification continue in effect as rules, orders, and determinations pertaining to the residential facility license.

### **Provisions from adult care facilities law**

The act adds all of the following provisions to the law governing ODMH-licensed residential facilities that are based on prior law governing adult care facilities:

--Prohibits the owner, operator, or manager of a residential facility whose license has been revoked or denied renewal (other than for nonpayment of fees) from applying for another license until two years have elapsed, and permanently prohibits such a person from applying if the revocation or refusal was based on abuse, neglect, or exploitation of a resident;

--Authorizes ODMH to issue an order suspending the admission of residents to a residential facility if the facility is in violation of ODMH's licensing requirements;

--Requires a court that grants injunctive relief concerning unlicensed operation of a residential facility to include an order suspending admission of new residents and requiring the facility to assist in relocating its residents;

--Authorizes the following to enter a residential facility at any time: (1) employees designated by the ODMH Director, (2) employees of a board of alcohol, drug addiction, and mental health services (ADAMHS board) in either of the following circumstances: (a) when a resident of the facility is receiving mental health services provided by another ADAMHS board or a mental health agency under contract with another ADAMHS board and (b) when acting on a complaint alleging that a resident with mental illness or severe mental disability is suffering abuse or neglect, (3) employees of a mental health agency in either of the following circumstances: (a) when a client is residing in the facility and (b) when the agency is acting as an agent of an ADAMHS board other than the board with which it is under contract, and (4) representatives of the State Long-term Care Ombudsperson Program;

--Authorizes ODMH employees to enter, for purposes of investigation, any institution, residence, facility, or other structure that ODMH has reasonable cause to believe is operating as a residential facility without a license;

--Requires a community mental health agency that receives a complaint alleging that a resident with mental illness or severe mental disability is suffering abuse or neglect to report the complaint to the ADAMHS board and requires the board to report the complaint to the Director;



--Requires the Director to adopt rules regarding referrals by an ADAMHS board or a mental health agency of individuals with mental illness or severe mental disability to certain residential facilities and effective arrangements for ongoing mental health services for the individuals;

--Requires an ADAMHS board to perform the duties specified in rules adopted by the Director regarding referrals by the board or a mental health agency of individuals with mental illness or severe mental disability to certain residential facilities and effective arrangements for mental health services;

--Adds provisions that pertain to matters of local zoning.

### **License to operate residential facility – application process**

The act requires the operator of a residential facility to be the applicant for an initial or renewed license to operate a facility. When applying for an initial or renewed license, a facility operator is required by the act to pay to ODMH a nonrefundable application fee specified in rules to be adopted by the ODMH Director. Under the act, "operator" means the person that is responsible for the administration and management of a residential facility.

ODMH is required by continuing law to send a copy of a licensure application to the ADAMHS board serving the county in which the person seeks to operate a residential facility. In place of the prior law requirement that the ADAMHS board review the application and recommend to ODMH whether the application should be approved, the act instead requires the ADAMHS board to review the application and provide to ODMH any information about the applicant or the facility that the ADAMHS board would like ODMH to consider in reviewing the application.

### **Fines**

The act permits, rather than requires, the imposition of monetary penalties for violating the residential facility licensing laws. It refers to the penalty as a fine, rather than a civil penalty. The act increases the penalty amount to \$500 (from \$100) for a first offense and to \$1,000 (from \$500) for each subsequent offense. When imposing a fine, the ODMH Director must comply with procedures established under the Administrative Procedure Act (R.C. Chapter 119.). It eliminates a provision specifying that the Attorney General is to bring an action to collect unpaid penalties when requested by the Director and eliminates a provision requiring that amounts collected be deposited into the state treasury and credited to the Mental Health Sale of Goods and Services Fund.

## **Qualified immunity**

The act provides that any person who makes a complaint to ODMH regarding the licensing or operation of a residential facility or who participates in an administrative or judicial proceeding resulting from such a complaint is immune from civil liability and is not subject to criminal prosecution, other than for perjury, unless the person acted in bad faith or with malicious purpose.

## **Rules**

The act adds all of the following to the rules that must be adopted under continuing law by the ODMH Director regarding the licensing and operation of residential facilities:

(1) Procedures for conducting criminal records checks for prospective operators, staff, and other individuals who, if employed by a residential facility, would have unsupervised access to facility residents;

(2) Procedures for residential facility operators to notify the appropriate ADAMHS board when the facility is serving residents with mental illness or severe mental disability, including the circumstances under which a facility operator is required to make such a notification;

(3) Procedures for issuing and terminating orders of suspension of admission of residents to a residential facility;

(4) Fees for new and renewed licenses;

(5) Standards and procedures under which the Director may waive the requirements of any of the residential facility licensure rules.

## **Access to facility records**

The act specifies that ODMH, in conducting an inspection of a residential facility, is to have access to copy (rather than only examine) all records, accounts, and other documents relating to the operation of the facility. The act further specifies that the records that ODMH must be able to examine and copy include records pertaining to facility residents.

## **Self-administration of medication**

The act eliminates a provision prohibiting a person from being admitted to or retained by a residential facility unless the person is capable of taking the person's own medication and biologicals, as determined by the person's physician. Continuing law



generally prohibits residential facility staff members from administering medication to facility residents but they may assist residents in self-administration of medication.

### **Residential State Supplement Program administrative agency**

(R.C. 340.091, 5119.61, 5119.69, and 5119.691)

The act specifies that ODMH is responsible for administering the Residential State Supplement (RSS) Program in any area where ODMH does not designate an entity to serve as that area's residential state supplement administrative agency. The RSS Program provides supplemental payments to eligible aged, blind, or disabled adults who receive benefits under the federal Supplemental Security Income (SSI) program. RSS payments must be used for the provision of accommodations, supervision, and personal care services.

If ODMH serves as the RSS administrative agency for an area, the following continuing law duties of an RSS administrative agency are applicable to ODMH:

(1) Determining whether the environment in which an individual will be living while receiving RSS payments is appropriate for the individual's needs;

(2) Referring individuals with a mental disability to a community mental health agency to determine whether a living environment is appropriate for the individual while receiving RSS payments and making a determination based on the agency's recommendation;<sup>175</sup>

(3) Implementing the RSS Program's Home First provisions under which a person on the RSS waiting list who has been admitted to a nursing facility may be approved to participate in RSS ahead of others on the list.

### **Exchange of confidential health information**

#### **By ODMH and ODRC or ADAMHS boards or community mental health facilities**

(R.C. 5122.31(A)(14))

The act authorizes ODMH to exchange psychiatric hospitalization records, other mental health treatment records, and other pertinent information with boards of alcohol, drug addiction, and mental health services (ADAMHS boards) and community mental health agencies to ensure continuity of care for inmates or offenders who are receiving mental health services in an Ohio Department of Rehabilitation and

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<sup>175</sup> The act includes clarifying changes regarding the process for approval of RSS Program living arrangements for individuals with mental disabilities.



Correction (DRC) institution and are scheduled for release within six months. This authority is the same as ODMH's authority under continuing law to exchange similar records and information with DRC. The release of records is limited to records regarding an inmate's or offender's medication history, physical health status and history, summary of course of treatment, summary of treatment needs, and discharge summary.

The act eliminates a provision requiring ODMH to notify and receive consent from an inmate before disclosing the inmate's psychiatric hospitalization records, other mental health treatment records, and other pertinent information to DRC for purposes of ensuring the inmate's continuity of mental health care.

### **By ODMH hospitals and community mental health facilities with payers and other providers**

(R.C. 5122.31(B))

Under law unchanged by the act, documents pertaining to the hospitalization of the mentally ill and criminal trials of persons alleged to be insane generally must be kept confidential and not be disclosed unless the patient consents to disclosure. There are several exceptions to this rule, one of which permits ODMH hospitals, institutions, and facilities, as well as community mental health agencies, to exchange psychiatric records and other pertinent information with payers and health care providers if the purpose of the exchange is to facilitate continuity of care.

The act eliminates a requirement that the custodian of records in an ODMH hospital, institution, or facility; a community mental health agency; or an ODMH-licensed hospital attempt to obtain patient consent before disclosing the patient's records to a payer or health care provider if the purpose of the exchange is to facilitate continuity of care.

### **Contract dispute process regarding ADAMHS boards and providers**

(R.C. 340.03)

The act restores a law eliminated by Am. Sub. H.B. 153 of the 129th General Assembly (the biennial budget act) regarding the ODMH's involvement in a contract dispute between a board of alcohol, drug addiction, and mental health services (ADAMHS board) and a community mental health agency or facility. This concerns continuing law that requires an ADAMHS board or community mental health agency or facility to provide notice if the board, agency, or facility proposes not to renew a contract or proposes substantial changes in contract terms. The notice must be given at least 120 days before the expiration of the current contract. During the first 60 days of



the 120-day period, both parties are required to attempt to resolve any dispute through good faith collaboration and negotiation to continue to provide services to persons in need.

The law that is restored permits either party to notify ODMH if a contract dispute is not resolved 60 days before the contract's expiration. The ODMH Director may require both parties to submit the dispute to a third party with the cost to be shared by the ADAMHS board and agency or facility. The Director is required to adopt rules establishing the procedures of the dispute resolution process.

### **Commitment for treatment of defendants who are incompetent to stand trial or not guilty by reason of insanity**

(R.C. 2945.371, 2945.38, 2945.39, 2945.40, and 2945.401)

#### **Examination of defendant who may be incompetent to stand trial or who pleads not guilty by reason of insanity**

If the issue of a defendant's competence to stand trial is raised or if a defendant enters a plea of not guilty by reason of insanity, the court may order one or more evaluations of the defendant's present mental condition or at the time the offense occurred. If the court orders an evaluation, it appoints an examiner to evaluate the defendant. The examiner must file a report with the court within 30 days after the court orders the evaluation. If the evaluation is ordered to determine the defendant's competence to stand trial, the examiner's report must include, among other things, a finding as to whether the defendant is capable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense. Under prior law, if the defendant was charged with a misdemeanor that was not an offense of violence and the examiner believed that the defendant was incapable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense and that the defendant was presently mentally ill or mentally retarded, the examiner had to make a recommendation as to whether the defendant was amenable to engagement in mental health treatment or developmental disability services. The act eliminates the requirement for such a recommendation.

#### **Optional places of commitment**

Under prior law, a court had to commit criminal defendants who fell within one of the following three categories to ODMH for treatment, continuing evaluation and treatment, or placement at a hospital, facility, or agency that ODMH determined was clinically appropriate:



(1) A defendant whom the court found to be incompetent to stand trial and for whom there was a substantial probability of becoming competent to stand trial within a year if provided with a course of treatment or a felony defendant whom the court found to be incompetent to stand trial but who required further evaluation before the likelihood of becoming competent to stand trial could be determined;

(2) A defendant who was charged with aggravated murder, murder, an offense of violence for which death or life imprisonment may be imposed, a first or second degree felony offense of violence, or a first or second degree felony attempt, complicity, or conspiracy to commit any such offense, was incompetent to stand trial, and, after the expiration of the maximum allowable time for treatment (one year) to become competent or after the court found that the defendant was not substantially likely to become competent, was found by clear and convincing evidence to have committed the charged offense and to be a mentally ill person subject to hospitalization by court order or a mentally retarded person subject to institutionalization by court order;

(3) A defendant who was found not guilty by reason of insanity and was found, by clear and convincing evidence at a subsequent, statutorily required hearing, to be a mentally ill person subject to hospitalization by court order or a mentally retarded person subject to institutionalization by court order.

In the above-described situations, the act retains the possibility of commitment to ODMH but also gives the court other commitment options. A defendant in category (1) may be committed to a facility certified by ODMH as being qualified to treat mental illness, to a public or community mental health facility, or to a psychiatrist or another mental health professional for treatment or continuing evaluation and treatment. A defendant in category (2) or (3) may be committed to another medical or psychiatric facility. In each case, the act requires that ODMH obtain court approval for the placement. In each case, the act eliminates a requirement that the court, in ordering the commitment, specify the least restrictive alternatives on the defendant's freedom of movement that are necessary to protect public safety. However, the act requires in each case that the court, in determining the place of commitment, consider the extent to which the person is a danger to the person or others, the need for security, and the type of crime involved and order the least restrictive available placement that is consistent with public safety and the person's welfare.

### **Prosecutor's authority to hold charges in abeyance**

The act eliminates the prosecutor's authority, in the case of a defendant who is charged with a misdemeanor that is not an offense of violence and who is incompetent to stand trial, to hold the charges in abeyance while the defendant engages in mental health treatment or developmental disability services.



## **Provision of information to ADAMHS or community mental health board**

In the case of a defendant described above in category (2) or (3), continuing law requires the prosecutor to provide the place of commitment with all reports of the defendant's current mental condition and other relevant information including, but not limited to, a transcript of the hearing held in the case, copies of relevant police reports, and copies of any prior arrest and conviction records that pertain to the defendant. The act additionally requires the place of commitment, upon the defendant's admission, to send to the board of alcohol, drug addiction, and mental health services or the community mental health board serving the county in which the charges against the defendant were filed copies of reports of the defendant's current mental condition, relevant police reports, prior arrest and conviction records, and the other relevant information furnished by the prosecutor (including, if provided, a transcript of the hearing held to determine whether the defendant committed the offense charged and was subject to hospitalization or institutionalization).

## **Termination or change in conditions of commitment**

In the case of a person described in category (2) or (3), the court retains jurisdiction over the person. Except with regard to certain mentally retarded persons being cared for by the Department of Developmental Disabilities, ODMH may recommend termination of the person's commitment or a change in the conditions of commitment. The statute establishes a procedure for an investigation and a hearing in connection with the recommendation, including involvement by the local forensic center. If the forensic center agrees with the recommendation, or if the forensic center disagrees but ODMH does not withdraw the recommendation, the designee must work with community mental health agencies, programs, facilities, or boards of alcohol, drug addiction, and mental health services to develop a plan to implement the recommendation. The act additionally requires the designee to work with community mental health boards to develop that plan. When the plan has been developed, ODMH must send the recommendation and plan to the court, the prosecutor, and counsel for the committed person for a hearing and determination. The act requires the ODMH designee to consult with the board of alcohol, drug addiction, and mental health services or the community mental health board serving the area before sending the recommendation and plan to the trial court, prosecutor, and counsel.

## **Conforming changes**

The act makes other changes to conform with the provisions described above and to refer to treatment for mental retardation rather than developmental disability. The act adds "the director of the program" and "program" to several existing provisions dealing with the person in charge of the place to which a defendant is committed or



dealing with the place to which a defendant is committed to be consistent with other existing provisions of law.

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## DEPARTMENT OF NATURAL RESOURCES (DNR)

- With respect to expenditures from the Oil and Gas Well Fund related to idle and orphaned wells, specifies that competitive bidding does not apply if the Chief of the Division of Oil and Gas Resources Management reasonably determines that an emergency situation exists requiring immediate action for the correction of the applicable health or safety risk rather than if the Chief reasonably determined that correction of the health or safety risk required immediate action as in prior law.
- Exempts contracts and purchases of material related to such an emergency situation from certain competitive bidding requirements and Controlling Board approval.
- Specifies that a requirement in continuing law related to the inspection of projects by a licensed professional engineer or professional surveyor does not apply to expenditures from the Oil and Gas Well Fund under contracts for plugging idle and orphaned wells or addressing imminent health or safety risks at such wells.
- Allows the Chief to engage in cooperative projects involving idle and orphaned wells with any agency of Ohio, another state, or the United States; any other governmental agency; or any state university or college.
- Specifies that a contract entered into for purposes of such a cooperative project is not subject to certain competitive bidding requirements or Controlling Board approval.
- Authorizes the Director of Natural Resources to request the Director of Budget and Management to transfer money from the Forestry Mineral Royalties Fund to the Parks Mineral Royalties Fund, and requires the Director of Budget and Management to transfer the money if the Director consents to the request.
- Exempts maintenance of specified hiking and bridle trails in the Shawnee Wilderness Area from the continuing prohibition against the operation of motorized vehicles or motorized equipment in the Area, and subjects the Twin Creek Fire Tower to the continuing prohibitions against conducting specified activities in the Area.
- Requires a person operating an energy facility whose operation may result in the incidental taking of a wild animal to obtain a permit to do so from the Chief of the Division of Wildlife.



- Authorizes a resident of another state who owns real property in Ohio, and the spouse and children living with the property owner, to hunt on that property without a license if the person's state of residence allows Ohio residents who own real property in that state, and the spouse and children living with the property owner, to hunt without a license.
- Requires the Director of Natural Resources, in consultation with the Directors of Agriculture and Environmental Protection, to use money appropriated to the Healthy Lake Erie Fund for specified purposes, including encouraging farmers to adopt 4R nutrient stewardship practices.

### **Oil and Gas Well Fund – idle and orphaned wells**

(R.C. 1509.071)

The act exempts from competitive bidding requirements certain expenditures from the Oil and Gas Well Fund related to plugging orphaned oil and gas wells. Specifically, the act declares that competitive bidding does not apply if the Chief of the Division of Oil and Gas Resources Management reasonably determines that an emergency situation exists requiring immediate action for the correction of the applicable health or safety risk. Prior law instead stated that competitive bidding requirements did not apply if the Chief reasonably determined that correction of the applicable health or safety risk required immediate action.

In addition, the act declares that a contract or purchase of materials for purposes of addressing the emergency situation is not subject to provisions of continuing law that require such a purchase to be made by competitive bidding or to be approved by the Controlling Board. The act also declares that contracts for plugging idle and orphaned wells or addressing imminent health or safety risks at such wells entered into by the Chief are not subject to a requirement in continuing law related to the inspection of projects by a licensed professional engineer or professional surveyor.

Finally, the act authorizes the Chief, for purposes of the statute governing idle and orphaned wells, to engage in cooperative projects with any agency of Ohio, another state, or the United States; any other governmental agencies; or any state university or college. A contract entered into for purposes of a cooperative project is not subject to competitive bidding requirements or Controlling Board approval.

## **Transfers from Forestry Mineral Royalties Fund**

(R.C. 1503.012 and 1541.26)

The act authorizes the Director of Natural Resources to request the Director of Budget and Management to transfer money from the Forestry Mineral Royalties Fund to the Parks Mineral Royalties Fund. The Director of Budget and Management must transfer the money pursuant to the request if the Director consents to the request. Money that is transferred to the Parks Mineral Royalties Fund must be used for the stated statutory purposes of the Fund.

Under continuing law, both Funds consist of money derived from leases for oil and gas production on land under the control of the Division of Parks and Recreation or the Division of Forestry, as applicable. Money in the Parks Mineral Royalties Fund must be used by the Division of Parks and Recreation to acquire land and to pay capital costs, including equipment and repairs and renovations of facilities, that are owned by the state and administered by the Division. Money in the Forestry Mineral Royalties Fund must be used by the Division of Forestry to acquire land and to pay capital costs, including equipment and repairs and renovations of facilities, that are owned by the state and administered by the Division of Forestry.

## **Shawnee Wilderness Area**

(R.C. 1503.43)

Continuing law generally prohibits motorized vehicles and motorized equipment from being operated in the Shawnee Wilderness Area. The act exempts from the prohibition the use of those vehicles and equipment for trail maintenance purposes on certain hiking and bridle trails in the Area. Specifically, the exemption applies to the hiking trail west of Upper Twin Creek Road known as the Wilderness Loop, the Buckhorn Ridge Bridle Trail, and the Cabbage Patch Bridle Trail. However, the act specifies that the exemption will not apply if the Chief of the Division of Forestry makes a determination that the exemption is no longer necessary for the administration of the Shawnee State Forest or the state forest system.

The act also subjects the Twin Creek Fire Tower to the continuing prohibition against conducting specified activities in the Shawnee Wilderness Area. The prohibited activities include exploring for or extracting coal, oil, gas, or minerals or operating a commercial enterprise. Formerly, the prohibited activities could be conducted at the Twin Creek Fire Tower.



## **Permit to take wild animals at energy facility**

(R.C. 1533.081)

Under the act, a person operating an energy facility whose operation may result in the incidental taking of a wild animal must obtain a permit to do so from the Chief of the Division of Wildlife. The act requires the Chief to adopt rules that are necessary to administer the requirement.

## **Hunting by nonresidents**

(R.C. 1533.10)

The act authorizes a resident of any other state who owns real property in Ohio, and the spouse and children living with the property owner, to hunt on that property without a license, provided that the state of residence of the real property owner allows Ohio residents owning real property in that state, and the spouse and children living with the property owner, to hunt without a license. It thus creates an exception to continuing law that generally requires an applicant for a hunting license who is a nonresident of the state and who is at least 18 years old to obtain a nonresident hunting license or an apprentice nonresident hunting license for a fee that is higher than the fee for a resident hunting license unless the person's state of residence is a party to a reciprocal agreement with Ohio.

## **Healthy Lake Erie Fund**

(Section 343.40)

The act requires the appropriation for the Healthy Lake Erie Fund to be used by the Director of Natural Resources, in consultation with the Directors of Agriculture and Environmental Protection, to implement nonstatutory recommendations of the Agriculture Nutrients and Water Quality Working Group. The Director of Natural Resources must give priority to recommendations that encourage farmers to adopt agricultural production guidelines commonly known as 4R nutrient stewardship practices. Money in the Fund also may be used for enhanced soil testing in the Western Lake Erie Basin, monitoring the quality of Lake Erie and its tributaries, and establishing pilot projects that have the goal of reducing algae blooms in Lake Erie.



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## STATE BOARD OF PHARMACY (PRX)

- Eliminates a provision that prohibited the Drug Repository Program from accepting or dispensing drugs donated by individuals if the drugs had an expiration date less than six months from the date of donation.

### Donations to the Drug Repository Program

(R.C. 3715.87)

The act eliminates a provision under which the Drug Repository Program could not accept or dispense drugs donated by individuals bearing an expiration date less than six months from the date of donation. As a result, a drug may be accepted and dispensed up to its expiration date. Under continuing law, expired drugs are considered to be adulterated and cannot be accepted or dispensed.

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## DEPARTMENT OF PUBLIC SAFETY (DPS)

### Homeland Security changes

- Repeals laws that: (1) required the Director of Public Safety to prepare a "declaration of material assistance/nonassistance to a terrorist organization" document to be used for the licensing, business, and employment purposes described in clauses (2) to (5), (2) required the state to identify state-issued licenses for which a holder with terrorist connections presented a potential risk, (3) generally required the denial of a state-issued license to a person who disclosed material assistance to a terrorist organization, (4) generally prohibited the state and political subdivisions from doing business with a person or entity unless it was certified as not providing material assistance to a terrorist organization, and (5) generally prohibited the state, state instrumentalities, and political subdivisions from employing a person who disclosed the provision of material assistance to a terrorist organization.
- Repeals a law that required the Director to adopt rules that specified substances and agents used in the illegal manufacture of a chemical, biological, radiological, or nuclear weapon or an explosive device.



## **Distribution of proceeds from the sale of forfeited property**

- In regard to money from the sale of property forfeited under federal law (1) codifies two existing funds for the deposit of money received by the Highway Patrol and (2) creates two new funds for the deposit of money received by the Investigative Unit of the Department of Public Safety; specifies that all such money, including any interest or other earnings, be used in accordance with any federal or other associated requirements.

## **Drivers' license examinations**

- Transfers the driver's license examination function from the State Highway Patrol (a division of the Department) to the Department and makes the Director, rather than the Superintendent of the Highway Patrol, responsible for (1) appointing examiners and clerical personnel and (2) conducting training schools for prospective driver's license examiners.
- In lieu of 24 hours of in-person classroom instruction for beginning drivers under 18, allows completion of the classroom portion by an optional, equivalent number of online hours of instruction provided via the Internet by an online driver training enterprise licensed by the Director and authorizes the Director to adopt rules governing online driver education courses.
- Allows the Director to approve a course of remedial driving instruction that permits students to take the entire course, rather than only 50% of the course, electronically.

## **Merging of funds**

- Eliminates the Elementary School Program Fund and the Trauma and Emergency Medical Services Grants Fund, and directs all state and local seatbelt violation fine money, and certain licensing and permit fees the State Board of Emergency Medical Services collects from medical service providers, to the existing Trauma and Emergency Medical Services Fund.
- Directs all other money that previously was deposited into the Trauma and Emergency Medical Services Grants Fund to the Trauma and Emergency Medical Services Fund instead.

## **Other provisions**

- Makes clear that the State Highway Patrol has discretionary authority to enforce criminal laws in the Lake Erie Correctional Institution to the same extent as if the prison were owned by this state.



- Requires the Director of Rehabilitation and Correction, not later than September 10, 2013, after consultation with various entities, to submit a report to the General Assembly on the effectiveness of the Patrol's authority to enforce the criminal law in the Lake Erie Correctional Institution.
- Requires the Capitol Square Review and Advisory Board and the Department jointly to contract for a study of the safety and security of the Ohio Statehouse complex.

### **Licensing or employment of, or doing business with, an entity or person with ties to a terrorist organization**

(R.C. 2909.21, 2909.32, 2909.33, 2909.34, and 5502.011; Section 105.01)

The act repeals the following provisions that pertained to the licensing or employment of, or doing business with, an entity or person with ties to a terrorist organization:

(1) Formerly, the Director of Public Safety was required to prepare a document, in a specified form, to serve as a "declaration of material assistance/nonassistance" and that was used in determining whether a person or entity had provided material assistance to an organization listed on the U.S. Department of State Terrorist Exclusion List (the TEL), for the purposes described below in (2) to (4); formerly, "material assistance" and TEL were defined for purposes of this provision and the provisions described below in (2) to (4).

(2) Formerly, the Director was required to adopt rules identifying licenses, other than driver's licenses or two other specified exempt licenses, the state issued for which the holder would present a potential risk to Ohio residents if that person had a connection to a terrorist organization. Agencies that issued licenses the Director identified were required to include a copy of the declaration the Director prepared with the application form for a license or renewal, along with a copy of the TEL, and an applicant was required to complete the declaration. A person's answer of "yes" to any question, or failure to answer "no" to any question, served as a disclosure of the provision of material assistance to an organization on the TEL, and a disclosure of material assistance required denial of the license or renewal. The failure of an applicant to complete a declaration, the failure to disclose material assistance to an organization on the TEL, or making false statements regarding material assistance to an organization on the TEL resulted in the denial of the application and the revocation of any license and in some cases was a criminal offense. An agency could revoke a license, pursuant to specified hearing procedures, of a person who, after providing a declaration, took an



action that would result in an answer of "yes" to any question, had the declaration been readministered after taking that action.

(3) Formerly, the state, an instrumentality of the state, or a political subdivision of the state generally was prohibited from conducting business with or providing funding to any person or entity, or any person with a controlling interest in an entity, unless the person or entity certified that it did not provide material assistance to an organization on the TEL. Certain business transactions were excepted from the provision. The Director was required to post a copy of the declaration the Director prepared, along with a copy of the TEL, on the Department's Internet web site. A person or entity that wanted to conduct business with or receive funding from a government entity was required to certify that it was not providing material assistance to an organization on the TEL by completing the declaration. The law provided procedures for pre-certification of a person or entity. A person's or entity's answer of "yes" to any question, or failure to answer "no" to any question, served as a disclosure of the provision of material assistance to an organization on the TEL, and a disclosure of material assistance was a denial of certification. A person or entity that had not provided material assistance at the time a declaration was answered, but subsequently started providing material assistance during the course of doing business or receiving funding from a government entity, was prohibited from entering into additional contracts to do business with or receive funding from any government entity for a specified period of time. A person or entity that provided a false certification was permanently banned from conducting business with or receiving funding from a government entity and was subject to criminal penalties.

(4) Formerly, the state, an instrumentality of the state, or a political subdivision of the state was prohibited from employing any person who disclosed the provision of material assistance to an organization on the TEL (the Director could establish categories of employment that were exempt from the provision). A government entity was required to provide a copy of the declaration the Director prepared and a copy of the TEL to any person under final consideration for a category of employment for which disclosure was required, and the person was required to complete the declaration prior to employment. A person's answer of "yes" to any question, or failure to answer "no" to any question, served as a disclosure of the provision of material assistance to an organization on the TEL. It was a criminal offense for an applicant for employment to fail to disclose the provision of material assistance to an organization on the TEL or to make false statements regarding material assistance to an organization on the TEL. A government entity could terminate, pursuant to specified hearing and due process procedures, the employment of any person who, after providing a declaration, took an action that would result in an answer of "yes" to any question, had the declaration been readministered after taking that action.



(5) Formerly, an appeals process was provided that a person could use if denied a license, denied employment, or prohibited from doing business due to a disclosure of material assistance to an organization on the TEL under the provisions described above.

### **Identification of components of certain illegal dangerous devices**

(R.C. 2909.28 and 5502.011)

The preexisting offense of "illegal assembly or possession of chemicals or substances for the manufacture of a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device," unchanged by the act except as described in the next paragraph, prohibits a person, with intent to manufacture any such weapon or device, from knowingly assembling or possessing one or more toxins, toxic chemicals, precursors or toxic chemicals, vectors, biological agents, or hazardous radioactive substances, including, but not limited to, those listed in rules the Director of Public Safety adopts, that may be used to manufacture any such weapon or device.

The act repeals the requirement that the Director adopt rules that specify the listed substances and agents used in the illegal manufacture of a chemical, biological, radiological, or nuclear weapon or an explosive device and removes the reference to the rules from the offense of "illegal assembly of possession of chemicals or substances for the manufacture of a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device."

### **Law enforcement funds for property forfeitures under federal law**

(R.C. 2981.14)

In order to fully segregate money received by the Highway Patrol and the Investigative Unit of the Department of Public Safety from the sale of property forfeited under federal law, the act (1) codifies the previously existing Highway Patrol Treasury Contraband Fund and the Highway Patrol Justice Contraband Fund and (2) creates the Investigative Unit Treasury Contraband Fund and the Investigative Unit Justice Contraband Fund. The act specifies that money in the funds must be used in accordance with any federal or other requirements associated with the money received.

For purposes of money received from the sale of property forfeited under federal law only, the act eliminates from previously existing codified law the reference to the Contraband, Forfeiture, and Other Fund of the Highway Patrol or the Department. Previously existing law required all interest and other earnings of these two funds to be deposited into whichever of the two funds was appropriate; the act continues this requirement for the funds it renames in codified law and the two funds of the Investigative Unit that it creates. The Contraband, Forfeiture, and Other Fund of the



Highway Patrol and the Contraband, Forfeiture, and Other Fund of the Department are retained in law not affected by the act to receive money from the sale of property forfeited under state law.<sup>176</sup>

## **Responsibility for driver examinations**

(R.C. 4503.031, 4507.01, 4507.011, 4507.12, 5503.21 (5502.05), 5503.22 (5502.06), and 5503.23 (5502.07))

The act generally transfers the driver's license examination function from the State Highway Patrol (a division of the Department of Public Safety) to the Department and makes the Director of Public Safety, rather than the Superintendent of the Highway Patrol, responsible for (1) appointing examiners and clerical personnel and (2) conducting training schools for prospective driver's license examiners.

As part of the transfer, the act does the following:

- Creates a driver's license examination section in the Department, rather than as a division of the State Highway Patrol;
- Requires the Director and the Registrar of Motor Vehicles to determine when it is possible to locate a driver's license examination station at or near a deputy registrar's office, rather than requiring the Registrar and the Superintendent to cooperate to the fullest extent possible in co-location of the offices;
- Requires the Director, rather than the Superintendent, to remit a proportionate share of rent plus a share of utility costs to a deputy registrar when a driver's license examination station is located in a deputy registrar's office;
- Requires a deputy registrar assigned to a driver's license examination station to remit a rental fee to the Director, rather than the Superintendent, and continues a requirement that any such rental fees be deposited into the Registrar Rental Fund and used only to pay rent and expenses of driver's license examination stations;
- Allows the Director, rather than the Superintendent with the Director's approval, to appoint driver's license examiners and clerical personnel and to set qualifications for examiners.

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<sup>176</sup> R.C. 2981.13 (not in the act).



## Online driver's education

(R.C. 4508.02)

Generally, the Director of Public Safety adopts rules concerning driver education. The act requires the Director to adopt rules governing online driver education courses that a licensed online driver training enterprise may offer and that a beginning driver under 18 may complete via the Internet in lieu of the 24 hours of in-person classroom instruction required under prior law. The act requires the rules to do all of the following:

- Establish standards that an online driver training enterprise must satisfy to be licensed to offer an online driver education course via the Internet, including, at a minimum (1) proven expertise in providing driver education and (2) an acceptable infrastructure capable of providing secure online driver education in accord with advances in Internet technology;
- Allow an online driver training enterprise to be affiliated with a licensed driver training school offering in-person classroom instruction, but the rules cannot require such an affiliation;
- Establish content requirements that an online driver education course must satisfy to be approved as equivalent to 24 hours of in-person classroom instruction;
- Establish attendance standards, including a maximum number of course hours that may be completed in a 24-hour period;
- Allow an enrolled applicant to begin the required eight hours of actual behind-the-wheel instruction upon completing at least two hours of course instruction and being issued a certificate of enrollment by a licensed online driver training enterprise;
- Establish any other requirements necessary to regulate online driver education.

The act authorizes the Department of Public Safety to charge a fee to each online driver training enterprise in an amount sufficient to pay the actual expenses the Department incurs in the regulation of online driver education courses. Additionally, the act requires the Department to supply to each licensed online driver training enterprise certificates to be used for certifying an applicant's enrollment in an approved online driver education course and a separate certificate to be issued upon successful completion of an approved online driver education course. The Department is allowed



to charge a fee to each online driver training enterprise per certificate supplied to pay the actual expenses the Department incurs in supplying the certificates.

### **Electronic remedial driving courses**

(R.C. 4510.037 and 4510.038)

The act allows the Director of Public Safety to approve a course of remedial driving instruction that permits students to take the entire remedial course via video teleconferencing or the Internet. Previously, not more than 50% of the course could be taken electronically; the rest of the course had to be attended in person. Upon receiving an application with a certificate or other proof of completion of an approved course, the person may apply to the Registrar of Motor Vehicles for a credit of two points on the person's driving record – unless taking the course was mandated by a court. Under continuing law, not more than one two-point credit may be granted during any one three-year period, and not more than five two-point credits may be granted during a person's lifetime.

### **Distribution of fines for seatbelt violations**

(R.C. 4511.191, 4513.263, 4765.07, and 5503.04)

The act requires all state and local seatbelt violation fine money, and certain licensing and permit fees the State Board of Emergency Medical Services collects from medical service providers, to be deposited into the existing Trauma and Emergency Medical Services Fund. The act retains the existing grant program of the State Board of Emergency Medical Services, but it eliminates the Trauma and Emergency Medical Services Grants Fund and requires all money that previously was deposited into that fund to be deposited instead into the Trauma and Emergency Medical Services Fund, which now will be the source for grants made under the grant program. The act also eliminates the Elementary School Program Fund, which is used by the Department of Public Safety to establish and administer elementary school programs that encourage seatbelt use.

The prior distribution of seatbelt violation fine money was as follows:

- (A) 8% to the Elementary School Program Fund;
- (B) 2% to the Occupational Licensing and Regulatory Fund;
- (C) 36% to the Trauma and Emergency Medical Services Fund;
- (D) 54% to the Trauma and Emergency Medical Services Grants Fund.



The other money that previously was deposited into the Trauma and Emergency Medical Services Grants Fund consisted of portions of certain driver's license reinstatement fees, certain other fees and fines collected by the State Board of Emergency Medical Services, and portions of certain bail forfeitures.

### **Highway Patrol authority in privately owned prisons**

(R.C. 5503.02(A); Section 755.10)

The act makes it clear that the existing discretionary authority of the Superintendent and troopers of the State Highway Patrol to enforce the criminal laws in state institutions extends to the Lake Erie Correctional Institution to the same extent as if the prison were owned by this state.

The act requires that, not later than September 10, 2013, the Director of the Department of Rehabilitation and Correction, after consultation with the State Highway Patrol, the Department of Public Safety, the Fraternal Order of Police of Ohio, and the Buckeye State Sheriff's Association, submit a written report to the Governor, the President of the Senate, the Speaker of the House of Representatives, the minority leader of the Senate, and the minority leader of the House of Representatives on the effectiveness of the State Highway Patrol's authority to enforce the criminal laws in the Lake Erie Correctional Institution. (This provision incorrectly refers to the Patrol's authority pursuant to R.C. 5503.03, which should be a reference to R.C. 5503.02.)

### **Ohio Statehouse Safety and Security Study**

(Section 701.10.10)

The act requires the Capitol Square Review and Advisory Board and the Department of Public Safety jointly to contract for a study of the safety and security of the Ohio Statehouse complex, including the buildings, parking garage, and grounds. The Board and the Department jointly are to determine with whom to contract. The study is to include recommendations for security protocols while providing for the health, safety, and convenience of those who work in, or visit, the Statehouse. The report must be submitted to the Capitol Square Review and Advisory Board for adoption not later than December 1, 2012.



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## PUBLIC UTILITIES COMMISSION (PUC)

### Motor-carrier regulation

- Revises and reorganizes the laws governing motor-carrier regulation by the Public Utilities Commission (PUCO), effective June 11, 2012.
- Changes the term "motor transportation company" to "for-hire motor carrier."
- Makes changes to certain motor-carrier laws to bring the laws into compliance with requirements for federal funding, including:
  - removing certain regulatory exemptions;
  - restricting other exemptions to intrastate commerce;
  - clarifying that public-utility exemptions do not extend to for-hire motor carriers or private motor carriers; and
  - increasing the cap on forfeitures from \$10,000 to \$25,000.
- Exempts from regulation as a for-hire motor carrier an entity operating motor vehicles for contractors on public road work.
- Removes a provision that defined private motor carriers as persons providing transportation "for hire."
- Repeals public-highway-operation-permit requirements for private motor carriers, and requirements that private motor carriers pay annual taxes to the PUCO and file liability insurance.
- Repeals a provision that would have required publication of notice of a for-hire motor carrier's application for a certificate of public convenience and necessity, and repeals a requirement for hearings on these applications.
- Explicitly states the manner in which certain exemptions for public utilities, for-hire motor carriers, and private motor carriers are to be construed.
- Permits the PUCO to grant temporary, emergency, intrastate operation, regulatory exemptions, and exemptions additional to those specified in the act, for for-hire motor carriers or private motor carriers, but not persons who do not qualify as one of those types of carriers.



- May broaden the scope of rules to be adopted by the PUCO, governing the transportation of persons or property and the transportation or offering for transportation of hazardous materials, by clarifying that the rules apply to interstate and intrastate commerce.
- Applies the rules governing the transportation of persons or property to for-hire motor carriers and private motor carriers, but likely applies the rules regarding hazardous materials more broadly, to those carriers and to persons engaged in the transportation or offering for transportation of hazardous materials.
- Requires various rules of the PUCO governing transportation, including general liability insurance requirements, to be "not incompatible with" requirements of the United States Department of Transportation.
- Requires inspectors and employees to conduct motor vehicle and driver inspections (and declare out-of-service violations) consistent with the North American Standard Inspection Procedure of the Commercial Vehicle Safety Alliance and the standards of the United States Department of Transportation.
- Eliminates caps on fees for roadside inspections and compliance reviews, of \$1,000 and \$10,000, respectively.
- Eliminates a provision that would have required freight cargo insurance for the issuance of a certificate of public convenience and necessity to a for-hire motor carrier, but maintains the requirement for household goods carriers.
- Eliminates provisions that governed the cancellation or lapse of freight cargo insurance.
- Limits the laws governing the transportation of household goods to intrastate commerce, but maintains the PUCO's authority to enforce federal consumer protection provisions related to the transportation of household goods in *interstate* commerce.
- Requires the PUCO to adopt rules governing the suspension and revocation of certificates of public convenience and necessity for for-hire motor carriers, and requires suspension upon request of a for-hire motor carrier.
- Requires unified carrier registration fees to be identical to those established by the Unified Carrier Registration Act Board.
- Expressly requires the PUCO to adopt rules applicable to the filing of annual update forms by for-hire motor carriers.



- Limits the payment of annual taxes by for-hire motor carriers to those operating solely in intrastate commerce.
- Removes requirements regarding the PUCO's determination of the amount of the apportioned per-truck registration fee for uniform registration for the transportation of hazardous materials.
- Abolishes and requires the transfer of balances from five funds, as well as \$21 million from the Public Utilities Fund, into the Public Utilities Transportation Safety Fund, created by the act.
- Requires most of the fees, taxes, fines, and forfeitures under the act to be deposited into the Public Utilities Transportation Safety Fund, for the PUCO's nonrailroad transportation activities.
- Requires that certain excess fees, taxes, fines, and forfeitures, after a point of parity is reached between the Public Utilities Transportation Safety Fund and the appropriation from the fund, be deposited into the GRF, whereas some of those fees went to the Department of Public Safety under prior law.
- Removes the PUCO from the functions of regulating rates, routes, and territories of motor carriers, and eliminates the requirement that would have applied to for-hire motor carriers, requiring them to file time and service schedules; also changes state policy accordingly.
- Removes references to the act's provisions that govern motor carriers in sections dealing exclusively with railroads, since the act provides that motor-carrier law no longer applies to railroads.

### **Natural gas investments in gathering and storage facilities**

- Permits a regulatory exemption for natural gas companies' investments in gathering facilities placed into service before 2010, and any related service.
- Requires, for an exemption for pre-2010 gathering facilities, a true-up if the prior-rate-case value of the investments to be exempted exceeds the value of *nonexempt* investments placed into service after the date certain used in the last rate case, such that the company's gross-annual-revenue entitlement is reduced accordingly.
- Requires that a regulatory exemption for storage or gathering facilities placed into service at any time be sought as part of a rate case.

## Revisions to motor-carrier regulations

(R.C. 4905.01, 4909.01, 4909.17, 4921.01, 4921.05, 4923.01; technical and conforming changes in various R.C. sections; R.C. 4511.01, 4766.01 (not in the act))

Effective June 11, 2012, the act revises and reorganizes the regulations governing motor carriers. Mainly, the revisions are accomplished by repealing Chapters 4919., 4921., and 4923., as well as other individual sections, and reenacting new Chapters 4921. and 4923., and enacting other new sections. But, much of the act's new language consists of repealed language that is recodified and reenacted. So, underlined text in the act for these areas does not necessarily indicate change. This analysis endeavors to specify what actual changes are being made by the act.<sup>177</sup>

### Altering terminology

The motor-carrier revisions include changing the following terms and redefining them, resulting in the following differences:<sup>178</sup>

Prior law	Act
<b>"Motor transportation company" or "common carrier by motor vehicle"</b>	<b>"For-hire motor carrier"</b>
Specifies that the transportation is "for the public in general."	No provision.
Specifies that the transportation is "for hire."	Specifies that the transportation is "for compensation."
Excludes an entity engaged or proposing to engage as a private motor carrier as defined in prior law.	No provision.
Excludes entities transporting property exclusively within the territorial limits of a municipal corporation, or within that municipal corporation and the territorial limits of immediately contiguous municipal corporations.	No provision. This alleviates a compliance issue with requirements for federal funding under the Motor Carrier Safety Assistance Program (see " <b>Public-utility exemptions do not extend to for-hire motor carriers</b> ").

<sup>177</sup> Note that "prior" R.C. sections referred to in footnotes in this portion of the analysis are not designated in the act by the number referenced. Refer to published versions of the Revised Code to examine those sections.

<sup>178</sup> Prior R.C. 4921.02 and 4923.02.



**Prior law**

**Act**

<p><b>"Motor transportation company" or "common carrier by motor vehicle"</b></p>	<p><b>"For-hire motor carrier"</b></p>
<p>Excludes the transportation of persons in taxicabs, certain transportation of farm supplies or farm products, the distribution of newspapers, the transportation of crude petroleum from gathering wells, the transportation of compost or shredded bark mulch, and the transportation of persons in carpool vehicles.</p>	<p>Same, except restricts the exemptions to intrastate commerce (e.g., an interstate taxicab would still be subject to regulation as a for-hire motor carrier). This alleviates a compliance issue with requirements for federal funding under the Motor Carrier Safety Assistance Program (see "<b>Public-utility exemptions do not extend to for-hire motor carriers</b>"). The act defines "intrastate commerce" as any trade, traffic, or transportation in any state that is not "interstate commerce" (which itself is defined in the act as trade, traffic, or transportation in the United States that is between a place in a state and a place outside of that state (including a place outside of the United States), between two places in a state through another state or a place outside of the United States, or between two places in a state as part of trade, traffic, or transportation originating or terminating outside the state or the United States).</p>
<p>Excludes the transportation of the injured, ill, or deceased by hearse or ambulance.</p>	<p>Same, except restricts the exemption to intrastate commerce, and defines "ambulance" as any motor vehicle that is specifically designed, constructed, or modified and equipped and is intended to be used to provide basic life support, intermediate life support, advanced life support, or mobile intensive care unit services and transportation of persons on Ohio's streets or highways who are seriously ill, injured, wounded, or otherwise incapacitated or helpless. This alleviates a compliance issue with requirements for federal funding under the Motor Carrier Safety Assistance Program (see "<b>Public-utility exemptions do not extend to for-hire motor carriers</b>").</p>
<p>No provision.</p>	<p>Excludes the operation of motor vehicles for contractors on public road work.</p>
<p>No provision.</p>	<p>Includes a vehicle that is designed and used solely for the transportation of nonstretcher-bound persons, whether hospitalized or handicapped or whether ambulatory or confined to a wheelchair, if the vehicle otherwise would qualify as a for-hire motor carrier.</p>
<p>Excludes transportation of pupils in school buses to or from school sessions or events.</p>	<p>Same, except restricts the exemption to intrastate commerce, and defines "school bus" as a bus designed for carrying more than nine passengers that is owned by a public, private, or governmental agency or institution of learning and operated for the transportation of children to or from a school session or a school function, or owned by a private person and operated for</p>



**Prior law**

**Act**

<p><b>"Motor transportation company" or "common carrier by motor vehicle"</b></p>	<p><b>"For-hire motor carrier"</b></p>
	<p>compensation for the transportation of children to or from a school session or a school function, but excludes from the "school bus" definition all of the following if they are <i>not</i> devoted exclusively to the transportation of children to and from a school session or a school function (i.e., they could be subject to regulation as for-hire motor carriers):</p> <ul style="list-style-type: none"> <li>--a bus operated by a municipally owned transportation system;</li> <li>--a mass transit company operating exclusively within the territorial limits of a municipal corporation, or within those limits and the territorial limits of immediately contiguous municipal corporations;</li> <li>--a "common passenger carrier."</li> </ul> <p>Also excludes from the "school bus" definition (i.e., this type could be subject to regulation as a for-hire motor carrier) a van or bus used by a licensed child day-care center or type A family day-care home to transport children from the child day-care center or type A family day-care home to a school if the van or bus does not have more than 15 children in the van or bus at any time.</p>
<p>Specifies that the terms include every corporation, company, association, joint-stock association, person, firm, or copartnership, and their lessees, legal or personal representatives, trustees, and receivers or trustees appointed by any court.</p>	<p>Specifies that the term includes the carrier's agents, officers, and representatives, as well as employees responsible for hiring, supervising, training, assigning, or dispatching drivers and employees concerned with the installation, inspection, and maintenance of motor-vehicle equipment and accessories.</p>
<p>Specifies that the regulations apply whether the transportation is directly or by lease or other arrangement.</p>	<p>No provision.</p>
<p>Specifies that the transportation is "in or by motor-propelled vehicles," defined as any automobile, automobile truck, motor bus, or any other self-propelled vehicle not operated or driven upon fixed rails or tracks.</p>	<p>Specifies that the transportation is by "motor vehicle" (defined in the act as any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of persons or property, except a vehicle, locomotive, or car operated exclusively on a rail or rails, or a trolley bus operated by electric power derived from a fixed overhead wire, furnishing local passenger transportation similar to street-railway service).</p>



Prior law	Act
<b>"Motor transportation company" or "common carrier by motor vehicle"</b>	<b>"For-hire motor carrier"</b>
Specifies that all laws regulating the business of motor transportation, the context notwithstanding, apply to motor transportation companies or common carriers by motor vehicle.	No provision.

Prior law	Act
<b>"Private motor carrier" or "contract carrier by motor vehicle"</b>	<b>"Private motor carrier"</b>
Specifies that the transportation is "for hire."	No provision.
Specifies that the business is the "private carriage" of persons or property.	Specifies that the business is "transporting" persons or property.
Excludes an entity engaged or proposing to engage as a private owner or operator of motor vehicles employed or used by a private motor carrier.	No provision.
Excludes an entity engaged or proposing to engage as a private owner or operator of motor vehicles employed or used by a for-hire motor carrier.	No provision.
Excludes entities transporting property exclusively within the territorial limits of a municipal corporation, or within that municipal corporation and the territorial limits of immediately contiguous municipal corporations.	No provision. This alleviates a compliance issue with requirements for federal funding under the Motor Carrier Safety Assistance Program (see " <b>Public-utility exemptions do not extend to for-hire motor carriers</b> ").
Excludes not-for-hire church buses if the transportation is exclusively within the territorial limits of a municipal corporation, or within that municipal corporation and the territorial limits of immediately contiguous municipal corporations.	No provision.



**Prior law**

**Act**

"Private motor carrier" or "contract carrier by motor vehicle"	"Private motor carrier"
Excludes the transportation of persons in taxicabs, the transportation of farm supplies to the farm or farm products from farm to market, the transportation of crude petroleum from gathering wells, the transportation of compost or shredded bark mulch, the operation of motor vehicles for contractors on public road work, and the transportation of persons in carpool vehicles.	Same, except restricts the exemptions to intrastate commerce (e.g., an interstate taxicab would be subject to regulation as a private motor carrier). This alleviates a compliance issue with requirements for federal funding under the Motor Carrier Safety Assistance Program (see " <b>Public-utility exemptions do not extend to for-hire motor carriers</b> ").
Excludes the towing of disabled or wrecked motor vehicles.	No provision.
No provision.	Excludes the intrastate transportation of farm supplies to food fabricating plants.
Excludes the transportation of newspapers.	Limits the exemption to the "distribution" of newspapers, and limits the exemption to intrastate commerce.
Excludes the transportation of the injured, ill, or deceased by hearse or ambulance.	Same, except restricts the exemption to intrastate commerce, and defines "ambulance" (as explained above for the "for-hire motor carrier" definition).
No provision.	Includes a vehicle that is designed and used solely for the transportation of nonstretcher-bound persons, whether hospitalized or handicapped or whether ambulatory or confined to a wheelchair, if the vehicle otherwise would qualify as a private motor carrier.
Excludes the transportation of pupils in school buses to and from school sessions or events.	Same, except restricts the exemption to intrastate commerce, and defines "school bus" (as explained above for the "for-hire motor carrier" definition), which could subject the municipally owned buses, mass transit systems, and common passenger carriers to regulation as private motor carriers if they are <i>not</i> devoted exclusively to school transportation. Also as explained above, vans or buses of certain day care centers and homes could be subject to regulation as private motor carriers.
Excludes certain motor carriers engaged in the carriage of persons in emergency or additional motor vehicles on charter party trips to or from any point within a county where the motor carrier provides regular route scheduled service, if the vehicle	No provision.



Prior law	Act
<b>"Private motor carrier" or "contract carrier by motor vehicle"</b>	<b>"Private motor carrier"</b>
is reported and the applicable tax is paid.	
Specifies that the terms include every corporation, company, association, joint-stock association, person, firm, or copartnership, and their lessees, legal or personal representatives, trustees, and receivers or trustees appointed by any court.	Specifies that the term includes the carrier's agents, officers, and representatives, as well as employees responsible for hiring, supervising, training, assigning, or dispatching drivers and employees concerned with the installation, inspection, and maintenance of motor-vehicle equipment and accessories.
Defines the terms in part as a corporation, company, etc. "not included in the definition under section 4921.02 of the Revised Code," which defines "motor transportation company," among other terms.	Defines the term in part as "a person who is not a for-hire motor carrier."
Specifies that the transportation is "in or by motor-propelled vehicles," defined as any automobile, automobile truck, motor bus, or any other self-propelled vehicle not operated or driven upon fixed rails or tracks.	Specifies that the transportation is "by motor vehicle" (defined in the act as any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of persons or property, except a vehicle, locomotive, or car operated exclusively on a rail or rails, or a trolley bus operated by electric power derived from a fixed overhead wire, furnishing local passenger transportation similar to street-railway service).

## Regulation as public utilities

### For-hire motor carriers as public utilities

(R.C. 4905.01, 4905.02, 4905.03, and 4921.01)

The act changes the term "motor transportation company" to "for-hire motor carrier," and redefines the term, within the definition of a "public utility" under continuing law. The effect is that for-hire motor carriers, as defined by the act, would be subject to regulation as public utilities. Any resulting diversity between the two definitions would subject or exempt certain entities from regulation as public utilities. The following are the major differences between the two definitions:

- The act includes as a public utility the carrier's agents, officers, and representatives, as well as employees responsible for hiring, supervising, training, assigning, or dispatching drivers and employees concerned with



the installation, inspection, and maintenance of motor-vehicle equipment and accessories.

- The act uses "for compensation" whereas prior law used "for hire."
- The act replaces "by motor-propelled vehicle," with "by motor vehicle," (definition discussed above in table).
- The act strikes "for the public in general, over any public street, road, or highway in this state" but retains "upon the highways."
- The act strikes "carrying and" from "engaged in the business of carrying and transporting persons or property."

Also, the act does not exclude from regulation as a public utility a for-hire motor carrier transporting property exclusively within the territorial limits of a municipal corporation, or within that municipal corporation and the territorial limits of immediately contiguous municipal corporations. Prior law, though unclear, might have permitted an exclusion for this type of transportation. Finally, the act *excludes* from regulation as a public utility a for-hire motor carrier operating motor vehicles for contractors on public road work. Prior law did not permit this exclusion.<sup>179</sup>

#### **Public-utility exemptions do not extend to for-hire motor carriers**

(R.C. 4905.02(B)(1))

The act clarifies that exemptions for the following entities from regulation as public utilities do not extend to for-hire motor carriers operated in connection with those entities:

- Nonprofit electric light companies;
- Nontelephone utilities owned and operated by and for the customers;
- Railroads;
- Providers, with respect to their provision of advanced telecommunications services, broadband service, information service, Internet protocol-enabled services, and newer telecommunication services.

This clarification alleviates a compliance issue noted by the Federal Motor Carrier Safety Administration, under the Motor Carrier Assistance Program (MCSAP).

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<sup>179</sup> Prior R.C. 4921.02.



Under MCSAP, states can receive funding to increase motor-carrier safety.<sup>180</sup> To qualify for funding, states must adopt certain federal motor carrier safety and hazardous materials regulations, and enforce them against certain motor carriers.<sup>181</sup>

### **Limitations to exemptions and exclusions**

#### **Public utility exemptions do not exempt private motor carriers**

(R.C. 4905.02(B)(2))

The act specifies that exemptions for certain entities from regulation as public utilities (specifically those listed under "**Public-utility exemptions do not extend to for-hire motor carriers**") must not be construed to exempt a private motor carrier operated in connection with any such entity from compliance with Chapter 4923. of the Revised Code, which applies in part to private motor carriers, the law governing uniform registration and permitting of persons engaged in the highway transportation of hazardous materials, or the law governing unified carrier registration.

#### **For-hire motor carrier exclusions do not exempt persons from certain laws**

(R.C. 4921.01(B), 4923.01(B) and (C), and 4923.04(A)(1))

The act specifies that the exclusions from the definition of "for-hire motor carrier" (such as taxicab transportation, school bus transportation, and the transportation of farm supplies; see the chart within "**Motor-carrier regulations**" for the full list) must not be construed to exempt persons from compliance with the law governing uniform registration and permitting, or the law governing unified carrier registration. The act also specifies that the same exclusions must not be construed to exempt persons from compliance with the Public Utilities Commission's (PUCO's) rules applicable to the transportation and offering for transportation of hazardous materials, rules governing motor vehicle inspections, rules governing motor carrier or vehicle audits, rules governing the highway routing of hazardous materials, or rules regarding commercial driver's licenses.

The rules regarding commercial driver's licenses are limited to for-hire motor carriers and private motor carriers. Therefore, they would not apply to a "person" who would not qualify as a for-hire motor carrier. Thus, the act's provision limiting how the

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<sup>180</sup> U.S. Department of Transportation, Federal Motor Carrier Safety Administration, "Motor Carrier Safety Assistance Program," available at <<http://www.fmcsa.dot.gov/safety-security/safety-initiatives/mcsap/mcsap.htm>> (last visited July 10, 2012).

<sup>181</sup> 49 C.F.R. 350.201(a).



exclusions are to be construed may contradict the PUCO's authority regarding rules for commercial driver's licenses.

#### **Private-motor-carrier exclusions do not exempt persons from certain laws**

(R.C. 4923.02(D))

The act specifies that the exclusions from the definition of "private motor carrier" (such as taxicab transportation, school bus transportation, and the transportation of farm supplies; see the chart within "**Motor-carrier regulations**" for the full list) must not be construed to exempt persons from compliance with the PUCO's rules applicable to the transportation and offering for transportation of hazardous materials, rules governing motor vehicle inspections, rules governing motor carrier or vehicle audits, rules governing the highway routing of hazardous materials, or rules regarding commercial driver's licenses.

As explained above, because the rules regarding commercial driver's licenses are limited to for-hire motor carriers and private motor carriers, the act's provision limiting how the exclusions are to be construed may contradict the PUCO's authority regarding rules for commercial driver's licenses.

#### **Temporary and additional intrastate exemptions**

##### **Authority to grant the exemptions**

(R.C. 4923.02(B) and (C))

The act permits the PUCO to grant a for-hire motor carrier or a private motor carrier (and no other types of carriers) a temporary exemption for intrastate operations in an emergency. The temporary exemption may be from any of the following requirements under the act:

- Rules applicable to the transportation of persons or property by for-hire motor carriers and private motor carriers;
- Rules applicable to the highway transportation and offering for transportation of hazardous materials (but not uniform registration and permitting);
- Motor vehicle and driver inspections;
- Premises and motor vehicle audits;
- Rules applicable to the highway routing of hazardous materials; or



- Forfeitures.

The act requires that the emergency be declared by the Governor, or that the PUCO Chairperson (or designee) declares a transportation-specific emergency.

The act also permits the PUCO to adopt rules, not incompatible with the requirements of the United States Department of Transportation (USDOT), to provide exemptions, in addition to those granted by the act, for for-hire motor carriers or private motor carriers in intrastate commerce.

#### **Temporary and additional exemptions do not exempt persons**

(R.C. 4923.02(B), (C), and (D))

The act specifies that the temporary and additional exemptions must not be construed to exempt "persons" from compliance with the PUCO's rules applicable to the transportation and offering for transportation of hazardous materials, rules governing motor vehicle inspections, rules governing motor carrier or vehicle audits, rules governing the highway routing of hazardous materials, or rules regarding commercial driver's licenses. However, the temporary and additional exemptions are not available to "persons" who are not for-hire motor carriers or private motor carriers.

Also, as explained above, the provision may appear to contradict the PUCO's authority regarding rules for commercial driver's licenses, as that authority is limited to for-hire motor carriers and private motor carriers, but the provision addresses the broad category of "persons."

#### **Repeal of requirement for consent of municipal corporation**

(R.C. 4921.05, repealed)

The act repeals a requirement that a for-hire motor carrier carrying persons whose complete ride is wholly within the territorial limits of a municipal corporation, or within those limits and the territorial limits of immediately contiguous municipal corporations, must obtain consent of the municipal corporations.



## **PUCO adoption of rules governing transportation**

### **Rules for the transportation of persons or property**

(R.C. 4905.81(C) and 4923.04(A)(1) and (C))

The act requires the PUCO to adopt rules applicable to the transportation of persons or property. Prior law permitted, but did not require this adoption.<sup>182</sup> The act limits the rules to transportation by for-hire motor carriers and private motor carriers, whereas prior law may not have been limited in this regard. One prior law provision was limited to private motor carriers,<sup>183</sup> while two other provisions were not limited to any specific carrier.<sup>184</sup>

The act also expands from prior law, in both of its nearly identical rulemaking provisions, the scope of the rules to interstate *and* intrastate commerce. The rules may have been more limited in prior law: one of three similar provisions in prior law limited the rules to interstate commerce, another limited them to intrastate commerce, and a third did not appear to contain a limitation.<sup>185</sup>

The act also modifies the scope of the rules by requiring them not to be incompatible with the requirements of the USDOT. A provision in prior law required the rules to be consistent with, and equivalent in scope, coverage, and content to the federal Motor Carrier Safety Act of 1984, and regulations adopted under it.<sup>186</sup> Two other similar provisions in prior law did not require this equivalency.<sup>187</sup>

Finally, the act removes a requirement, in the rulemaking provision limited to private motor carriers, that the rules must not affect any rights or duties granted to or imposed on the operator of a motor vehicle under Ohio law governing traffic laws for the operation of motor vehicles.<sup>188</sup>

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<sup>182</sup> Prior R.C. 4919.79(B) and 4923.20(B).

<sup>183</sup> Prior R.C. 4923.20(B).

<sup>184</sup> Prior R.C. 4919.79(B) and 4921.04(D).

<sup>185</sup> Prior R.C. 4919.79(B), 4921.04(D), and 4923.20(B).

<sup>186</sup> Prior R.C. 4919.79(C).

<sup>187</sup> Prior R.C. 4921.04(D) and 4923.20(B).

<sup>188</sup> Prior R.C. 4923.20(B).



## Rules for the transportation of hazardous materials

(R.C. 4905.81(D) and 4923.04(A)(2))

In two provisions, the act requires the PUCO to adopt rules applicable to the highway transportation and offering for transportation of hazardous materials. One of the provisions is limited to for-hire motor carriers and private motor carriers. The other provision also encompasses persons engaged in the highway transportation and offering for transportation of hazardous materials. The more limited provision would likely be out of compliance with requirements for federal funding under MCSAP. But that provision is located in a section specifying general requirements of the PUCO (R.C. Chapter 4905.); the act does not impose forfeitures for violations of rules adopted under that specific section.

If the act is interpreted to encompass persons engaged in the highway transportation and offering for transportation of hazardous materials for purposes of these rules, this is likely an expansion of prior law. There were four similar provisions in prior law permitting the adoption of these rules.<sup>189</sup> Only one of the four applied the adopted rules to everyone.<sup>190</sup>

The act also expands, in both of the provisions, the scope of the rules to interstate *and* intrastate commerce. The rules may have been more limited in prior law: one of the four prior provisions limited the rules to interstate commerce,<sup>191</sup> and the other three limited the rules to intrastate commerce.<sup>192</sup>

The act may broaden the scope of the rules further by specifying that they not be incompatible with the requirements of the USDOT. Prior law required them to be consistent with, and equivalent in scope, coverage, and content to the Hazardous Materials Transportation Act, as amended, and regulations adopted under it.<sup>193</sup>

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<sup>189</sup> Prior R.C. 4919.79(A) and (C), 4921.04(E), 4923.03(C), and 4923.20(C).

<sup>190</sup> Prior R.C. 4919.79(A).

<sup>191</sup> Prior R.C. 4919.79(A).

<sup>192</sup> Prior R.C. 4921.04(E), 4923.03(C), and 4923.20(C).

<sup>193</sup> Compare R.C. 4905.81(D) and 4923.04(B) with prior R.C. 4919.79(A), 4921.04(E), 4923.03(C), and 4923.20(C).



## **Rules for the highway routing of hazardous materials**

(R.C. 4923.11)

The act modifies the former requirement that the rules for the highway routing of hazardous materials be consistent with, and equivalent in scope, coverage, and content to a portion of the federal Hazardous Materials Transportation Act, and regulations adopted under the portion. The act requires that the rules not be incompatible with the requirements of the USDOT.<sup>194</sup>

### **Inspections**

#### **Authority of the PUCO**

(R.C. 4905.06, 4923.06 and 4923.07)

The act permits the PUCO, through the PUCO's inspectors or other authorized employees, to enter in or upon any motor vehicle of any for-hire motor carrier, private motor carrier, or person engaging in the transportation of hazardous material or hazardous waste, to inspect the motor vehicle or driver subject to rules adopted under the act regarding the transportation of hazardous materials, persons, or property. The act also permits the PUCO, through the inspectors or authorized employees, to enter in or upon the *premises* and motor vehicles of the same carriers and persons, to examine any records, documents, or property, for the purpose of assessing the safety, performance, and management controls associated with the carrier or person.

Given that there were four similar provisions in prior law, each containing some differences, the effect of these provisions of the act is difficult to determine.<sup>195</sup> But the provisions of the act likely represent minimal change to the PUCO's inspection authority.

The act also expressly permits inspectors and employees authorized to conduct inspections to, under the PUCO's direction, stop motor vehicles to inspect those vehicles and drivers to enforce compliance. The act requires the inspectors and employees to conduct inspections consistent with the North American Standard Inspection Procedure (NASIP) of the Commercial Vehicle Safety Alliance and the USDOT's standards. The act permits the inspectors and employees to declare drivers and motor vehicles out-of-service, consistent with the NASIP and the USDOT's standards. The Commercial Vehicle Safety Alliance is an international not-for-profit organization of local, state, provincial, territorial, and federal motor carrier safety officials and industry

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<sup>194</sup> Compare R.C. 4923.11 with prior R.C. 4905.81(A).

<sup>195</sup> Prior R.C. 4905.81(C), 4919.79(E), and 4923.20(D).



representatives. It promotes commercial motor vehicle safety and security by providing leadership to enforcement, industry, and policy makers.<sup>196</sup>

The act permits the PUCO to adopt rules to carry out the inspection laws, but requires that the rules not be incompatible with the USDOT's requirements.

### **Authority of the Motor Carrier Enforcement Unit**

(R.C. 4905.06 and 4923.06(B))

The act may slightly expand the inspection authority of the Motor Carrier Enforcement Unit with regard to inspections of private motor carriers engaged in the intrastate transportation of persons. The act permits them to enter in or upon "any property" of a private motor carrier engaged in the intrastate transportation of persons. Prior law limited the unit to "the premises" of not-for-hire private motor carriers.<sup>197</sup> Under the act, the unit continues to be able to enter in or upon any property of a *motor transportation company* engaged in the intrastate transportation of persons. The unit is within the Division of State Highway Patrol of the Department of Public Safety.

The act also eliminates a provision that permitted "authorized employees" of the unit to enter in or upon any motor vehicle of a not-for-hire private motor carrier, for inspection purposes.<sup>198</sup> But the act permits "authorized employees" of the State Highway Patrol to conduct inspections, regardless of the type of transportation.

### **Repeal of permit requirements for private motor carriers**

(R.C. 4923.04, 4923.05, 4923.06, 4923.07, 4923.08, 4923.09, 4923.11, 4923.13, and 4923.14, repealed)

The act repeals a provision that required a private motor carrier to obtain a permit to operate on any public highway in Ohio. Consequently, the act repeals other provisions relating to permitting of private motor carriers, including application requirements, the requirement to give notice by newspaper publication, requirements for changes in operation, the requirements to file liability insurance with the PUCO, and provisions relating to death and dissolution of a private motor carrier.

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<sup>196</sup> Commercial Vehicle Safety Alliance, "Who We Are," available at <<http://www.cvsa.org/about/index.php>> (last visited July 10, 2012).

<sup>197</sup> Prior R.C. 4923.20(D).

<sup>198</sup> Prior R.C. 4923.20(D).



The act also eliminates the provision that required private motor carriers to pay annual taxes.

## **Certificates of public convenience and necessity (CPCNs)**

### **CPCN applications and requirements for issuance, including taxes**

(R.C. 4921.03, 4921.05, 4921.13(A), and 4921.19(A))

The act requires the PUCO to issue a certificate of public convenience and necessity (CPCN) to a for-hire motor carrier who does all of the following:

- Files a complete and accurate application, which the act requires to include a certification that the applicant understands and is in compliance with the applicable service, operation, and safety laws of Ohio, and that the applicant meets the general liability insurance requirements that apply to for-hire motor carriers under the act. Prior law required the filing of an application, and meeting the applicable insurance, service, and safety rules of the PUCO.<sup>199</sup>
- Agrees to maintain accurate and current business and insurance information with the PUCO, in accordance with the PUCO's rules.
- Pays all applicable registration fees for unified carrier registration, any forfeitures imposed under the penalty provisions in the act, and the applicable tax due from a for-hire motor carrier under the act, in the following amounts: for each motor vehicle used for transporting persons and for each commercial tractor used for transporting property, \$30, and for each other motor vehicle transporting property, \$20. These tax amounts are the same as were due under prior law for the issuance of a CPCN.<sup>200</sup>

The act requires the PUCO to adopt rules applicable to the payment of the taxes. The rules must not be incompatible with the requirements of the USDOT, and they must at least address the form and manner in which taxes may be paid. The act also eliminates the following requirements regarding these taxes:

- That they be reckoned as from the beginning of a quarter in which the CPCN is issued, or from when the use of equipment under any existing

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<sup>199</sup> Prior R.C. 4921.08 and 4921.101(A).

<sup>200</sup> Prior R.C. 4921.18(A).



CPCN began (but maintains this requirement for annual taxes (see "**Annual taxes on for-hire motor carriers**")); and

- That the PUCO must account for the taxes collected, and pay them to the Treasurer of State on or before the 15th of each month (for the taxes collected in each preceding month).<sup>201</sup>

The act also eliminates a provision that permits any vehicle or tractor for which the CPCN tax has been paid to be used by another for-hire motor carrier without further payment of the tax.<sup>202</sup>

The act eliminates a requirement that the CPCN application contain both of the following:

- The principal office or place of business of such motor transportation company; and
- Full information concerning the physical property used or to be used by the applicant.<sup>203</sup>

#### **Freight cargo insurance not required for CPCN**

(R.C. 4921.09(B))

The act does not require a for-hire motor carrier to obtain freight cargo insurance to receive a CPCN, as was the case under prior law, but retains the requirement for certificates for the transportation of household goods – see "**Freight cargo insurance**."<sup>204</sup>

#### **General liability insurance requirements for CPCNs**

(R.C. 4921.09(C))

The act requires the PUCO to adopt rules regarding the general liability insurance requirements, which requirements are the same as under prior law.<sup>205</sup> The rules are not to be incompatible with the requirements of the USDOT, which requires

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<sup>201</sup> Prior R.C. 4921.18(E) and (F).

<sup>202</sup> Prior R.C. 4921.18(D).

<sup>203</sup> Prior R.C. 4921.08(A) and (B).

<sup>204</sup> Compare R.C. 4921.09(B) with prior R.C. 4921.11(C).

<sup>205</sup> See R.C. 4921.09(A).

very specific levels of financial responsibility for various types of motor carriers, based on the type of property or number of passengers transported, and the vehicle weight.<sup>206</sup> The act requires the PUCO's rules to address, at minimum, all of the following:

- The minimum levels of financial responsibility for each type of for-hire motor carrier;
- The form and type of documents to be filed with the PUCO;
- The manner by which documents may be filed with the PUCO; and
- The timelines for filing documents with the PUCO.

### **Cancellation or lapses of insurance**

(R.C. 4921.09(D))

The act restricts requirements that governed insurance cancellation or lapses to just general liability insurance. Before, these requirements appeared to apply to both freight cargo insurance and general liability insurance (see "**Freight cargo insurance**").<sup>207</sup> The act also modifies these requirements to clarify that all operations under a CPCN must cease immediately when general liability insurance lapses or is cancelled. The act also clarifies that operations under the CPCN may not restart until a replacement general liability insurance certificate, policy, or bond is filed with the PUCO.

The act also removes a requirement that an insurance certificate, policy, or bond "provide that" ten days' written notice must be given to the PUCO of the intent to cancel the insurance. This requirement may have applied previously to both general liability insurance and freight cargo insurance (see "**Freight cargo insurance**").<sup>208</sup>

### **Repeal of notice provisions for CPCN applications**

(R.C. 4921.09, repealed)

The act repeals a provision that required a motor transportation company to give notice of the filing of a CPCN application, if intrastate operations are proposed, by newspaper publication once a week for three weeks. The act also eliminates a requirement for the PUCO to give written notice of the filing of the application to all

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<sup>206</sup> 49 C.F.R. 387.9 and 387.303.

<sup>207</sup> Prior R.C. 4921.11(D).

<sup>208</sup> *Id.*



like companies operating between fixed termini or over a regular route, street railways, interurban railroads, and railroads operating in Ohio. The act also eliminates a requirement for a hearing on the application.

#### **PUCO's authority to deny CPCNs**

(R.C. 4921.03(E))

The act expressly permits the PUCO to deny the issuance of a CPCN if an applicant fails to comply with the act's requirements for CPCN issuances, or rules adopted regarding applications for CPCNs.

#### **New applications or supplementing applications**

(R.C. 4921.03(D))

The act permits a for-hire motor carrier to file a new CPCN application or supplement a former application any time after a CPCN is granted or refused. Prior law permitted this, but required the new application or supplementation to be for the purpose of changing, extending, or shortening the route, or doing any other thing not otherwise specifically provided for that the applicant might be permitted to do under Ohio's general statutory laws and regulations.<sup>209</sup>

#### **CPCN suspension**

(R.C. 4921.07(A) and 4921.19(B))

The act requires the PUCO to adopt rules regarding procedures and timelines for CPCN suspension, and requires suspension if a for-hire motor carrier does at least any of the following:

- Fails to file a complete and accurate CPCN application (presumably this would require a determination after a CPCN had been granted);
- Fails to maintain accurate and current business and insurance information with the PUCO;
- Fails to maintain proper proof of insurance or proper levels of insurance under the act's requirements; or
- Fails to pay all applicable unified carrier registration fees, any applicable annual taxes, which would apply under the act to a for-hire motor carrier

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<sup>209</sup> Prior R.C. 4921.16.



operating solely in intrastate commerce, on top of the initial CPCN tax, and any forfeitures imposed under the act.

The act also requires suspension upon request of the for-hire motor carrier.

Prior law did not expressly permit or require suspension of a CPCN, though the PUCO's authority to order a suspension was interpreted to be encompassed within the PUCO's authority to revoke, alter, or amend a CPCN.<sup>210</sup>

### **CPCN revocation**

(R.C. 4921.07(B))

The act extends, in part, the remedy period before revocation of a CPCN may occur. Prior law required 15 days before a CPCN could be revoked "for good cause," and 60 days before a CPCN could be "cancelled" for failure to give convenient and necessary service.<sup>211</sup> The act requires 60 days before a CPCN may be revoked, which period may be extended for good cause shown. During this time, the for-hire motor carrier may remedy the deficiency or refute the revocation. Prior law, but not the act, explicitly required that the for-hire motor carrier receive an "opportunity to be heard" before revocation could occur.<sup>212</sup> The act also requires that notice be written, and that the notice indicate the nature of the deficiency, a proposed revocation effective date, and the means by which the deficiency may be remedied. The act requires the PUCO to adopt rules regarding procedures and timelines for CPCN revocation if the CPCN is already suspended and the deficiency is not remedied. The act also requires that a CPCN first be suspended before it may be revoked.

### **Removal of provisions regarding CPCN transference, death, and dissolution**

(R.C. 4921.13, repealed)

The act repeals provisions governing what happens to a CPCN upon death or dissolution of a partnership, and related provisions governing transference of a CPCN.

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<sup>210</sup> *Dworkin, Inc. v. Public Utilities Com.*, 159 Ohio St. 174, 181 (1953).

<sup>211</sup> Prior R.C. 4921.10.

<sup>212</sup> *Id.*



## Unified carrier registration and fees

(R.C. 4921.11 and 4921.19(G))

The act clarifies and modifies the requirement that the PUCO must adopt rules governing unified carrier registration. Prior law described the requirement as "applicable to motor carrier registration."<sup>213</sup> The act clarifies that the requirement pertains to the Unified Carrier Registration Plan. The act also requires the PUCO's rules to be "applicable to" the rules, procedures, and fee schedules adopted under the plan. The act eliminates a provision that required the PUCO's rules to be equivalent in scope, coverage, and content to the USDOT's registration rules.<sup>214</sup> But the act requires that the registration *fees* be identical to those established by the Unified Carrier Registration Act Board, as approved by the FMCSA for each year.

The Unified Carrier Registration Plan is the organization of state, federal, and industry representatives responsible for developing, implementing, and administering the payment of fees and the collection and distribution of registration and financial-responsibility information.<sup>215</sup> The act does not restrict the PUCO's authority regarding unified carrier registration to for-hire motor carriers or private motor carriers. In fact, unified carrier registration applies to motor carriers, motor private carriers, brokers, and leasing companies, as those terms are used in federal law. Under the plan, these entities must pay annual fees to a "base-state," designated by the entity usually as the state of its principal place of business. States that participate in the plan and that comply with plan requirements may retain a portion of the revenues generated under the plan.<sup>216</sup>

## Annual update forms

(R.C. 4905.81(E) and 4921.13(A))

The act expressly requires the PUCO to adopt rules applicable to the filing of annual update forms by for-hire motor carriers. The rules must not be incompatible with the requirements of the USDOT and must address, at minimum:

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<sup>213</sup> Prior R.C. 4919.76.

<sup>214</sup> *Id.*

<sup>215</sup> 49 U.S.C. 14504a(a)(8) and (9).

<sup>216</sup> 49 U.S.C. 14504a(a)(2), (g), and (f).



- The information and certifications that must be provided on an annual update form, including a certification that the carrier continues to be in compliance with Ohio's applicable laws; and
- Documentation and information that must be provided regarding proof of financial responsibility.

The act is not clear as to whether documentation and information regarding financial responsibility must be provided on an annual basis, or as part of the annual update form.

Prior law required the PUCO to require "the filing of annual and other reports and of other data" by motor transportation companies. The act modifies this requirement to read: "the filing of reports and other data" and applies it to for-hire motor carriers. Along the same lines, the act repeals a provision that permitted a motor transportation company owning two or more CPCNs to file a "combined report."<sup>217</sup>

### **Annual taxes on for-hire motor carriers**

(R.C. 4921.13(A) and (C) and 4921.19(A) to (C))

The act limits the requirement of the payment of annual taxes by for-hire motor carriers to only those who operate solely in intrastate commerce. Prior law required that the annual taxes be paid by motor transportation companies "operating in this state."<sup>218</sup> The annual taxes continue to be in addition to the taxes required for the issuance of a CPCN. The annual taxes are the same amounts as the CPCN taxes, which are also the same amounts as in prior law: for each motor vehicle used for transporting persons and for each commercial tractor used for transporting property, \$30, and for each other motor vehicle transporting property, \$20.

The act also expands and makes slightly earlier the time period during which for-hire motor carriers must pay the annual taxes. Prior law required payment between July 1 and July 15,<sup>219</sup> and the act requires payment between May 1 and June 30.

The act requires the PUCO to issue a tax receipt for payment of the annual taxes upon satisfaction of all of the following:

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<sup>217</sup> Prior R.C. 4921.04(F) and 4921.06.

<sup>218</sup> Prior R.C. 4921.18(A).

<sup>219</sup> Prior R.C. 4921.18(A).



- The filing of a complete and accurate annual update form (see "**Annual update forms**");
- That proof of financial responsibility remains in effect; and
- Payment of applicable unified carrier registration fees, "all applicable taxes" (which could be interpreted as the annual taxes and those required for the issuance of a CPCN), and any forfeitures imposed under the act.

The act requires the for-hire motor carrier to carry a copy of the tax receipt in each motor vehicle operated by the carrier, and to maintain the original copy at the carrier's primary place of business.

The act limits and modifies the applicability of a requirement that taxes be reckoned as from the beginning of a quarter.<sup>220</sup> The act applies this requirement to the annual taxes, whereas prior law applied it to both the CPCN taxes and the annual taxes. Also, the act requires that the annual taxes be reckoned from the beginning of the quarter in which the *tax receipt* is issued, or from when the use of equipment under "any existing tax receipt" began. Prior law required that the taxes be reckoned from the beginning of the quarter in which the *CPCN* was issued, or from when the use of equipment under any existing CPCN began.

The act also eliminates a provision that required the PUCO to account for the annual taxes collected, and pay them to the Treasurer of State on or before the 15th of August.<sup>221</sup>

The act also eliminates a provision that permitted any vehicle or tractor for which the annual tax had been paid to be used by another for-hire motor carrier without further payment of the tax. The act eliminates a similar exemption for a city transit company engaged principally in the transportation of persons within the territorial limits of a municipal corporation, or within contiguous municipal corporations to each other, that extends its operations outside of the municipal corporations.<sup>222</sup>

The act requires the PUCO to adopt rules applicable to the payment of annual taxes by for-hire motor carriers. The rules must not be incompatible with the

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<sup>220</sup> Prior R.C. 4921.18(F).

<sup>221</sup> Prior R.C. 4921.18(E).

<sup>222</sup> Prior R.C. 4921.18(D) and 4921.20.



requirements of the USDOT. The rules must at least address the form and manner in which the taxes may be paid.

### **Uniform registration and permitting for transportation of hazardous materials**

(R.C. 4921.15)

The act clarifies that the law governing the uniform registration and permitting for the highway transportation of hazardous materials applies broadly to persons (not just for-hire motor carriers or private motor carriers). Prior law used both "persons" and "carriers."

The act removes the requirement that the PUCO consider certain factors in determining when the apportioned per-truck registration fee is to be levied and, if the fee is levied, the amount of the fee. With regard to whether or not the fee is to be levied, the act removes the requirement that PUCO consider the difference between the appropriation for the Hazardous Materials Registration Fund and revenue from the operation of the laws governing uniform registration. With regard to the amount of the fee, the act removes the requirement that the total revenue from the fee not exceed the appropriation for the Hazardous Materials Registration Fund (abolished by the act). The act also eliminates a provision that permitted an interested party to appeal, to the Court of Appeals of Franklin County, an order establishing the apportioned per-truck registration fee.<sup>223</sup>

### **Transportation of household goods**

#### **General changes**

(R.C. 4921.03(C), 4921.30, 4921.32, 4921.34, 4921.36, and 4921.38)

The act names the certificate required for operation as a household goods carrier as a "certificate for the transportation of household goods." It also limits the laws governing household goods motor carriers to intrastate commerce. But the act maintains the PUCO's authority to enforce federal consumer protection provisions related to the delivery and transportation of household goods in *interstate* commerce. The act is not clear as to whether this enforcement authority would be limited to only those intrastate household goods carriers that also engage in interstate commerce.

The act removes a provision that limited the laws governing household goods carriers to the transportation of household goods "over a public highway." The act also permits the PUCO to accept the filing of tariffs establishing rates for the transportation

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<sup>223</sup> Compare R.C. 4921.15 to prior R.C. 4905.80.



of household goods, but it does not require household goods carriers to file these tariffs. Household goods carriers were required to file rate schedules with the PUCO under prior law, but not the act.<sup>224</sup>

### **Applications for the certificates for the transportation of household goods**

(R.C. 4921.19(I) and 4921.34(A))

The act clarifies that an application fee must be paid before a certificate for the transportation of household goods may be issued. The act requires the fees to be set in amounts sufficient to carry out the purposes of the act's provisions governing the transportation of household goods, and the act's provisions regarding forfeitures. To the extent necessary, the PUCO is required by the act to change the fee structure to ensure that neither over nor under collection of the fees occurs. The act requires the fees to take into consideration the revenue generated from forfeitures "regarding the consumer protection provisions applicable to for-hire motor carriers engaged in the transportation of household goods."

Accordingly, the act eliminates a requirement that the PUCO had to consider, in determining fee amounts, the amount of fees collected versus the appropriations for the administration of household-goods-transportation requirements. Under prior law, fees were to be reduced if the collected fees exceeded the appropriations in a fiscal year.<sup>225</sup>

The act may slightly expand the requirement that an applicant meet insurance requirements before a certificate for the transportation of household goods may be issued. The act requires that the applicant's financial responsibility is in accordance with the PUCO's rules under the act's provisions governing insurance. These provisions govern both freight cargo insurance requirements and requirements for general liability insurance, which is required for operation under a CPCN. Prior law required only that the applicant's financial responsibility *relating to freight cargo insurance* be in accordance with the rules.<sup>226</sup>

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<sup>224</sup> Prior R.C. 4921.36, 4921.37, 4921.38, 4921.39, and 4921.40 were generally recodified by the act as 4921.30, 4921.32, 4921.34, 4921.36, and 4921.38, respectively; compare R.C. 4921.03(C) to prior R.C. 4921.08 and 4921.23.

<sup>225</sup> Prior R.C. 4921.38(C).

<sup>226</sup> Prior R.C. 4921.38(A).



## Freight cargo insurance

(R.C. 4921.09(B), (D), and (E))

The act requires a for-hire motor carrier to have adequate freight cargo insurance only for the issuance of a certificate for the transportation of household goods. Under prior law, a motor transportation company was required to have freight cargo insurance in order to operate at all (under a CPCN).<sup>227</sup>

The act requires that the PUCO's rules for cargo insurance (which the PUCO may adopt under continuing law) must not be incompatible with the requirements of the USDOT. The USDOT requires household goods motor carriers to have \$5,000 of security for loss or damage to goods on any one motor vehicle, and \$10,000 for loss or damage occurring at any one time and place.<sup>228</sup> The act removes a provision that required that freight cargo insurance insure the carrier against "all loss, in excess of [\$1,000] and within the limits fixed in [the freight cargo insurance]."<sup>229</sup>

As discussed in "**Cancellation or lapses of insurance**," the act eliminates requirements that may have governed what happened when freight cargo insurance was cancelled or lapsed. It also eliminates a provision that may have required that a freight cargo insurance certificate, policy, or bond to "provide that" ten days' written notice must be given to the PUCO of the intent to cancel the insurance. But law that is largely unchanged by the act permits the PUCO to adopt rules governing cargo insurance. These rules could specify requirements regarding the cancellation or lapse of freight cargo insurance.<sup>230</sup>

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<sup>227</sup> Prior R.C. 4921.11.

<sup>228</sup> 49 C.F.R. 387.301(b) and 387.303(c).

<sup>229</sup> Prior R.C. 4921.11(C).

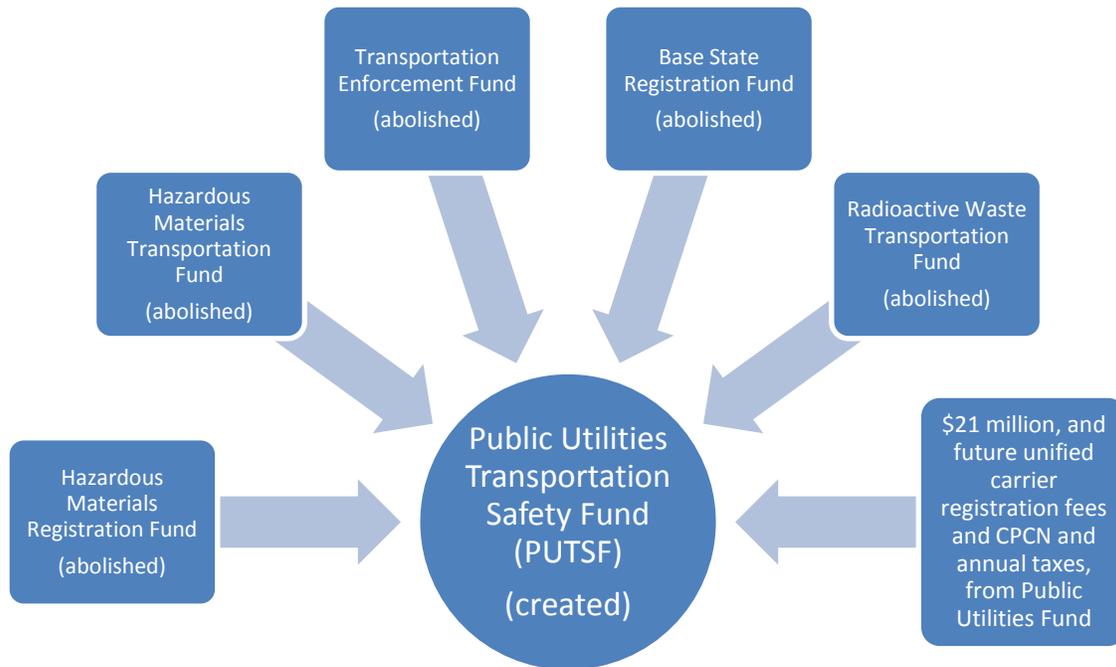
<sup>230</sup> R.C. 4921.09(E) and prior R.C. 4921.11(E).



## Funds and disposition of fees, taxes, and forfeitures

### Consolidation into the Public Utilities Transportation Safety Fund

(Section 601.40; R.C. 4905.57, 4163.07, 4921.21(B) and (C), and 4921.38(E))



The act abolishes five funds (shown above), and requires their cash balances to be transferred to the Public Utilities Transportation Safety Fund (PUTSF), created by the act. The act also requires that \$21 million be transferred from the Public Utilities Fund, and that the necessary encumbrances for motor-transportation regulation be reestablished. The act redirects the deposit of all fines, fees, and forfeitures from the abolished funds into the PUTSF. In addition, the act redirects forfeitures from enforcement of federal consumer protection provisions related to the delivery and transportation of household goods in interstate commerce from the GRF to the PUTSF.<sup>231</sup> Also, the act appears to contain a conflicting provision requiring all forfeitures under the act to go to the GRF, rather than the PUTSF.<sup>232</sup> The act also requires that unified carrier registration fees and the CPCN and annual taxes be

<sup>231</sup> Prior R.C. 4921.40(E).

<sup>232</sup> R.C. 4905.57.



deposited into the PUTSF. These were generally required to go into the Public Utilities Fund under prior law.<sup>233</sup>

The act specifies that the purpose of the PUTSF is for defraying all expenses incident to maintaining the nonrailroad transportation activities of the PUCO.

**Disposition of excess funds to the GRF**

(R.C. 4921.21(B))

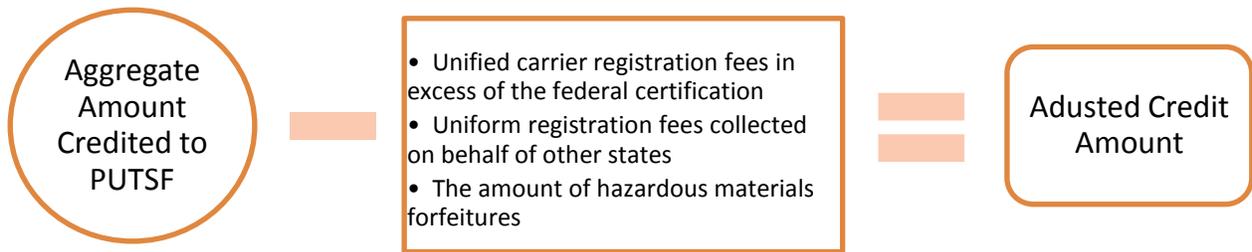
The act requires many of the fines, fees, taxes, and forfeitures to go into the PUTSF only until the credit to the fund, minus certain fees and forfeitures, is sufficient to meet the appropriation. The fees and forfeitures that are subtracted from the total credit are either designated for specific purposes or they may be subject to federal requirements. After the point of parity, the act requires additional receipts of certain fees, taxes, and forfeitures to go to the GRF. The graphics below explain the act's requirements with more specificity.

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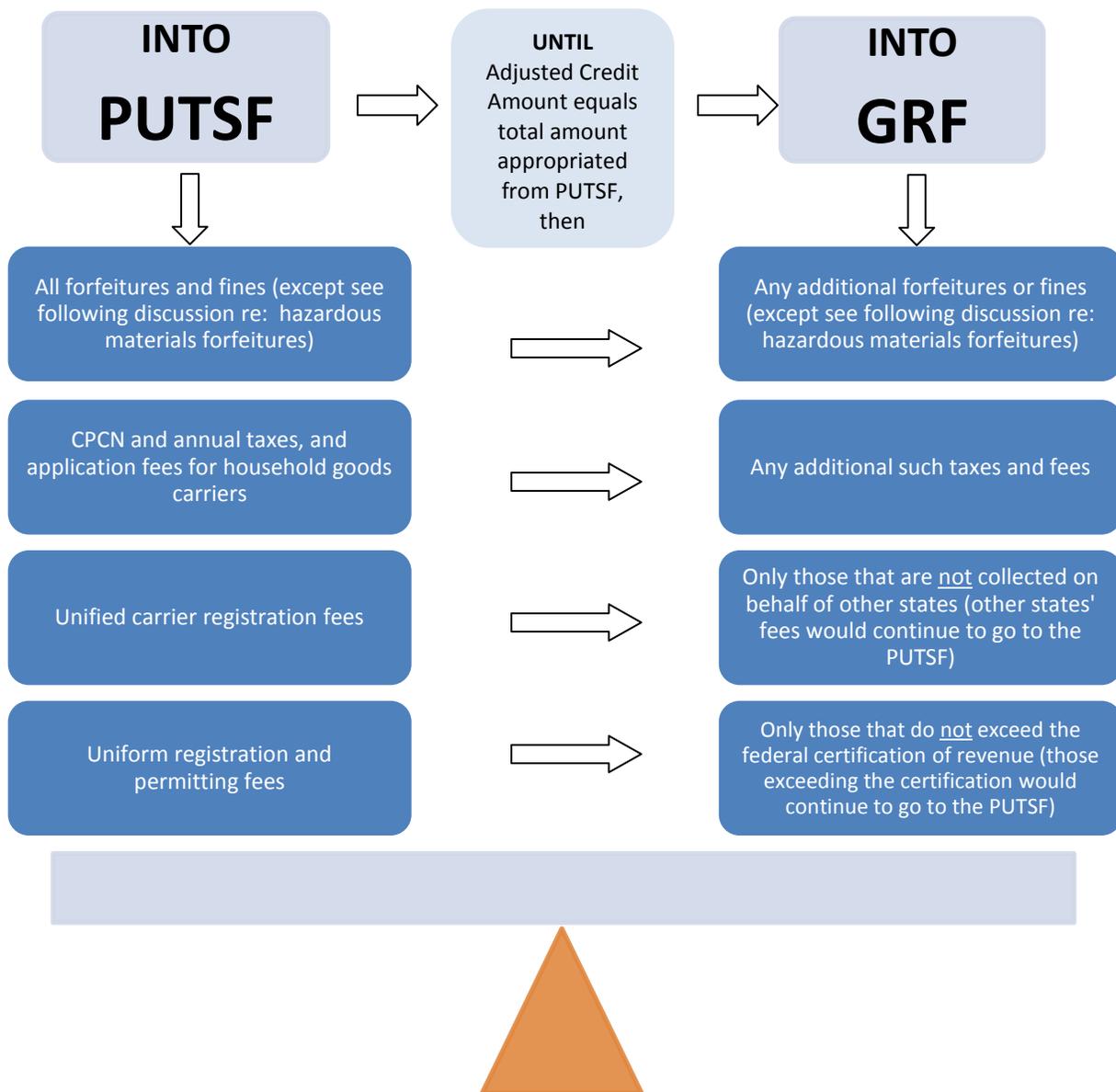
<sup>233</sup> Prior R.C. 4923.12(A) and (B).



## Adjusted Credit Amount Calculation



## Disposition Based on the Adjusted Credit Amount



The act prescribes a different point at which deposits are to be redirected from the PUTSF to the GRF for forfeitures from violations of rules governing the highway transportation and offering for transportation of hazardous materials. That is, the first \$800,000 of those forfeitures is required to be deposited into the PUTSF, and amounts over \$800,000 go to the GRF. This requirement is similar to law repealed by the act. That law required the first \$800,000 of forfeitures for violations of various prior laws governing the transportation of hazardous materials to go to the Hazardous Materials Transportation Fund, abolished by the act. After that point, under prior law, additional amounts were required to go to the GRF.<sup>234</sup>

### **Elimination of excess funds to the Department of Public Safety**

(R.C. 4923.12(A) and (B), repealed)

The act removes a provision in prior law that was similar to the act's parity provision, explained above (see "**Disposition of excess funds to the GRF**"). But prior law required that after the point of parity was reached, the additional amounts had to go to the State Highway Safety Fund. This money was to be used for the operation and maintenance of the Department of Public Safety. The provision was limited to the unified carrier registration fees, the CPCN and annual taxes, and fees for the filing of insurance information for certain carriers. (The insurance fees are not required under the act.) Prior law required them to be deposited to the Public Utilities Fund, until the aggregate credit from those fees and taxes in a fiscal year met the appropriation from the Public Utilities Fund for the PUCO's nonrailroad transportation expenses.

### **Federal Commercial Vehicle Transportation Systems Fund**

(R.C. 4921.21(D))

The act modifies a requirement governing the purpose of the Federal Commercial Vehicle Transportation Systems Fund. Prior law required the fund to be used in part to "improve safety of motor carrier operations through electronic exchange of data by means of on-highway electronic systems."<sup>235</sup> The act removes the phrase "by means of on-highway electronic systems."

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<sup>234</sup> Prior R.C. 4905.80(E).

<sup>235</sup> Prior R.C. 4923.26.



## **Motor Carrier Safety Fund**

(R.C. 4921.21(E) and 4923.09)

The act modifies the description of the input to and the purpose of the Motor Carrier Safety Fund. The act specifies that the fund is to consist of money received from the USDOT for motor carrier safety. Continuing law, modified only slightly by the act, also requires the following to go into the fund: grants-in-aid, cash, and reimbursements received under cooperative agreements with the USDOT, and any other federal agency or commission to enforce the federal and state economic and safety laws and rules concerning highway transportation by motor vehicles. But the act removes the reference to the "economic" laws.

The act requires the fund to be used to administer the state's Motor Carrier Safety Assistance Program (MCSAP) and associated grants, or their equivalents.

## **Removal of rate regulation**

(R.C. 4921.03(C) and 5503.34)

The act effectively removes the PUCO from the business of regulating motor-carrier rates, and removes references to the economic regulation of motor carriers. The act broadens the prohibition on the PUCO's regulation of motor-carrier rates, by stating that the PUCO has no power to fix, alter, or establish rates for the "transportation of persons or property" (except for the power to accept tariffs of household goods carriers). Prior law stated that the PUCO had no power to regulate rates "for the transportation of passengers, for hire, within this state." The act repeals or eliminates all other provisions relating to rate regulation of motor carriers.<sup>236</sup>

## **Removal of route regulation**

(R.C. 4921.02, 4921.07, 4921.08, 4921.09, 4921.101, 4921.12, 4921.14, 4921.19, 4921.26, 4921.27, 4923.01, and 4923.02, repealed)

The act repeals or removes all provisions that governed the regulation of regular and irregular routes.

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<sup>236</sup> Prior R.C. 4921.101(B), 4921.23, and 4921.27.



## **Removal of provisions requiring the filing of time and service schedules**

(R.C. 4921.23 and 4921.24, repealed)

The act repeals provisions that required the filing of time and service schedules by motor transportation companies.

## **Removal of provisions regarding territory overlap**

(R.C. 4921.10, repealed)

The act removes a provision that permitted the PUCO, after notice and hearing, to grant a CPCN to an applicant requesting to serve the territory of an existing motor transportation company, only when the existing company did not provide the service required or the particular kind of equipment necessary to furnish the service to the satisfaction of the PUCO. The removed provision also permitted the PUCO to issue limited CPCNs.

## **Changes in seating or carrying capacity**

(R.C. 4921.28, repealed)

The act repeals a provision that required a motor transportation company to pay additional taxes that could have been due on any equipment because of a change in seating or carrying capacity of motor vehicles.

## **PUCO authority to examine persons under oath**

(R.C. 4923.04(C)(2))

The act expands the PUCO's authority to examine under oath certain officers, agents, or employees. Under the act, this authority extends to an officer, agent, or employee of a person subject to the following requirements under the act:

- Rules applicable to the transportation of persons or property by for-hire motor carriers or private motor carriers;
- Rules applicable to the highway transportation and offering for transportation of hazardous materials (but not uniform registration and permitting);
- Motor vehicle and driver inspections;
- Premises and motor vehicle audits;



- Rules applicable to the highway routing of hazardous materials; and
- Forfeitures.

Under prior law, the authority was limited to an officer, agent, or employee of a person who transports or offers for transportation hazardous materials subject to the safety rules adopted under existing law in relation to the transportation and offering for transportation of hazardous materials.<sup>237</sup>

## **Forfeitures**

(R.C. 4923.99)

### **Increase of forfeiture cap**

The act increases the maximum forfeiture amount from \$10,000<sup>238</sup> to \$25,000 for each day of each violation. This alleviates a compliance issue with requirements for federal funding under MCSAP. The act provides for forfeitures for every requirement of the act on for-hire motor carriers, private motor carriers, or persons subject to the laws governing the transportation of persons or property. This applicability is essentially the same as prior law.

### **Forfeitures determined at roadside inspections and compliance reviews**

The act modifies the PUCO's duty to be "consistent with" federal and related guidelines in determining forfeitures for violations discovered at roadside inspections and compliance reviews, by adding the phrase "to the extent practicable." The act also eliminates caps on the fees for roadside inspections and compliance reviews, of \$1,000 and \$10,000, respectively.<sup>239</sup>

### **Removal of \$10,000 general forfeitures**

(R.C. 4905.54)

The act removes a provision that permitted the PUCO to assess a forfeiture of no more than \$10,000 for a public utility's violation of the law governing motor transportation companies and private motor carriers. These forfeitures were to go into the GRF.

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<sup>237</sup> Prior R.C. 4905.81(D).

<sup>238</sup> Prior R.C. 4905.83, 4921.99, and 4923.99.

<sup>239</sup> Prior R.C. 4921.99 and 4923.99.



## **Referral to the Attorney General for hazardous waste forfeitures**

(R.C. 4905.83(A), repealed)

The act removes a provision that permitted the PUCO to refer hazardous waste violations to the Attorney General for enforcement under law pertaining to environmental protection.

## **State policy**

(R.C. 4905.80)

The act replaces in state-policy language references to economic regulation<sup>240</sup> with references to safety regulation, as follows:

- Changes "foster sound economic conditions in [transportation by motor carriers]" to "foster *safe* conditions in . . .";
- Replaces "[p]romote adequate, economical, and efficient service" with "[p]romote *safe and secure* service"; and
- Removes a reference to the promotion of reasonable charges for motor-carrier service.

## **Scope of PUCO authority**

(R.C. 4905.81)

The act generally expands provisions that describe the PUCO's regulatory authority to include private motor carriers and for-hire motor carriers, whereas prior law was limited to motor transportation companies in these descriptions. The act expressly grants the PUCO rulemaking authority for administration and enforcement of all motor-carrier law within the PUCO's jurisdiction. The act eliminates the PUCO's authority to designate stops for service and safety on established routes. The act eliminates a requirement that the PUCO provide uniform accounting systems for motor transportation companies.<sup>241</sup> Finally, the act expands to for-hire motor carriers the PUCO's authority to hear and determine complaints that a person is engaged as such a carrier. Prior law applied this complaint provision only to private motor carriers.<sup>242</sup>

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<sup>240</sup> Prior R.C. 4921.03.

<sup>241</sup> Prior R.C. 4921.04.

<sup>242</sup> Prior R.C. 4923.03.



## **Notification of radioactive waste transportation**

(R.C. 4905.801, repealed)

The act removes a provision that permitted the PUCO, consistent with national security requirements, to notify any law enforcement agency or other state or local entity affected by the shipment of certain radioactive material.

## **Common carriers and discriminatory service**

(R.C. 4907.37)

The act removes a prohibition that a "common carrier" subject to the motor-carrier law could not provide discriminatory service. "Common carrier," in this context, could have been intended to refer only to railroad common carriers, as the provision was located in a chapter governing railroads. Under this interpretation, the act merely removes an unnecessary reference to motor-carrier law, as railroads are not subject to that law under the act.

## **Railroad references**

(R.C. 4905.58, 4907.02, 4907.04, 4907.19, 4907.28, 4907.35, 4907.43, 4907.49, 4907.57, 4907.59, 4907.60, 4907.62, 4909.02, 4909.03, 4909.22, 4909.24, and 4909.28)

The act removes references to the act's provisions that govern for-hire motor carriers and private motor carriers in sections dealing exclusively with railroads.

## **References to the Interstate Commerce Commission**

(R.C. 306.04, 306.36, and 4923.09)

The act replaces references to the Interstate Commerce Commission with references to the Federal Motor Carrier Safety Administration, or removes the references.<sup>243</sup> The Interstate Commerce Commission no longer exists.

## **Transportation of liquor**

(R.C. 4303.22)

The act limits the issuance of Permit H by the PUCO for the transportation of beer, intoxicating liquor, or alcohol for delivery or use in Ohio to for-hire motor carriers, which the act does not define for this purpose. Prior law allowed issuance of the permit to a "carrier by motor vehicle." Additionally, the act states that the law governing

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<sup>243</sup> Prior R.C. 4919.77 and 4919.79(D).



Permit H does not prevent the Division of Liquor Control from contracting with a for-hire motor carrier, and that any such carrier is eligible for Permit H. Prior law applied these provisions to "common or contract carriers."

## **Natural gas investments in gathering and storage facilities**

(R.C. 4929.041 and 4929.042)

### **General overview**

The act permits a natural gas company to apply for a regulatory exemption for investments in older gathering facilities (placed into service before 2010), and any related service. In a sense, this exemption may provide the natural gas company with the regulatory flexibility to facilitate a conversion of those older facilities, such as converting them from transmission lines to wet gas (shale) gathering lines. Without the regulatory exemption, if the facilities were converted, the revenue earned from those facilities would be counted against the natural gas company in the company's next rate case. While prior law did not expressly address conversion of gathering facilities in any way (e.g. permitting or prohibiting conversion, or imposing restrictions on conversion), the act requires natural gas companies to notify the PUCO in writing before converting the use of any gathering facilities. The act does not clarify the scope of the phrase "converting the use."

If older facilities are converted before a natural gas company's next rate case, customers would continue to pay for those facilities until the next rate case, even though the facilities may not be in use for their service.<sup>244</sup> To this point, the act requires a true-up comparison when an exemption is requested for investments in older facilities. The PUCO must compare the older facilities to newer investments that are not yet factored into rates and reduce rates if the previous-rate-case value of the older facilities is more than the newer investments.

### **Effect of the exemption in detail**

#### **Ratemaking treatment**

If granted, the regulatory exemption would exempt investments from all ratemaking provisions. There are two major consequences, which would occur at the company's next rate case: (1) customers would stop paying for any exempt investments and (2) revenues that the company receives from the exempt investments would not be counted against the company for the determination of rates. This is because Ohio's ratemaking formula permits utilities to earn a rate of return on their property

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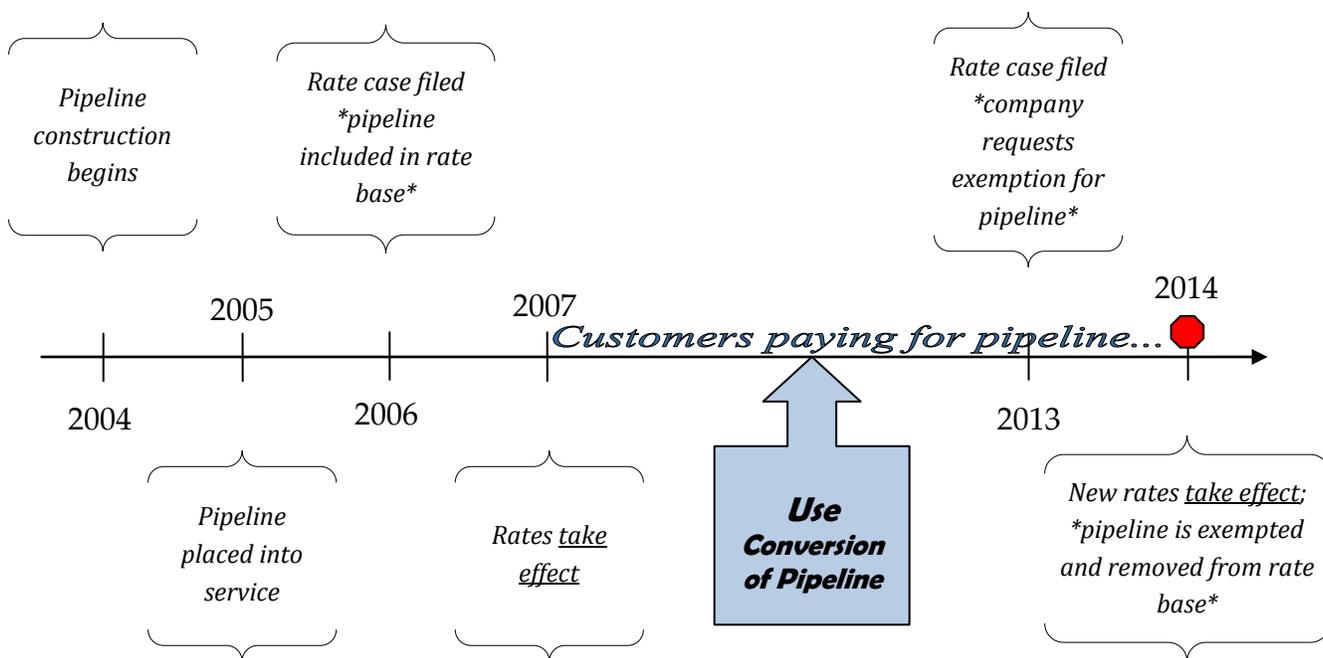
<sup>244</sup> R.C. 4909.15 (not in the act).



(commonly referred to as the rate base). Also, the revenue earned by a utility during a 12-month test period (and, for a natural gas company, adjusted for changes reasonably expected to occur during the following 12-month period) is used to calculate the revenues to which the utility is entitled.<sup>245</sup> Exempt investments and the revenue from those investments would be excluded from these calculations.

### Conversion of gathering facilities and rate implications

If a natural gas company were to convert older gathering facilities, there would be a period of time, beginning with the conversion and ending whenever new rates take effect and the regulatory exemption is granted, when customers would be paying for gathering facilities that are not being used for their service. The following hypothetical timeline illustrates this point:



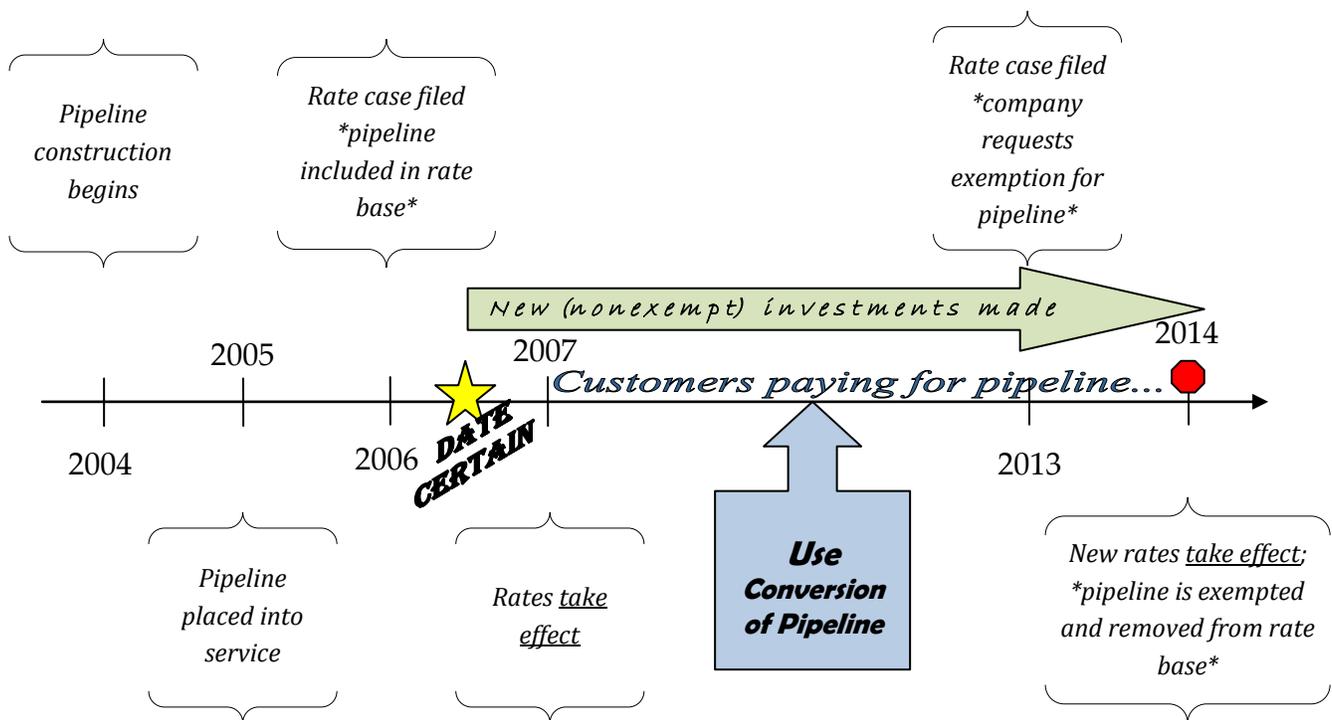
### True-up comparison

To respond to the situation described above, where customers could end up paying for older gathering facilities that are converted to another use, the act requires a true-up comparison. This provision requires the PUCO to compare the value of the investments to be exempted, as determined in the company's last rate case, which is the value as of the "date certain," to the value of all nonexempt investments placed into

<sup>245</sup> R.C. 4909.05 and 4909.15 (not in the act).

service *after that same date certain*. Investments placed into service after the date certain would not have been included in the rate base, and therefore customers would not have been paying for them.

The following hypothetical timeline, borrowed from above, is modified to demonstrate the true-up comparison. Notably, the date certain for a natural gas company may be up to nine months after the date of filing of the rate-case application.<sup>246</sup>



If the date-certain value of the investments to be exempted is more than the value of the post-date-certain, nonexempt investments, the PUCO is required to reduce the gross-annual-revenue entitlement of the natural gas company by applying the rate of return to the difference. The rate of return is the rate of return established in the rate case in which the regulatory exemption is being sought. Because the act requires the regulatory exemption to be sought as part of a rate case, the comparison and any reduction of gross annual revenue would likewise be done as part of the rate case. In other words, the true-up comparison would not result in any kind of customer refund, but rather a downward adjustment to the rates to be set in the rate case. If the comparison goes in the other direction (i.e., the post-date-certain, nonexempt

<sup>246</sup> R.C. 4909.15(C) (not in the act).

investments are more than the investments to be exempted), the act requires no adjustments other than what would naturally result from the regulatory exemption.<sup>247</sup>

But the act limits revenue recovery of a natural gas company with an exemption for older gathering facilities for revenues related to investments that replace the older facilities. More specifically, the recovery limitation applies to investments that "perform the function that had been provided by the exempt investments" and that were placed into service after the exemption was granted. The company may not recover revenues related to the replacement investments greater than "those" consistent with the value of the exempt assets as would be determined in the company's next rate case.

### **Terminology change for the exemption for newer investments**

The act modifies some terminology regarding a regulatory exemption for newer investments. This exemption could be sought under prior law for investments in "gathering lines" and "storage facilities" placed into service after 2009, and any service related to those lines and facilities. Neither "gathering lines" nor "storage facilities" was or is defined for this purpose. But in Ohio's pipeline-safety law, "gathering line" is given the federal definition: "a pipeline that transports gas from a current production facility to a transmission line or main."<sup>248</sup> The act modifies the terminology by changing the description to investments in "storage or gathering *facilities*."<sup>249</sup> Neither term is defined.

### **Exemption must be sought in a rate case**

The act requires a regulatory exemption, for investments in older *or* newer facilities, to be sought as part of a rate case. Therefore, new rates would be determined and the regulatory exemption granted simultaneously. Under prior law, there was no clear restriction on when a regulatory exemption could be sought.

### **Other laws covered by the regulatory exemption**

The act does not change the laws from which the subject investments would be exempt. These are general regulatory provisions, governing accounts and records,<sup>250</sup> annual reports,<sup>251</sup> long-term forecasts,<sup>252</sup> financial regulation,<sup>253</sup> property and plant of

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<sup>247</sup> R.C. 4909.15 (not in the act).

<sup>248</sup> R.C. 4905.90(C) (not in the act) and 49 C.F.R. 192.3.

<sup>249</sup> (emphasis added).

<sup>250</sup> R.C. 4905.13 (not in the act).

<sup>251</sup> R.C. 4905.14 (not in the act).



public utilities,<sup>254</sup> transactions between public utilities,<sup>255</sup> and other matters,<sup>256</sup> and, as stated above, all ratemaking provisions.<sup>257</sup>

### **Continuing provisions apply to the exemption for older facilities**

Because the act is *expanding* the regulatory exemption of prior law to cover older facilities, provisions that applied to the prior regulatory exemption apply equally to the regulatory exemption for older facilities. These include:

- a requirement for the separation of the company's operations, resources, employees, books, and records (for exempt investments versus nonexempt investments);
- a prohibition against using exempt facilities to provide an unregulated or exempt commodity sales service, which prohibition may be waived by the PUCO for good cause shown; and
- a grant of continuous jurisdiction to the PUCO, under which it may enforce terms of a regulatory exemption and alter, amend, or suspend the regulatory exemption in certain circumstances.

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## **OHIO BOARD OF REGENTS (BOR)**

- Eliminates several mandated reports by the Chancellor of the Board of Regents and consolidates requirements for other reports into one Revised Code section.
- For purposes of the ongoing authority of a state institution of higher education to enter into an arrangement with a conduit entity and an independent funding source relative to the lease/leaseback of any of the institution's auxiliary facilities, expands the definition of "conduit entity" to include any appropriate legal entity selected by the institution.

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<sup>252</sup> R.C. Chapter 4935.

<sup>253</sup> R.C. 4905.40 to 4905.47 (not in the act).

<sup>254</sup> R.C. Chapter 4933.

<sup>255</sup> R.C. 4905.48 (not in the act).

<sup>256</sup> R.C. Chapter 4905.

<sup>257</sup> R.C. Chapter 4909.



## **Chancellor reports**

### **Eliminated reports**

(R.C. 3333.04, 3333.123, and 3333.21; repealed R.C. 3333.049 and 3354.23)

The act eliminates the following reports required of the Chancellor of the Board of Regents under former law:

(1) Goals and timetables for increased access to higher education, job training, adult literacy, research, excellence in higher education, and graduate program redundancy reduction (R.C. 3333.04(P));

(2) Quality of institutions that offer teacher preparation programs (R.C. 3333.049);

(3) Performance of current Ohio Academic Scholars and the effectiveness of the formula to select scholars for the Ohio Academic Scholarship (R.C. 3333.21); and

(4) Evaluation of the pilot program for displaced homemakers required to be conducted at Cuyahoga Community College (R.C. 3354.23).

### **Consolidation of statutes**

(R.C. 3333.041, 3333.60, 3333.61, 3333.71, 3333.72, 3345.28, and 3345.692; repealed R.C. 3333.0411, 3333.33, 3333.70, 3333.80, and 3334.111)

The act consolidates reporting requirements on the following topics, formerly separate, into one Revised Code section (R.C. 3333.041), with the report or reports all due not later than December 31 each year to the Governor and the General Assembly:

(1) Status of Ohio school district graduates enrolled in state institutions of higher education (R.C. 3333.041);

(2) Aggregate academic growth data for students assigned to graduates of teacher preparation programs (R.C. 3333.0411);

(3) Use of minority and women investment managers in programs of the Ohio Tuition Trust Authority (R.C. 3334.111);

(4) Status of implementation of faculty improvement programs at state institutions of higher education, particularly regarding professional leave (R.C. 3345.28);

(5) The number and types of biobased products purchased by state institutions of higher education and the amount spent on those purchases (R.C. 3345.692);



(6) A description of dual enrollment programs offered by school districts, community schools, and chartered nonpublic high schools (R.C. 3333.33);

(7) The academic and economic impact of the Ohio Innovation Partnership (R.C. 3333.70); and

(8) The academic and economic impact of the Ohio Co-Op/Internship Program (R.C. 3333.80).

The act also expands the dual enrollment report described in (6) to cover dual enrollment programs offered by STEM schools and the newly authorized college-preparatory boarding schools. The act maintains the requirement that the dual enrollment report also must be posted on the Chancellor's web site.

### **Leasing campus auxiliary facilities**

(R.C. 3345.54)

Under ongoing law, state institutions of higher education are authorized to enter into an arrangement with a conduit entity and an independent funding source relative to the lease/leaseback of any of the institution's auxiliary facilities. "Conduit entity" was formerly defined as a nonprofit organization qualified as a public charity under the Internal Revenue Code.

The act expands the definition of "conduit entity" to include any other appropriate legal entity selected by the state institution.

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## **DEPARTMENT OF REHABILITATION AND CORRECTIONS (DRC)**

- Requires the Director of Rehabilitation and Correction to deposit all moneys received from commissions on specified services provided to prisoners and all moneys received from commissions on all telephone systems into the existing Prisoner Programs Fund.
- Makes every person serving a term in a community-based correctional facility or district community-based correctional facility responsible for medical treatment and services that the person requests and receives.
- Eliminates a limitation of the fee for medical treatment and services in a community-based correctional facility or district community-based correctional facility to actual cost.



- Eliminates a requirement that any fee paid by an offender in a community-based correctional facility or district community-based correctional facility for treatment or services requested and received be deducted from medical or dental costs that the person is ordered to reimburse under a court-imposed financial sanction or to repay under a county policy that requires repayment of the costs of confinement.
- Eliminates a requirement that the governing board of a community-based correctional facility or district community-based correctional facility establish a policy requiring non-indigent offenders to pay for any medical treatment or service requested by and provided to an offender.
- Requires that a Department of Rehabilitation and Correction (DRC) prisoner who is released from prison early under a risk reduction sentence be placed after release under post-release control sanctions (instead of on "supervised release") and specifies that the Felony Sentencing Law definition of "stated prison term" includes any period of time by which a felon's prison term is shortened under a risk reduction sentence.
- Requires a sentencing court to determine the days of credit an offender receives for time served in relation to the offense, provides for the correction of errors in the determination, and requires DRC to adjust a prisoner's stated prison term or parole eligibility in accordance with the court's determination.
- Specifies that DRC and the Adult Parole Authority are not liable for any claim for damages arising from the DRC's or Authority's issuance, denial, or revocation of a certificate of achievement and employability or for the DRC's or Authority's failure to revoke a certificate under required circumstances.
- Eliminates the Authority's power to recommend to the Governor the medical release of a prisoner.
- Eliminates the requirement that the Authority use the currently specified procedures for recommending a pardon, commutation, medical release, or reprieve prior to making a recommendation to the Governor regarding an inmate's release because the inmate is terminally ill, medically incapacitated, or in imminent danger of death, if the Authority is directed to investigate the inmate prior to the Governor ordering the release of the inmate.
- Requires the Director to adopt rules providing for the use of no more than 15% (10% under prior law) of appropriations for the Halfway House, Reentry Center, and Community Residential Center Program to pay for contracts *with licensed halfway*



*houses* for specified nonresidential services for offenders supervised by the Adult Parole Authority.

- Revises the procedures for the possible release of certain DRC prisoners who serve 80% of their stated prison term and corrects erroneous cross-references in that mechanism to mandatory prison terms imposed under R.C. 2929.14.
- Specifies that DRC's Division of Parole and Community Services, instead of the Division's Adult Parole Authority, must notify the sentencing court of the pendency of a transfer to transitional control of a DRC prisoner and of the fact that the court may disapprove of the transfer.
- Makes probation departments that supervise offenders sentenced by courts of common pleas or municipal courts (instead of just departments that supervise felons) eligible for probation improvement grants and probation incentive grants.
- Excludes specified community-based correctional facility employee residential and familial information from the application of the Public Records Law.
- Includes a community-based correctional facility employee among the group of persons whose personal residence address must be disclosed to a journalist so long as the journalist meets certain specified requirements.

## **Funding of the Prisoner Programs Fund**

(R.C. 5120.132)

The act requires the Director of Rehabilitation and Correction to deposit all moneys received by the Department of Rehabilitation and Correction (DRC) from services provided to prisoners in relation to electronic mail, prisoner trust fund deposits, and the purchase of music, digital music players, and other electronic devices into the existing Prisoner Programs Fund. Prior law required the Director to deposit all moneys received by the Department from commissions on telephone systems *established for the use of prisoners* into the Fund. The act removes the italicized language so that the Director must deposit all such commissions on any telephone system. The act does not change the purposes for which the Fund may be used.



## **Responsibility for medical expenses in a community-based correctional facility**

(R.C. 2301.571)

The act makes every person confined in a community-based correctional facility or district community-based correctional facility, rather than just a person who is not indigent, financially responsible for any medical treatment or service the person requests and receives. It eliminates a requirement that a facility's governing board establish a policy requiring non-indigent offenders to pay for such treatment or services and eliminates a limitation on the fee for the medical treatment or service to the actual cost of the treatment or service provided. The act also eliminates a requirement that any fee paid by an offender for treatment or services requested and received be deducted from medical or dental costs that the offender is ordered to reimburse under a court-imposed financial sanction or to repay under a county policy that requires repayment of the costs of confinement.

The act provides that nothing in this provision may cause a community-based correctional facility or a district community-based correctional facility to be responsible for the payment of any medical or other health-care expenses incurred in connection with an offender who is serving a term in the facility that is imposed as a community residential sanction for a felony.

## **Risk reduction sentencing**

(R.C. 2929.01, 2929.19, 2967.28, and 5120.036)

The act modifies the law governing risk reduction sentencing to specify that, if a sentencing court recommends risk reduction sentencing for a convicted felon, if DRC determines that the felon is eligible for risk reduction and provides the felon treatment and programming, and if the felon successfully completes the required treatment or programming, the felon will be released to post-release control (instead of "supervised release") under one or more post-release control sanctions after serving all mandatory prison terms and a minimum of 80% of all other prison terms. The placement under post-release control sanctions will be under terms set by the Parole Board, under the procedures it follows under preexisting law in setting post-release control sanctions for felons who complete their prison term and are released under a period of post-release control, and it will be subject to the provisions under preexisting law that apply to violations of post-release control sanctions. The period of post-release control will be for the length of time specified under preexisting law for felons who are subjected to post-release control upon being released from prison upon completion of their prison term, determined by the felon's offense.



Related to the changes described in the preceding paragraph, the act expands the following preexisting provisions so that they expressly apply with respect to risk reduction sentences: (1) the provision that requires that sentences to prison for a felony include a requirement that the felon, upon being released from prison upon completion of the prison term, either be subject to mandatory post-release control or be subject to post-release control at the discretion of the Parole Board, depending upon the felony, (2) the provisions that, depending upon the felony, either require or authorize the imposition of one or more post-release control sanctions upon a felon released from prison upon the completion of the prison term, and (3) the provision that requires that a felon sentenced to prison be notified at the time of sentencing that the felon, depending upon the felony, either will be or may be subject to supervision under one or more post-release control sanctions upon being released from prison upon completion of the prison term.

The act also expands the Felony Sentencing Law's definition of "stated prison term" to specify that, in addition to the things the definition formerly included, if an offender is serving a prison term as a risk reduction sentence, "stated prison term" includes any period of time by which the prison term imposed upon the offender is shortened by the offender's successful completion of all assessment and treatment or programming under the sentence.

### **Determination of credit for time served by offender**

(R.C. 2929.19(B)(2)(h) and 2967.191)

The act requires a court that determines at a sentencing hearing that a prison term is necessary or required to determine, notify the offender of, and include in the sentencing entry the number of days that the offender has been confined for any reason arising out of the offense for which the offender is being sentenced and by which DRC must reduce the offender's stated prison term. The court's calculation may not include the number of days, if any, that the offender previously served in DRC custody arising out of the offense for which the prisoner was convicted and sentenced. In making the determination, the court must consider the arguments of the parties and conduct a hearing if one is requested. The court retains continuing jurisdiction to correct any error not previously raised at sentencing in making its determination. At any time after sentencing, the offender may file a motion in the sentencing court to correct any error in the determination, and the court has discretion to grant or deny the motion. If the court changes its determination, it must cause the entry granting the change to be delivered promptly to DRC. The act provides that the Revised Code sections governing new trial motions and petitions for post-conviction relief do not apply to motions under R.C. 2929.19 for a redetermination of time served. The act also states that an inaccurate



determination is not grounds for setting aside the offender's conviction or sentence and does not otherwise render the sentence void or voidable.

The act requires DRC to reduce a prisoner's stated prison term or, if the prisoner is serving a term for which there is parole eligibility, the minimum and maximum term or the parole eligibility date of the prisoner, in accordance with the court's determination.

### **Certificates of achievement and employability**

(R.C. 2961.22)

Continuing law, unchanged by the act, permits any prisoner serving a prison term in, or who has been released from, a state correctional institution who satisfies certain specified conditions to apply to the DRC or the Adult Parole Authority for a certificate of achievement and employability.

The act specifies that DRC and the Authority are not liable for any claim for damages arising from the DRC's or Authority's issuance, denial, or revocation of a certificate of achievement and employability or for the DRC's or Authority's failure to revoke a certificate of achievement and employability if the person is convicted of or pleads guilty to any offense other than a minor misdemeanor or a traffic offense.

### **Recommendation for prisoner's medical release**

(R.C. 2967.03 and 2967.05)

The act eliminates the Adult Parole Authority's power to recommend to the Governor the medical release of a prisoner. Under former law, the Authority could recommend to the Governor the medical release of a prisoner if in the Authority's judgment there was reasonable ground to believe that granting a medical release would further the interests of justice and be consistent with the welfare and security of society.

Under continuing law, the Governor may order an inmate's release upon the recommendation of the Director of DRC, accompanied by a certificate of the inmate's attending physician that the inmate is terminally ill, medically incapacitated, or in imminent danger of death. The Governor may direct the Authority to investigate an inmate who is terminally ill, medically incapacitated, or in imminent danger of death prior to the Governor ordering the release of the inmate. Under the act, the Authority is no longer required to follow the procedures required by the former law (recommendation for pardon, commutation, medical release, or reprieve) prior to making a recommendation pertaining to the inmate's release to the Governor.



## **Halfway house nonresidential services**

(R.C. 2967.14(B))

Under prior law, DRC could use no more than 10% of the amount appropriated each fiscal year for the Halfway House, Reentry Center, and Community Residential Center Program to pay for contracts for nonresidential services for offenders being supervised by the Adult Parole Authority. The nonresidential services could include, but were not limited to, treatment for substance abuse, mental health counseling, counseling for sex offenders, and electronic monitoring services. The act increases the amount that DRC may spend for such contracts to 15% of appropriations; requires the Director of DRC to adopt rules governing the use of the funds; specifies that the contracts must be with licensed halfway houses; provides that the offenders being supervised may include offenders who are supervised under an agreement between the Authority and a court of common pleas of a county in which there is no county probation department; and expands the permissible uses of the funds to include aftercare and other nonresidential services that the Director identifies by rule.

## **80% early release mechanism for DRC prisoners**

(R.C. 2967.19 and 5120.66)

The act modifies the preexisting law enacted in Am. Sub. H.B. 86 of the 129th General Assembly that provides an "80% release mechanism" for certain felons serving a prison term. It modifies the 80% release mechanism as follows:

(1) Instead of requiring the DRC Director to petition the sentencing court for the release of an inmate as the initiating step under the mechanism, it requires the Director to send a written notice to the sentencing court recommending that the court consider releasing an inmate under the mechanism.

(2) It provides that the time of making the recommendation described in (1) is not earlier than 90 days prior to the date on which the inmate becomes eligible (see (4), below) and that only an inmate recommended by the Director may be considered for early release under the mechanism, and removes a requirement that the materials sent to the court include a post-release control assessment and placement plan, if available.

(3) It specifies that the mechanism applies to any inmate confined in a prison on or after September 30, 2011.

(4) It specifies that an inmate serving a stated prison term of one year or more that includes one or more "restricting prison terms" and one or more "eligible prison terms" becomes eligible for release under the mechanism after having fully served all



restricting prison terms and having served 80% of the stated prison term that remains to be served after all restricting prison terms have been fully served. It also specifies that an inmate serving only one or more "eligible prison terms" becomes eligible for release under the mechanism after having served 80% of those terms.

(5) In former provisions that required notification to the appropriate prosecutor and the victim and posting on DRC's Internet database when the Director petitioned a court for release of an inmate under the mechanism, it replaces the references to the Director petitioning the court with references to the Director submitting a notice to the court, as described above in (1).

(6) It requires the Director's notice to the court and the information provided to the prosecutor and victim to include contact information for a DRC employee who can answer questions about the inmate.

(7) It replaces the procedure that formerly governed a court in determining whether to grant an inmate a release under the mechanism – under the act: (a) the court upon receipt of the notice from the Director either must hold a hearing to consider the inmate's release or inform DRC that it will not be conducting a hearing, (b) the court cannot grant an early release to an inmate without holding a hearing, (c) if the court declines to hold a hearing, it may later consider release of the inmate under the mechanism on its own motion and conduct a hearing, and (d) the court must notify DRC within 30 days of receipt of the notice from the Director whether it will hold a hearing for an inmate.

(8) It conforms language in other portions of the mechanism to the changes described above in (1) to (7).

(9) In the definition of "restricting prison term," it corrects erroneous cross-references to mandatory prison terms imposed under R.C. 2929.14.

## **DRC transitional control program**

(R.C. 2967.26)

Preexisting law authorizes DRC, by rule, to establish a transitional control program for closely monitoring a prisoner's adjustment to community supervision during the final 180 days of the prisoner's confinement. Formerly, at least three weeks prior to transferring a prisoner to transitional control under the program, the Authority was required to give notice of the pendency of the transfer to the common pleas court of the county in which the prisoner was indicted and of the fact that the court may disapprove the transfer of the prisoner and must include a report prepared by the head



of the prison in which the prisoner is confined regarding the prisoner's activities and conduct in the prison.

The act requires that DRC's Division of Parole and Community Services, instead of the Authority, give the notice to the court of common pleas of the pendency of the transfer of a prisoner to transitional control and of the court's authority to disapprove the transfer. The act does not otherwise modify the program.

### **Probation department grant eligibility**

(R.C. 5149.311)

DRC administers the Probation Improvement Grant and the Probation Incentive Grant for court of common pleas probation departments that supervise felony offenders. The act extends eligibility for the two grants to any probation department that supervises any offenders sentenced by courts of common pleas or municipal courts.

### **Community-based correctional facility employees**

(R.C. 149.43)

As used in the Public Records Law, except as described below, "public record" means records kept by any public office, including, but not limited to, state, county, city, village, township, and school district units, and records pertaining to the delivery of educational services by an alternative school in Ohio kept by the nonprofit or for-profit entity operating the alternative school. A provision of the Public Records Law, largely unchanged by the act, excludes many types of records from the definition of "public record," including "peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or investigator of the Bureau of Criminal Identification and Investigation residential and familial information."

As used in the Public Records Law under continuing law, "peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or investigator of the Bureau of Criminal Identification and Investigation residential and familial information" is defined as any information that discloses any of the following about a peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or investigator of the Bureau:



(1) The address of the actual personal residence of a person in any of the specified categories of persons, except for the state or political subdivision in which the person resides;

(2) Information compiled from referral to or participation in an employee assistance program;

(3) The Social Security number, the residential telephone number, any bank account, debit card, charge card, or credit card number, or the emergency telephone number of, or any medical information pertaining to, a person in any of the specified categories of persons;

(4) The name of any beneficiary of employment benefits, including, but not limited to, life insurance benefits, provided to a person in any of the specified categories of persons by the person's employer;

(5) The identity and amount of any charitable or employment benefit deduction made by the employer of a person in any of the specified categories of persons from the person's compensation unless the amount of the deduction is required by state or federal law;

(6) The name, the residential address, the name of the employer, the address of the employer, the Social Security number, the residential telephone number, any bank account, debit card, charge card, or credit card number, or the emergency telephone number of the spouse, a former spouse, or any child of a person in any of the specified categories of persons;

(7) A photograph of a peace officer who holds a position or has an assignment that may include undercover or plain clothes positions or assignments as determined by the peace officer's appointing authority.

The act does all of the following:

(1) Expands the definition of "peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or investigator of the Bureau of Criminal Identification and Investigation residential and familial information" so that it also includes community-based correctional facility employees;

(2) Modifies the term itself so that it will refer to "peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, *community-based correctional facility employee*, youth services



employee, firefighter, EMT, or investigator of the Bureau of Criminal Identification and Investigation residential and familial information";

(3) Modifies the related exclusion from the definition of "public record" so that it now excludes from that definition "peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, *community-based correctional facility employee*, youth services employee, firefighter, EMT, or investigator of the Bureau of Criminal Identification and Investigation residential and familial information";

(4) Includes a community-based correctional facility employee among the persons (peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or investigator of the Bureau of Criminal Identification and Investigation) whose personal residence address must be disclosed to a journalist so long as the journalist makes and signs a written request and the request includes the journalist's name and title, the name and title of the journalist's employer, and that the disclosure of the information sought would be in the public interest.

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## REHABILITATION SERVICES COMMISSION (RSC)

- Grants exclusive authority to administer the daily operation and provision of vocational rehabilitation services to the administrator of the Rehabilitation Services Commission (RSC).
- Requires RSC to establish a fee schedule for vocational rehabilitation services.
- Authorizes, rather than requires, RSC to solicit funds from private or public entities for the purpose of receiving the maximum amount of federal funds possible to support RSC's activities.
- Replaces prior law permitting RSC to terminate a funding agreement with a third-party only with good cause and three months' notice with a provision permitting RSC to terminate such an agreement as follows: (1) for just cause at any time or (2) for any other reason with 30 days' notice.
- Eliminates a requirement that the duration of each funding agreement be at least six months.



## **Rehabilitation Services Commission administrator**

(R.C. 3304.14 and 3304.16)

The Rehabilitation Services Commission (RSC) administers programs providing vocational rehabilitation services. RSC's governing authority consists of a Commission of seven members appointed by the Governor with the advice and consent of the Senate. The RSC administrator is appointed by the Governor and serves at the pleasure of the Governor. Law modified by the act specified the duties of the Commission but did not specify the duties of the RSC administrator.

The act grants to the RSC administrator exclusive authority to administer the daily operation and provision of vocational rehabilitation services. The act requires the RSC administrator to establish a fee schedule for vocational rehabilitation services in accordance with federal law.<sup>258</sup>

## **Solicitation of funds**

(R.C. 3304.16 and 3304.181)

The act authorizes RSC to solicit funds from private or public entities for the purpose of receiving the maximum amount of federal funds possible to support the activities of RSC, in place of the requirement under prior law to solicit the funds. Federal law establishes maintenance of effort requirements necessary for a state to receive the entire allotment of federal funds for vocational rehabilitation services.<sup>259</sup> Federal law also provides that a state may receive additional amounts as a reallocation from other states if a state is able to supply additional matching funds.<sup>260</sup>

## **Funding agreements with third parties**

(R.C. 3304.182)

RSC is authorized by continuing law to enter into agreements with private entities for the purpose of receiving the maximum amount of federal funds possible. Under prior law, the agreement had to last at least six months and could not be discontinued by RSC without first providing three months' notice. Agreements could be terminated only for good cause.

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<sup>258</sup> 34 C.F.R. 361.50.

<sup>259</sup> 34 C.F.R. 361.62 and 361.65.

<sup>260</sup> 34 C.F.R. 361.65.



The act eliminates the requirement that each agreement last at least six months. In place of prior law regarding termination of a funding agreement with good cause and three months' notice, the act provides that an agreement may be terminated as follows: (1) for just cause at any time or (2) for any other reason with 30 days' notice.

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## **SCHOOL FACILITIES COMMISSION (SFC)**

- Would have revised the method of determining a school district's priority for assistance, and local share, under the Classroom Facilities Assistance Program, if the district is participating in the Expedited Local Partnership Program and its tangible personal property valuation (not including public utility personal property) made up 18% or more of its total taxable value for tax year 2005 (VETOED).
- Permits a school district segmenting its classroom facilities project or participating in the Exceptional Needs Program to prorate its maintenance obligation to cover only the facilities acquired under the segment or program, if the district can generate the amount to maintain those facilities by a means other than levying a maintenance tax.
- Specifies that a STEM school's proposal for classroom facilities funding must indicate the amount requested from the School Facilities Commission (instead of the amount of "state funding" requested, as in prior law) and the amount pledged from "other" sources (rather than from "nonstate" sources, as formerly required).
- Requires a STEM school to secure at least 50% of its classroom facilities funding from sources other than the Commission (instead of from "nonstate" sources, as in prior law).

### **CFAP priority and share for Expedited Local Partnership districts with large tangible personal property valuation (VETOED)**

(R.C. 3318.36)

The Governor vetoed a provision that would have made an exception to the general requirement that school districts participating in the Expedited Local Partnership Program "lock in" their priority and local share percentage for their eventual projects under the Classroom Facilities Assistance Program (CFAP). Under the act, if a district's tangible personal property valuation, not including public utility personal property, made up 18% or more of its total taxable value for tax year 2005 (the year the tax on that property began to phase out), the district's priority for CFAP



funding would have been based on the *smaller* of its percentile when it entered into the Expedited Local Partnership agreement or its current percentile. In addition, the district's share of its CFAP project cost would have been the *lesser* of (1) the percentage locked in under the Expedited Local Partnership agreement or (2) the percentage computed using its current wealth percentile. Due to the loss of tangible personal property valuation, a district's total taxable value may be significantly lower now than it was when it entered into its Expedited Local Partnership agreement. That lower valuation could result in a higher priority for state funds and a lower share of the total cost of its state-assisted project. The act would have permitted an affected Expedited Local Partnership district to take advantage of that lower current valuation.

## Background

The annual wealth percentile rankings of school districts for school facilities funding is based on the "total" taxable value of each district, *averaged* over three years. That total taxable value is the sum of both the district's real property tax valuation and its tangible personal property tax valuation. Beginning in 2005, however, the tax on tangible personal property that is not public utility personal property was phased down over several years, and is now fully phased out.<sup>261</sup> Thus, the value of that tangible personal property is no longer included in a district's *current* total taxable value. As each district's three-year average adjusted valuation is computed each year, the impact of the tangible personal property valuation will decrease. This decline in total valuation could eventually lower a district's wealth percentile and increase the amount of state funding available for its school facilities projects.

The Expedited Local Partnership Program permits most school districts that have not been served under CFAP to apply the advance expenditure of *district* money on approved parts of their districtwide needs toward their shares of their CFAP projects when they become eligible for that program. Districts participating in the Expedited Local Partnership Program "lock in" their percentiles when they enter into their Expedited Local Partnership agreements. It is that locked-in percentile on which a district's priority for CFAP funding and its share of the CFAP project cost will be based. Thus, subsequent changes in the district's valuation (up or down) do not affect its priority or share of the eventual CFAP project. Accordingly, districts that had a relatively higher amount of tangible personal property in their total taxable values when the tax was phased out may experience a negative effect from having locked in their percentiles that now could be lower due to lower taxable valuations. That is, their priority for funding may be higher and their CFAP shares may be lower, if computed

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<sup>261</sup> R.C. 5711.22 (not in the act).



using their current lower valuations, than they were when the districts entered into their Expedited Local Partnership agreements.

## **Prorating of maintenance obligation**

(R.C. 3318.034 and 3318.37)

The act allows a school district, under certain circumstances, to prorate the amount of its full maintenance obligation under a state-assisted school construction project (see below), so that the district only has to generate enough funds to cover the maintenance costs of a portion of the district's entire project at one time. Under the act, this option is available for districts that:

(1) Either (a) have elected to divide their CFAP project into segments and proceed with one or more separate segments of the total project at a time or (b) are constructing a single building through the Exceptional Needs Program (ENP) to address health and safety issues; and

(2) Are able to generate the total prorated maintenance amount by an alternative means other than levying the one-half mill maintenance tax.

The prorated amount must be sufficient for the district to maintain the facilities completed under the CFAP segment or ENP project. It is calculated by multiplying the district's "full maintenance amount" by the percentage that the district's portion of the cost of the segment or project is of the district's portion of the cost of its entire facilities needs. For example, if the segment or project accounts for 25% of the district's portion of the cost of its entire facilities needs, the district must generate 25% of its full maintenance amount to maintain the facilities acquired under the segment or project. For this purpose, the "full maintenance amount" is the amount of total revenue that the district likely would generate by levying the one-half mill maintenance tax over the entire 23-year period typically required.

A school district may prorate its maintenance obligation for any number of CFAP segments or ENP projects, so long as the district can generate the entire prorated amount for each segment or project by an alternative means other than the maintenance tax. However, the sum of the prorated amounts for a district's segments or projects may not exceed the amount the district would have been required to raise for maintenance if the district had elected to address its entire facilities needs at one time.

If the district cannot generate the entire prorated amount for a segment or project through alternative means, it must levy the one-half mill maintenance tax in an amount necessary to generate the remainder of its full maintenance amount. In the case of a district segmenting its CFAP project, the tax must run for 23 years from the date the



segment for which the tax is initially levied is undertaken. Prior law required the tax to run for 23 years from the date the first segment was undertaken.

If a school district is in the middle of a CFAP segment or ENP project on September 10, 2012, and the district has not levied a maintenance tax, the district may request approval from the School Facilities Commission to prorate its maintenance obligation in accordance with the act.

### **Background – maintenance obligation**

Continuing law generally requires school districts participating in a state classroom facilities program to levy a tax of one-half mill for 23 years to provide for the maintenance of the facilities acquired through the program.<sup>262</sup> However, a district may opt to generate all or part of the funds necessary to meet its maintenance obligation by alternative means other than levying the tax. These means include (1) using proceeds from a property tax for permanent improvements or from a school district income tax,<sup>263</sup> (2) applying donations, credit issued to the district, or funds provided by a third party,<sup>264</sup> or (3) using any other available moneys.<sup>265</sup>

### **Maintenance plan**

(R.C. 3318.08)

Continuing law requires that the contract between the School Facilities Commission and a school district for a state-assisted project include a provision for the district to maintain the project according to a plan approved by the Commission. The act adds another contract provision requiring "the school district to adhere to a facilities maintenance plan approved by the Commission."

### **Facilities assistance for STEM schools**

(R.C. 3318.70)

Continuing law authorizes the School Facilities Commission, with Controlling Board approval, to provide funding to STEM schools that are not governed by a single school district board of education for the acquisition of classroom facilities. Under the act, when a STEM school submits a proposal for funding to the Commission, the

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<sup>262</sup> R.C. 3318.05 (not in the act).

<sup>263</sup> R.C. 3318.052 (not in the act).

<sup>264</sup> R.C. 3318.084 (not in the act).

<sup>265</sup> R.C. 3318.051 (not in the act).



proposal must indicate how much funding the school is requesting from the Commission, instead of how much "state funding" is being requested, as in prior law. The proposal also must indicate how much funding is pledged from "other" sources, rather than from "nonstate" sources, as formerly required. These changes appear to allow state entities other than the Commission that may be collaborating in the development of the school to pledge funds for the school's facilities. Finally, under the act, at least 50% of the funding secured for the school's facilities must come from sources other than the Commission. Former law required at least half of the funding to come from "nonstate" sources.

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## **RETIREMENT (RET)**

### **Alternative retirement plans**

- Makes the Ohio Board of Regents, rather than the Department of Insurance, responsible for designating vendors as eligible to provide investment options under alternative retirement plans (ARPs) for employees of public institutions of higher education.
- Adds several factors to those to be identified, considered, and evaluated when designating vendors.
- Eliminates as factors to be considered when designating vendors the relationship between the rights and benefits under the investment options and amount of contributions made under those options and the suitability of those rights and benefits to the needs and interests of employees eligible to participate.
- Requires, rather than authorizes, the Board to rescind the designation of a vendor that does not comply with law authorizing establishment of ARPs.
- Requires that public institutions of higher education be given notice and an opportunity to comment whenever an entity applies for vendor designation or a designated vendor is scheduled for review by the Board.



## Alternative retirement plans

(R.C. 3305.01, 3305.02, 3305.03, 3305.031, 3305.032, 3305.04, 3305.05, 3305.053, and 3305.06; Section 733.05)

Under the act, the designation of entities authorized to provide investment options under alternative retirement plans (ARPs) is transferred to the Ohio Board of Regents from the Department of Insurance. ARPs are available to full-time employees of public institutions of higher education who elect to participate in an ARP rather than the public retirement system that would otherwise cover the employment.

Law modified in part by the act provided that investment options under ARPs must be offered to electing employees pursuant to group or individual contracts and certificates issued under group contracts. The act provides that the options must be offered to electing employees pursuant to *trust or custodial accounts* or pursuant to group or individual *annuity* contracts and certificates issued under group contracts.

### Designation of a vendor

Prior law required the Department of Insurance to designate at least three entities to provide ARP investment options. To be designated, an entity had to be authorized to provide investment options and offer those options in at least ten other states.

In transferring designation responsibility to the Ohio Board of Regents, the act removes the requirement that at least three entities be designated and refers to the entities designated by the Board as "vendors." A "provider" is a vendor that has entered into an agreement to provide ARP investment options at a particular institution (see "**Provider agreements**," below). The Board is given rulemaking authority to carry out its duties and responsibilities, including the authority to impose a fee on providers to cover any administrative or marketing expenses.

To be designated under the act, an entity must meet preexisting requirements and the following additional requirements: (1) that the investment options are offered as defined contribution plans that are qualified plans under the U.S. Internal Revenue Code,<sup>266</sup> (2) that the options provided in ten other states are offered through institutions of higher education, and (3) that the investment option plans are established as primary

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<sup>266</sup> Defined contribution plans are those that provide for an individual account and benefits based solely on the amount contributed to the account and any earnings or losses on that amount. This is different from a defined benefit plan that provides a set benefit (such as a monthly pension) on retirement based typically on a formula including years of service, age, and salary.



retirement plans that are alternatives to or a component of the applicable state retirement system.

The Board is required to accept and review applications from entities seeking designation as vendors. Regarding entities holding the Department's designation, the act requires the Board to complete a review of the entities by December 9, 2012 (which is 90 days after the act's 90-day effective date).

When designating an entity, law modified by the act required consideration of a number of criteria. The act modifies these requirements to require the Board to *identify*, *consider*, and *evaluate* all of the following when designating a vendor:

(1) Whether the entity intends to offer a broad range of investment options to electing employees;

(2) The suitability of the investment options to the needs and interests of the electing employees and their beneficiaries;

(3) The capability of the entity to offer sufficient information to the electing employees and their beneficiaries to make informed decisions with regard to investment options offered by the entity;

(4) The capability of the entity to perform in a manner that is in the best interests of the electing employees and their beneficiaries;

(5) The fees and expenses associated with the entity's investment options and the manner in which the entity intends to disclose those fees and expenses;

(6) Comments submitted by a public institution of higher education during a review of the entity.

In addition to adding the criteria described above, the act modifies preexisting criteria as follows:

(1) Provides that the experience of an entity in providing investment options under ARPs, *optional retirement plans*, or *similar types of plans* is to be identified, considered, and evaluated, rather than requiring only consideration of the entities' experience in ARPs;

(2) Removes a requirement that the relationship between the rights and benefits under the investment options and the amount of the contributions made under those options be considered;



(3) Removes a requirement that the suitability of the rights and benefits under the investment options to the needs and interests of employees be considered.

Continuing law requires that a periodic review be conducted to ensure that the requirements of the law authorizing the establishment of ARPs are met. A designated entity may lose its designation for failure to comply with these requirements. The act requires the review to be conducted not less than once every three years and requires the Board to rescind the designation of a vendor that fails to satisfactorily meet the purposes of the ARP or comply with vendor requirements.

### **Review process**

The act establishes a process for public institutions of higher education to comment on the designation or review of a vendor. The Board is required to provide written notice to each public institution of higher education that an entity has applied to be designated as a vendor or that a vendor is scheduled for a review. The Board is also required to provide written notice to each institution of its decision with respect to an application, review, or rescission of a vendor's designation no later than 14 days after that decision.

The Board must provide a 30-day period for a public institution of higher education to comment about an entity's application for designation or a vendor's review. The institution may request a meeting with the Board concerning the application or review. If the institution requests a meeting, the Board must do all of the following:

- (1) Notify each institution of the meeting and its time and place;
- (2) Hold the meeting not less than ten but not more than 30 days after the end of the comment period;
- (3) Continue to accept comments concerning the application or review until five business days after the meeting is held.

### **Provider agreements**

Law modified by the act required each institution of higher education to enter into a contract with each designated entity willing to provide investment options under an ARP.

The act modifies the arrangement between the institution and the entity providing investment options under an ARP. Each institution is to develop agreements to be entered into with vendors. Each agreement must include terms and conditions determined at the sole discretion of the institution. The institution is to enter into



agreements with a minimum of four vendors or, if fewer than four vendors are available, the number of vendors that are available. An institution is not required to enter into an agreement with a vendor that is not willing to provide investment options or not willing to agree to the terms and conditions of the agreement. The agreement is to terminate if the entity ceases to be designated as a vendor or fails to comply with the terms and conditions of the agreement.

### **ARP provider selection**

Continuing law largely maintained by the act requires each institution to notify, in writing, a state retirement system that the institution has hired an employee who is eligible to elect to participate in an ARP and whose employment is subject to that state retirement system. Prior law required that this notice be given within ten days of the person's employment. The act provides that the notice is to be given no later than ten days after the first date the person is on the institution's payroll.

Each employee who elects to participate in an ARP rather than a state retirement system must select a provider. Under prior law, an employee could change providers once a year or at any time the provider lost its designation. The act instead provides that, subject to the terms and conditions established by the institution, an employee may change providers at any time during the ARP plan year. When an employee changed a plan provider, prior law required the provider to transfer to the new provider the employee's account balance, as directed by the employee. The act permits an employee to direct the provider to transfer the account balance rather than requiring the transfer.

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## **SENATE (SEN)**

- Establishes qualifications for service as the Senate Sergeant at Arms or as an assistant sergeant at arms for the Senate.
- Confers law enforcement authority to the Senate Sergeant at Arms and assistant sergeants at arms.



## **Authority and qualifications of the Senate Sergeant-at-Arms**

(R.C. 101.312, 109.801, 2901.01, 2935.01, 2935.03, and 4501.271)

### **Authority**

The act provides that a person serving as the Senate Sergeant-at-Arms or employed as an assistant sergeant-at-arms for the Senate has all of the authority of a peace officer to enforce state laws, municipal ordinances, and township resolutions and to make arrests for any violation of those laws, ordinances, and resolutions in the Statehouse and anywhere in the state where the Senate Sergeant-at-Arms or an assistant sergeant-at-arms is engaged in the performance of their official duties. The jurisdiction of the Senate Sergeant-at-Arms and assistant sergeants-at-arms is concurrent with that of the peace officers in the county, township, or municipal corporation in which the violation occurs and with the State Highway Patrol. The House Sergeant-at-Arms and assistant House sergeants-at-arms have such authority under ongoing provisions of the Revised Code.

The President of the Senate, upon receiving a written recommendation from the Clerk of the Senate, may issue a commission to the Senate Sergeant-at-Arms indicating the Sergeant-at-Arms's arrest authority and, upon receiving a recommendation from the Senate Sergeant-at-Arms, may issue a commission to each assistant sergeant-at-arms indicating the assistant sergeant-at-arms's arrest authority. The President of the Senate is required to issue a suitable badge to each commissioned Senate Sergeant-at-Arms and assistant sergeant-at-arms. The act includes the Senate Sergeant-at-Arms and assistant sergeants-at-arms in one of the Revised Code's definitions of a "law enforcement officer." (R.C. 2901.01(A)(11).)

The act permits the Senate Sergeant-at-Arms and any assistant sergeant-at-arms to file a written request with the Bureau of Motor Vehicles that requires the Bureau to take actions designed to prevent the public disclosure of their residential address, a protection granted to other peace officers under ongoing provisions of the Revised Code.

### **Qualifications**

The act requires that one of the following apply to a person serving as the Senate Sergeant-at-Arms or as an assistant sergeant-at-arms of the Senate:

(1) The person is serving as the Senate Sergeant-at-Arms or is employed as an assistant sergeant-at-arms on September 10, 2012, and previously has been awarded a certificate by the Executive Director of the Ohio Peace Officer Training Commission



(POTC) attesting to the person's satisfactory completion of an approved state, county, municipal, or Department of Natural Resources peace officer basic training program.

(2) The person previously has been awarded a training certificate by the Executive Director of POTC, previously has been employed as a peace officer with no breaks in service that require the person to receive updated training by the Ohio Peace Officer Training Academy, and has successfully completed a firearms requalification program approved by the Executive Director of POTC.

(3) The person previously has been awarded a training certificate by the Executive Director of POTC and has been employed as a peace officer, the person's previous employment as a peace officer contains a break in service of one year or more but no more than four years that requires the person to obtain updated training, the person has received all updated training required by law, and the person has successfully completed a firearms requalification program approved by the Executive Director of POTC.

(4) The person previously has been employed as a trooper by the State Highway Patrol, within one year prior to employment as the Senate Sergeant-at-Arms the person had arrest authority as a State Highway Patrol trooper, and the person has successfully completed a firearms requalification program approved by the Executive Director of POTC.

(5) The person previously has been employed as a trooper by the State Highway Patrol, the prior employment contains a break in service of one year or more but no more than four years that requires the person to obtain updated training, the person has received all updated training required by law, and the person has successfully completed a firearms requalification program approved by the Executive Director of POTC.

With the exception of the first listed qualification, the qualifications listed above apply to appointment as the House Sergeant-at-Arms or as an assistant House sergeant-at-arms.

The act provides that in order to continue to serve as the Senate Sergeant-at-Arms or to be an assistant Senate sergeant-at-arms with all of the authority of a peace officer an individual must comply with all continuing professional training requirements for peace officers established in rules adopted by the Attorney General and all firearms requalification requirements and must provide proof of compliance with these requirements to the Clerk of the Senate. The act requires the Ohio Peace Officer Training Academy, a state, county, municipal, or Department of Natural Resources training program, and other programs of continuing training, to admit the



Senate Sergeant-at-Arms and assistant sergeants-at-arms to all necessary continuing training programs.

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## SECRETARY OF STATE (SOS)

- Removes the requirement that a campaign committee include the name and address of its chairperson, treasurer, or secretary in printed political communications and public political advertisements.
- Requires instead that a campaign committee include its name in printed political communications and public political advertisements.

### **Name and address of campaign committee in printed political publications and advertisements**

(R.C. 3517.20)

The act removes the requirement that a campaign committee include the name and address of its chairperson, treasurer, or secretary in printed political communications and public political advertisements (for example, in a newspaper, a flyer, or a direct mailing). Instead, the act requires a campaign committee to include its name in printed political communications and public political advertisements.

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## DEPARTMENT OF TAXATION (TAX)

- Creates the Peace Officer Training Academy Fund and the Criminal Justice Services Casino Tax Revenue Fund to receive the portion of casino tax proceeds (2%) currently allocated for the purpose of supporting law enforcement training efforts of the Peace Officer Training Academy and the Department of Public Safety's Division of Criminal Justice Services.
- Specifies how the portion of casino tax proceeds currently allocated to the Ohio State Racing Commission Fund and the Problem Casino Gambling and Addictions Fund are to be used.
- Would have exempted from sales and use taxes the purchase of property or services used in research and development activities related to aerospace vehicles (VETOED).



- Removes the requirement that certain telecommunications equipment used in direct marketing must be purchased by a direct marketing vendor in order for the equipment to be exempt from the sales tax.
- Extends the time during which local governments may enter into enterprise zone agreements to October 15, 2013.
- Would have allowed townships to exempt property consisting of at least four residential units pursuant to a tax increment financing resolution if construction of the property begins between April 1, 2012, and December 31, 2013, and if the tax increment financing resolution was adopted before December 14, 2001 (VETOED).
- Authorizes county auditors to consider factors other than the sale price in assessing the true value of real property subject to a recent arm's length sale, and specifies that the true value of property is to be based on the fee simple estate, as if unencumbered by liens, easements, and other encumbrances.
- Requires county auditors to involve at least one "qualified project manager" in each county-wide reappraisal or triennial update that begins more than two years after September 10, 2012.
- Provides that a person qualifies as a "qualified project manager" if the person completes a 30-hour course in mass appraisal techniques approved by the Superintendent of Real Estate and Professional Licensing and meets continuing education requirements following completion of the course.
- Changes the time when a municipal corporation or township's withdrawal from a regional transit authority (RTA) takes effect, from six months after the withdrawal election to the last day of the year in which the election occurs.
- Specifies that RTA property taxes may not be levied in a subdivision for the year of an election that approves the question of the subdivision's withdrawal from the RTA.
- Authorizes a township or municipal corporation that withdraws from an RTA to place on the ballot the question of a property tax levy for the purpose of providing transportation services to the unincorporated area of the township or municipal corporation, respectively.
- Authorizes a township or municipal corporation to certify a single ballot question combining the questions of withdrawal from an RTA and a property tax levy to fund its own transportation services.



- Extends the tax exemption for a cultural center that is a historic structure under renovation and that is conveyed to a nonpublic, noncharitable organization to include the circumstances that the property is conveyed to any entity that contracts to have the renovations done and is at least partly owned by a 501(c)(3) federally tax-exempt organization.
- Authorizes a property tax exemption for a convention center owned by a convention facilities authority in a county with a population over one million.
- Authorizes the abatement of unpaid property taxes, penalties, and interest owed on property that is owned by a church or a township and that would have qualified for property tax exemption if not for a failure to comply with certain tax exemption procedures.
- Requires businesses that pay the dealers in intangibles tax to remit the tax to the Tax Commissioner instead of to the Treasurer of State.
- Provides that the Tax Commissioner, instead of the Treasurer, may bill such dealers for underpaid taxes or issue refunds for overpayments.
- Provides that dealers in intangibles may claim a refund of overpaid taxes by filing an application for final assessment, instead of applying for a certificate of abatement.

## **Use of casino tax revenue**

(R.C. 5753.03)

Continuing law imposes a 33% tax on gross casino revenue received by casino operators. (The tax, its rate, and distribution of its proceeds are governed by the constitutional amendment authorizing casino gaming in Ohio. Article XV, Section 6(C).) "Gross casino revenue" is the total amount of money exchanged for the purchase of chips, tokens, tickets, electronic cards, or similar objects by casino patrons, less winnings paid out by the casino operator.

Several funds have been established under continuing law for the purpose of receiving, distributing, and accounting for proceeds of the tax on gross casino revenue. One such fund is the Ohio Law Enforcement Training Fund, which receives 2% of casino tax proceeds to support law enforcement functions in this state. The act creates two funds to share this allocation of casino tax revenue. Of the amount allocated to the Ohio Law Enforcement Training Fund, 85% is to be distributed to the Peace Officer Training Academy Fund, which is created for the purpose of supporting the law



enforcement training efforts of the Peace Officer Training Academy. The remaining 15% is to be distributed to the Criminal Justice Services Casino Tax Revenue Fund, which is created for the purpose of supporting the law enforcement training efforts of the Department of Public Safety's Division of Criminal Justice Services. These percentages were previously established for use by the Academy and Division; the act creates special funds to which the revenue is to be credited and held.

### **Specifications for use of casino tax proceeds**

(R.C. 5753.03)

The act stipulates that the 3% portion of casino tax proceeds allocated to the Ohio State Racing Commission Fund under continuing law is to be used by the Commission to promote pari-mutuel horse racing. Under prior law, this revenue allocation was to be used for the same purpose, but there was no condition as to whether the money was for use by the Commission or some other person or entity. The act also specifies that the 2% portion of casino tax proceeds allocated to the Problem Casino Gambling and Addictions Fund under continuing law is for use by the Department of Alcohol and Drug Addiction Services. Prior law did not specify which person or entity was to utilize the revenue.

The act provides that these amendments are exempt from the referendum and take effect immediately when the act becomes law.

### **Sales tax exemption for aerospace-related research and development**

(R.C. 5739.02(B)(49))

The Governor vetoed a provision that would have exempted from sales and use taxes any tangible personal property or services used or consumed in performing research and development activities with respect to aerospace vehicles, the parts and components of aerospace vehicles, and human performance equipment and technology associated with operating and testing aerospace vehicles. For the purposes of the vetoed exemption, aerospace vehicles were defined to be any manned or unmanned aviation device including, but not limited to, aircraft, airplanes, helicopters, missiles, rockets, and space vehicles.

### **Sales tax exemption for direct marketing telecommunications equipment**

(R.C. 5739.02(B)(35))

Under law partially retained by the act, sales of certain items to a "direct marketing vendor" are exempt from the sales and use taxes. A vendor is engaged in



"direct marketing" if the vendor sells products that customers order by mail, delivery service (such as FedEx), or telecommunications (e.g., telephone or Internet) and the vendor delivers or ships the products from a warehouse or similar facility by mail, delivery service, or common carrier. Prior law exempted the following items if the items were purchased by a direct marketing vendor: materials used to create print advertisements, printed materials offering free merchandise or sweepstakes prizes, and telecommunications equipment (such as telephones, computers, and fax machines) that would primarily be used to accept orders for direct marketing retail sales.

The act removes the requirement that telecommunications equipment used to accept direct marketing orders must be purchased by a direct marketing vendor in order to qualify for the sales tax exemption. Consequently, any person who purchases telecommunications equipment that will be "primarily used to accept orders for direct marketing retail sales" may claim the exemption, regardless of whether the person qualifies as a direct marketing vendor.<sup>267</sup> The act does not alter the exemption for materials used to create print advertisements or for printed materials that offer free merchandise or sweepstakes prizes, which still must be purchased by a direct marketing vendor in order to qualify for exemption.

The act states that its intent is to clarify the law as it existed prior to the act's amendments.

### **Enterprise zone agreement extension**

(R.C. 5709.62, 5709.63, and 5709.632)

Under continuing law, counties and municipal corporations may designate areas within the county or municipal corporation as "enterprise zones." After designating an area as an enterprise zone, the county or municipal corporation must petition the Director of Development for certification of the designated enterprise zone. If the Director certifies a designated enterprise zone, the county or municipal corporation may then enter into enterprise zone agreements with businesses for the purpose of fostering economic development in the enterprise zone. Under an enterprise zone agreement, the business agrees to establish or expand within the enterprise zone or to relocate its operations to the zone in exchange for property tax exemptions and other incentives.

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<sup>267</sup> Although the law defines "direct marketing," neither prior law nor the act expressly define who qualifies as a "direct marketing vendor."



Prior law authorized local governments to enter into enterprise zone agreements through October 15, 2012. The act extends the time during which local governments may enter these agreements to October 15, 2013.

### **Township tax increment financing exemption for residential property (VETOED)**

(R.C. 5709.73(L))

Under continuing law, a township may exempt a certain percentage of the value of improvements to parcels of property from taxation for a certain number of years under a tax increment financing arrangement (TIF). The township may exempt certain individual parcels or groups of parcels (parcel-by-parcel TIF) or a collection of parcels in an "incentive district" (incentive district TIF). In either situation, the township may require the owner of the exempted improvements to make payments to the township in lieu of taxes. Currently, such TIF funds generally must be used to pay debt charges on securities that townships typically issue to finance infrastructure. In addition, some townships also might use some TIF funds to compensate school districts or counties for some of the foregone property taxes. Any incidental surplus remaining in a TIF fund after the fund is dissolved must be deposited in the township's general fund.

The Governor vetoed a provision that would have allowed townships to exempt improvements to certain types of residential property pursuant to a tax increment financing resolution. Under the vetoed provision, a township would have been able to authorize an exemption for improvements to property consisting of at least four residential units if construction of the property begins between April 1, 2012, and December 31, 2013, and if the resolution under which the improvements would be exempted was adopted before December 14, 2001.

Continuing law prohibits townships from exempting property used "for residential purposes" under such an arrangement, but does not define what constitutes "residential purposes."

### **Real property valuation**

(R.C. 5713.03; Section 757.51)

The act authorizes county auditors, in assessing real property that has recently sold, to consider factors other than the sale price. The act also specifies that the value of property is to be based on the fee simple estate, as if unencumbered by liens, easements, and other encumbrances.



Under continuing law, county auditors are responsible for valuing all real property in the county on a periodic basis to assign taxable values. The governing statutes and administrative rules direct county auditors to use the "best sources of information available" and to consider "all facts and circumstances relating to the value of the property, its availability for the purposes for which it is constructed or being used, its obsolete character, if any, the income capacity of the property, if any, and any other factor that tends to prove its true value."<sup>268</sup> Administrative rules prescribe certain approaches to estimate value, one of which is to use the value of comparable properties that have recently sold on the open market and to make adjustments to account for any differences.

Under prior law, if a particular property had recently been sold in an arm's length transaction, the value was required to be set at the sale price: if a parcel had "been the subject of an arm's length sale between a willing seller and a willing buyer within a reasonable length of time, either before or after the tax lien date [January 1], the auditor [was required to] consider the sale price of such . . . parcel to be the true value for taxation purposes" unless the parcel had since suffered some kind of casualty or an improvement had since been added.<sup>269</sup> Particular terms of a sale, such as financing terms or encumbrances on the property such as a lease, were to be disregarded if the property was recently sold in an arm's length transaction.<sup>270</sup>

## **Use of qualified project managers in county appraisals**

(R.C. 5713.012)

Continuing law requires county auditors to periodically assess all of the real property in a county for the purposes of property taxation. The act imposes new requirements relating to the involvement of outside entities in these county-wide "mass appraisal" projects and applies those new requirements to projects initiated after September 10, 2014 (i.e., two or more years after the act's effective date).

Under former law, a county auditor could contract with an outside entity to perform all or part of an appraisal, but only if the Tax Commissioner approved the arrangement. The act instead requires auditors to contract with at least one "qualified project manager" to plan and manage each reappraisal, triennial update, or other county-wide property valuation undertaken by the auditor's office. Similarly, under the

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<sup>268</sup> R.C. 5713.03; R.C. 5715.01 (not in the act).

<sup>269</sup> R.C. 5713.03.

<sup>270</sup> See *Cummins Property Services, L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516 (2008), and *Berea City Sch. Dist. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 269 (2005).



act, the Tax Commissioner may not approve any contract between an auditor and an outside entity unless the entity designates an officer or employee to act as a qualified project manager. If the Tax Commissioner compiles a list of entities that may contract with county auditors to perform a mass appraisal or that may assist the Commissioner in reviewing and approving such contracts, the list may include only entities that have designated an officer or employee to act as a qualified project manager.

### **Qualified project manager qualifications**

To qualify as a project manager, a person must attend a 30-hour course approved by the Superintendent of Real Estate and Professional Licensing and pass the final exam given at the end of the course. The person must also complete at least seven hours of continuing education courses in mass appraisal every two years, beginning with the two-year period after the year in which the person completes the 30-hour course.

The act requires that each 30-hour course approved by the Superintendent of Real Estate and Professional Licensing address all of the following topics:

(1) Concepts and principles of mass appraisal as they relate to the assessment of real property;

(2) Methods of data collection and data management relative to real property parcels, including modern alternative data collection methods and current computer-assisted mass appraisal systems;

(3) Assessment sales-ratio studies, including measures of central tendency, the various measures of dispersion of data, and the advantages and disadvantages of various analysis techniques;

(4) Traditional approaches to property valuation, including the cost approach, sales comparison approach, and income approach;

(5) Methods and systems for model building and calibration in relation to the mass appraisal of real property.

### **Tax levy for subdivisions withdrawing from a regional transit authority**

(R.C. 306.55, 505.59, 5705.19, 5705.25, 5705.252, and 5705.72; Section 757.10)

#### **Effective date of withdrawal**

Under continuing law, until November 5, 2013, the legislative authority of some municipal corporations or townships that have created or joined a regional transit authority (RTA), may propose to withdraw from the RTA by adopting a resolution to



place the issue on the ballot. This option is available only if the RTA levies a property tax and includes in its membership political subdivisions that are located in a county having a population of at least 400,000 according to the most recent federal census. Under prior law, if electors approved the withdrawal question, the withdrawal was effective six months after the election results were certified, and the power of the RTA to levy a tax on taxable property in the withdrawing subdivision terminated at the end of that six-month period.

The act moves the effective date of a subdivision's withdrawal from six months after the election to December 31 of the year of the election. The act additionally prohibits property tax from being assessed against property in a withdrawing subdivision for the tax year in which voters elect to withdraw from the RTA.

The act also clarifies that, if a board of trustees of a township proposes to withdraw from an RTA, only the unincorporated area of the township is authorized to withdraw. The question of withdrawal thus is voted on only by the voters in the unincorporated area. The incorporated area of a township withdraws from an RTA only if the area's corresponding municipal corporation withdraws.

### **Municipal corporation and township transportation services levies**

The act authorizes the legislative authority of a municipal corporation or township that has withdrawn or proposes to withdraw from an RTA under R.C. 306.55 to propose a property tax levy at any rate of mills for the purpose of providing transportation services for the movement of persons within, to, or from the municipal corporation or the township's unincorporated territory. The maximum term of a municipal levy is five years; of a township levy, ten years.

The township levy would apply only in unincorporated territory, and only voters in that territory would vote on the question.

Under prior law, townships and municipal corporations were not authorized to levy property taxes specifically to fund township or municipal public transportation.

### **Combined property tax question**

The act authorizes a legislative authority of a municipal corporation or township to combine the questions of the municipal corporation's or township's withdrawal, respectively, from an RTA and for the corresponding transportation services levy described above. If a board of township trustees certifies a combined question, only voters of the unincorporated area of the township may vote on the combined question. Both questions must be approved or defeated together.



## **Effective date**

The act authorizes a board of trustees of a township or the legislative authority of a municipal corporation to certify the question of a property tax for transportation services or a combined question to the board of elections between the date the act becomes law (June 11, 2012) and the effective date (September 10, 2012) as though the act was in effect on the date the act became law. In effect, the act allows a board or legislative authority to certify a question or combined question in time for the 2012 general election and directs the county board of elections to place the question on that election's ballot.

## **Property tax exemption for cultural center under renovation**

(R.C. 5709.121(B))

Under continuing law, real and tangible personal property belonging to a charitable or educational institution, the state, or a political subdivision of the state is exempt from taxation if the property is used as a community or area center in which presentations in music, dramatics, the arts, and related fields are conducted for the purpose of fostering public interest and education in the performing arts. Such property continues to be exempt from taxation even if it is conveyed through a single conveyance or a series of conveyances to an entity that is not a charitable or educational institution, the state, or a political subdivision. However, under law mostly unchanged by the act, the exemption continues to apply only if all of the following conditions are satisfied:

(1) The property has been listed as tax-exempt for the ten tax years immediately preceding the year in which the property is conveyed;

(2) The owner to which the property is conveyed leases the property, through one lease or a series of leases, to (a) the entity that owned or occupied the property for the ten tax years before the property was conveyed or (b) an affiliate of that prior owner or occupant;

(3) The property includes improvements that are at least 50 years old;

(4) The property is being renovated in connection with a claim for historic preservation tax credits available under federal law;

(5) The property continues to be used for the performing arts; and

(6) The property is certified by the United States Secretary of the Interior as a "certified historic structure" or is certified as being part of a certified historic structure.



The act modifies the second qualification by specifying that the current owner of the property, in lieu of necessarily leasing the property to the prior owner, may contract for the renovation (as described in (4)) if the property is partly owned by a 501(c)(3) federally tax-exempt organization.

### **Convention center property tax exemption**

(R.C. 5709.084)

The act authorizes a property tax exemption for a convention center owned by a convention facilities authority in a county with a population of over one million. Under the act, the convention center may be leased to or operated or managed by another person and still qualify for exemption, as long as it is owned by the convention facilities authority. For purposes of the exemption, the population of a county is determined by reference to the most recent federal decennial census.

### **Property tax abatement for church-owned or township property**

(Section 757.20)

The act provides for the abatement of unpaid property taxes, penalties, and interest on property that is owned by a church or by a township and that would have been tax-exempt if not for a failure to comply with the procedures for obtaining tax-exempt status. Township-owned property qualifies only if it had been acquired from a county. The current owner of the property may file an application with the Tax Commissioner requesting that the property be placed on the tax-exempt list and that all unpaid taxes, penalties, and interest be abated. Similarly, a prior owner of the property may file an application requesting exemption from prior taxes. The application must be filed by September 10, 2013 (i.e., within 12 months after the provision's effective date).

With the exception of the act's abatement provisions, continuing law allows the Tax Commissioner to abate only up to three years' worth of unpaid property taxes, interest, and penalties.

### **Procedures for receiving tax abatement**

#### **Certificate from county treasurer**

Before filing an application for tax abatement under the act, the property owner must request a certificate from the county treasurer stating that all taxes, penalties, and interest owed on the property before the property was used for a tax-exempt public purpose have been paid in full. This certificate must accompany the application filed with the Tax Commissioner.



## **Application filed with the Tax Commissioner**

The application form must include the name of the county in which the property is located; a legal description of the property; its taxable value; the amount of unpaid taxes, penalties, and interest; the date of acquisition of the property; the use of the property during any time in which unpaid taxes accrued; and any other information required by the Tax Commissioner.

## **Tax Commissioner determination**

Upon receipt of an application, the Tax Commissioner must determine whether the applicant meets all of the qualifications specified in the act and, if so, order that the property be placed on the tax-exempt list and that all unpaid taxes, penalties, and interest from each year the property meets the qualifications be abated. If the Tax Commissioner finds that the property does not meet the qualifications, or is otherwise being used for a purpose that would foreclose its right to exemption, the Tax Commissioner issues an order denying the application. For any year that the applicant is not entitled to tax abatement, the Tax Commissioner must order the county treasurer to collect any unpaid taxes, penalties, and interest on that property for those years.

In addition, the Tax Commissioner may consider whether property qualifies for tax abatement if that property is already subject to an application for exemption pending on September 10, 2012, without requiring the property owner to file another application. The Tax Commissioner may also allow for abatement of unpaid taxes on any qualified property that is subject to an application for exemption within 12 months after the effective date (i.e., before September 11, 2013) even if the application does not specifically request tax abatement.

## **Collection of the dealers in intangibles tax**

(R.C. 5703.05, 5719.13, 5725.14, 5725.15, 5725.16, 5725.17, 5725.22, and 5725.221)

The act amends the procedures for collection of the dealers in intangibles tax. Among other changes, the act requires taxpayers to remit tax payments to the Tax Commissioner instead of to the Treasurer of State.

## **Background**

Continuing law provides for the taxation of shares in and capital employed by dealers in intangibles. The tax applies to businesses that operate in Ohio and engage in certain financial and lending activities (e.g., stockbrokers, mortgage companies, nonbank loan companies). The tax also applies to "qualifying dealers," which are generally dealers in intangibles that are subsidiaries of a financial institution or



insurance company. The tax is levied on the fair value of capital employed by, or the value of shares of, dealers of intangibles at a rate of .8% (8 mills).

### **Collection procedures**

Under prior law, a dealer in intangibles was required to submit an annual report to the Tax Commissioner by the second Monday in March detailing the dealer's resources and liabilities as of the end of the previous year. The Tax Commissioner made an assessment based upon the taxable property described in the report and certified the assessment to the Treasurer of State. Upon receipt of the certification, the Treasurer computed the amount of tax due and issued a tax bill. Payment of the tax was due to the Treasurer within 30 days after the tax bill was mailed.

The act retains the current annual report requirement, but requires that dealers also submit payment of the tax with the report. Under the act, the filing of the report constitutes the preliminary assessment of the taxable property listed on the report. Taxpayers must pay the amount due, based on this preliminary assessment, to the Tax Commissioner instead of to the Treasurer. The Commissioner may prescribe the form of payment, but the payment must be made payable to the Treasurer.

Under the act, the Commissioner, instead of the Treasurer, must collect the taxes due on all assessments, including amended and final assessments. Accordingly, the act allows the Commissioner to charge penalties and interest on unpaid taxes and to certify delinquent claims to the Attorney General.

### **Amended or final assessments**

Under prior law, if an amended or final assessment was certified with respect to a dealer, the Treasurer of State was required to ascertain the difference in liability from the previous assessment and issue a tax bill for the deficiency or refund the overpayment. The act requires that the Tax Commissioner take such actions with respect to amended and final assessments.

### **Refunds of overpayments**

Prior law allowed a dealer in intangibles to receive a refund of overpaid taxes by obtaining a certificate of abatement from the Tax Commissioner. The certificate of abatement could be used to pay taxes due in the county in which the claim for overpayment arose. The taxpayer was required to tender the certificate to the Treasurer of State.

The act instead requires dealers to apply for a refund of overpaid taxes by filing an application for final assessment. In addition, the act provides that a dealer that has



received a certificate of abatement may use the certificate to pay any tax payable to the Treasurer and may tender the certificate to the Treasurer or to the Tax Commissioner.

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## DEPARTMENT OF TRANSPORTATION (DOT)

- Eliminates the statutory organization of the Department of Transportation into eight specified divisions; allows the Director to organize ODOT; and replaces the Office of Public Transportation of the Division of Multi-modal Planning and Programs with the Office of Transit, which has responsibility for public transportation grants.
- Permits the Director of Transportation to establish speed limits within construction zones that vary based on the type of work being conducted, the time of day, or any other criteria the Director may consider appropriate.
- Clarifies that the standards and specifications the Director must adopt for lighting on snow removal equipment and oversize vehicles operating under special permits may permit the use of flashing colored lights, other than blue or red lights, for purposes of identification.

### Organizational divisions

(R.C. 5501.04 and 5501.07; 5501.09 (repealed))

The act eliminates the previously existing statutory organization of ODOT into eight separate divisions (business services, engineering policy, finance, human resources, information technology, multi-modal planning and programs, project management, and equal opportunity). Under continuing general authority, the act allows the Director of Transportation to organize ODOT and distribute the duties, powers, and functions among divisions. As part of the elimination of the eight specific divisions, the act also does the following: (1) replaces the Office of Public Transportation of the Division of Multi-modal Planning and Programs with the Office of Transit, which will have the continuing responsibility for public transportation grants, (2) eliminates the Office of Maritime Transportation of the Division of Multi-modal Planning and Programs, (3) eliminates the specific requirement for the Director to supervise the work of each division, and (4) removes all statutory references to the existing eight divisions.



## **Construction zone speed limits**

(R.C. 4511.98)

The act permits the Director to establish speed limits within construction zones that vary based on the type of work being conducted, the time of day, or any other criteria the Director may consider appropriate. While continuing law provides that increased penalties may apply for certain violations that occur within construction zones, the Director previously did not have the authority to establish varying speed limits within a construction zone.

## **Lights on snow removal equipment and oversize vehicles**

(R.C. 4513.18)

The act clarifies that the standards and specifications the Director must adopt for lighting on snow removal equipment and oversize vehicles operating under special permits may permit the use of flashing colored lights, other than blue or red lights, for purposes of identification. Prior law provided only that those standards and specifications could permit the use of flashing lights. Continuing law also (1) limits the use of blue flashing, oscillating, or rotating lights to public law enforcement officers and other persons sworn to enforce the criminal and traffic laws of this state, and (2) limits the use of red flashing, oscillating, or rotating lights to public safety vehicles and school buses. These provisions do not apply to the use of warning lights required by law or the simultaneous flashing of turn signals on disabled vehicles, vehicles being operated in unfavorable atmospheric conditions, or farm machinery or vehicles escorting farm machinery on a street or highway.

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## **TREASURER OF STATE (TOS)**

- Authorizes the Treasurer of State to act as an eligible not-for-profit servicer of student loans owned by the federal government.
- Authorizes the Treasurer and the Superintendent of Insurance to agree that the Superintendent will collect the taxes levied on the gross premiums of "unauthorized" insurance companies (i.e., "surplus lines") on the Treasurer's behalf.
- Clarifies that the proceeds of obligations issued by the Treasurer or the Ohio Public Facilities Commission to pay the costs of certain capital facilities may be used to pay interest on the obligations *including* interest from the date of their issuance to the time when interest is to be covered from sources other than the proceeds of obligations.



- Specifies that, unless otherwise authorized by the Tax Commissioner, the Treasurer may sell cigarette tax stamps only to licensed dealers, and authorizes the Treasurer to charge dealers for the cost of shipping the stamps.
- Eliminates the Office of the Treasurer of State as one office in which money or a surety or government-issued bond may be deposited to cover the repair or removal of abandoned service stations for owners or lessees who own, lease, or construct two or more service stations in Ohio.
- Requires the Treasurer to refund the money or release the bond to the owner or lessee, who, in turn, must file a bond with the municipal corporation or county in which each service station is located.

### **Treasurer of State to act as a federal student loan servicer**

(R.C. 3366.05)

The act allows the Treasurer of State to act as an eligible not-for-profit servicer of student loans owned by the federal government, as permitted under the federal Health Care and Education Reconciliation Act of 2010. Under the act, the Treasurer is authorized to take actions, enter into contracts, and execute all instruments necessary or appropriate to act as an eligible not-for-profit servicer. The act specifies that revenues received by the Treasurer under this provision are to be deposited in an account in the custody of the Treasurer that is not part of the state treasury (commonly referred to as a custodial account). The funds in this account must be used to pay administrative costs incurred by the Treasurer. Any unexpended amounts in this account must be deposited in the state treasury and credited to the Treasurer's Administrative Fund.

### **Collection of insurance taxes**

(R.C. 3905.36)

"Unauthorized insurance" (also called "surplus lines insurance") is insurance sold by an insurer that is not licensed to do business in the state. A "surplus lines broker" is a person who negotiates for and obtains insurance, other than life insurance, on property or persons in the state from unauthorized insurers. Continuing law requires licensed surplus lines brokers to pay a 5% tax on gross premiums paid for unauthorized insurance after a deduction for return premiums. Furthermore, persons that independently procure unauthorized insurance (also called direct placement) must pay a 5% tax on gross premiums paid for unauthorized insurance after a deduction for return premiums.



Under prior law, the Treasurer of State was required to collect each of these taxes. The act instead provides that, if the Treasurer and Superintendent of Insurance agree, the Superintendent may collect the taxes on the Treasurer's behalf.

### **Proceeds of obligations issued for certain capital facilities**

(R.C. 151.01 and 154.01)

The act modifies the definition of "costs of capital facilities" as that term is used in the laws governing the issuance of bonds by the Treasurer or the Ohio Public Facilities Commission to fund the costs of certain capital facilities (R.C. Chapters 151. and 154.) Under prior law, the definition of "costs of capital facilities" included interest on obligations from the date of their issuance to the time when interest is to be covered from sources other than proceeds of obligations. The act broadens the definition by instead including "interest on obligations" as a cost of capital facilities and, thereby, payable with bond proceeds. Further, it clarifies that the type of interest formerly described in the definition is included in the broader term "interest on obligations."

### **Cigarette tax stamp sales and cost**

(R.C. 5743.03)

The act specifies that the Treasurer is authorized to sell cigarette tax stamps only to licensed wholesale dealers unless authorized to do otherwise by the Tax Commissioner. The act further authorizes the Treasurer to charge dealers for any shipping costs associated with the sale of cigarette tax stamps. Money collected by the Treasurer from such charges are to be used to fund the operating costs of the Treasurer's office.

### **Abandoned service stations**

(R.C. 3791.11 and 3791.12; Section 737.50)

The act eliminates the Office of the Treasurer of State as one office wherein money or a surety or government-issued bond may be filed for the repair or removal of abandoned service stations and the restoration of property for property owners or lessees who own, lease, or construct two or more service stations in Ohio. Under former law, if an owner or lessee owned, leased, or was constructing two or more service stations in Ohio, the owner or lessee could deposit money or a surety or government-issued bond with the Treasurer covering all of the service stations, in lieu of filing a bond with the executive authority of the municipal corporation in which each service station was located, or with the clerk of the board of county commissioners, if the service station was not located in a municipal corporation. The act eliminates this



option so that the owner or lessee must file a bond with the municipal corporation or county in which each service station is located.

The act requires the Treasurer to refund the money or release the bond to the property owner or lessee who deposited it with the Treasurer. The owner or lessee, in turn, must file a bond with the municipal corporation or county in which each of the owner's or lessee's service stations is located, as required by continuing law. Not later than 30 days after September 10, 2012, the Treasurer must give written notice to each property owner or lessee who had previously deposited money or a surety or government-issued bond with the Treasurer that the money will be refunded or the bond will be released within the following time period, and that the property owner or lessee must file a bond in the municipal corporation or county in which each service station is located, immediately after the refund or release:

(1) If money was deposited, the Treasurer will refund the money to the property owner or lessee within 180 days after September 10, 2012;

(2) If a surety bond was deposited, the Treasurer will release the bond to the property owner or lessee upon the earlier of the expiration of the bond or within two years after September 10, 2012;

(3) If a government-issued bond was deposited, the Treasurer will release the bond to the property owner or lessee within 180 days after September 10, 2012.

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## OHIO TUITION TRUST AUTHORITY (TTA)

- Requires that funds of the Ohio College Savings Program and the Variable College Savings Program not needed for immediate use are to be deposited by the Treasurer of State in the same manner provided under the Uniform Depository Law for public moneys of the state.

### **Deposit of certain Ohio College Savings Program and Variable College Savings Program funds**

(R.C. 3334.08)

The act specifies that any funds of the Ohio College Savings Program and the Variable College Savings Program that are not needed for immediate use are to be deposited by the Treasurer of State in the same manner provided under the Uniform



Depository Law (R.C. Chapter 135.) for public moneys of the state. All interest earned on those deposits must be credited to the respective program.

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## **BUREAU OF WORKERS' COMPENSATION (BWC)**

- Permits eligible state institutions of higher education to include, rather than exclude, its hospitals when self-insuring against claims for workers' compensation.
- Requires certain permanent partial disability payments to be paid in weekly installments and specifies that those installments may only be commuted to lump-sum payments by the Administrator of Workers' Compensation when special, continuing law circumstances exist.
- Permits the President of the Ohio Township Association, if presently unavailable to serve, to select a designee to serve on the Workers' Compensation Board of Directors Nominating Committee.
- Permits the President of the Ohio County Commissioners Association, if presently unavailable to serve, to select a designee to serve on the Committee.
- Requires the Administrator of Workers' Compensation to make available electronically the joint rules governing the operating procedures of the Bureau of Workers' Compensation (BWC) and the Industrial Commission and all rules adopted by BWC and the Commission rather than making those rules available in two separate printed publications as under former law.
- Requires the Administrator to make available electronically upon request the classifications, rates, rules, and rules of procedure of BWC rather than making those rules available in pamphlet form.
- Eliminates the former law requirement that the Administrator had to maintain a mailing list of persons who requested copies of the BWC and Commission rules.
- Permits certain employers, upon approval of the Administrator, to provide workers' compensation coverage through a sports league policy to professional athletes and coaches.
- Prohibits a professional athlete, coach, or the dependents of a professional athlete or coach who is or was an employee of such an employer from applying or receiving compensation or benefits under Ohio law for an injury or occupational disease suffered in the course of employment.



- Makes the laws of the state where the league policy was issued the exclusive remedy for an injury or occupational disease.

## **University hospitals and self-insurance**

(R.C. 4123.35(B) and (S))

The act allows a state institution of higher education, *including* its hospitals, to self-insure (that is, pay compensation and benefits under the Workers' Compensation Law directly to a claimant instead of paying premiums to the State Insurance Fund) if the institution satisfies the continuing law requirements applicable to most local public employers that wish to self-insure. Previously, a state institution of higher education could self-insure *excluding* its hospitals if it satisfied those requirements.

Under continuing law, "state institution of higher education" means the University of Akron, Bowling Green State University, Central State University, University of Cincinnati, Cleveland State University, Kent State University, Miami University, Ohio University, Ohio State University, Shawnee State University, University of Toledo, Wright State University, and Youngstown State University; community colleges; university branches; technical colleges; and state community colleges.

## **Workers' compensation partial disability payments**

(R.C. 4123.57)

Continuing law requires that, upon an order for the payment of permanent partial disability for a loss by amputation or for a loss of use, the Bureau of Workers' Compensation (BWC) or a self-insuring employer must calculate the award pursuant to a specific statutory schedule. Under rules adopted by the Administrator of Workers' Compensation, BWC (or a self-insuring employer) must pay the award as follows:

- If the order to pay the award is an order from which a timely appeal is pending, BWC or the self-insuring employer must pay the award in weekly payments until a final administrative or judicial decision on the appeal.
- If the order to pay the award is a final order from which there is no further appeal, BWC or the self-insuring employer must pay the award or the balance remaining on the award in one payment for the entire award or the balance remaining on the award. (O.A.C. 4123-3-15(C)(3)).



The act, instead of requiring a lump-sum payment when there is no further appeal as under the rule described above, requires that this compensation, which is payable per week under the act, to be paid in installments. Under the act, "payable per week" means the seven consecutive day period in which compensation is paid in installments according to the schedule associated with the applicable injury as set forth in continuing law. The act specifies that the Administrator may commute compensation paid in weekly installments according to the applicable schedule to lump-sum payments only pursuant to the continuing law requirements for lump-sum payments, such as when a lump-sum payment would provide the injured worker with financial relief or would further the injured worker's rehabilitation.

### **Workers' Compensation Board Nominating Committee**

(R.C. 4121.123)

Both the President of the Ohio Township Association and the President of the Ohio County Commissioners Association serve as members of the Workers' Compensation Board of Directors Nominating Committee.

The act permits the President of the Ohio Township Association, if presently unavailable to serve, to select a designee to serve on the Committee. The act also permits the President of the Ohio County Commissioners Association, if presently unavailable to serve, to select a designee to serve on the Committee.

Previously, no provision was made for what happened in the event that either president was unavailable to serve on the Committee. However, under continuing law, if either presidency is vacant, the governing body authorized to appoint the president has authority to appoint a designee who will serve until the vacancy is filled.

### **Publication of rules and orders by the Administrator**

(R.C. 4123.20, 4121.30, and 4121.18 (repealed))

The act requires the Administrator of Workers' Compensation to make available electronically the joint rules governing the operating procedures of the Bureau of Workers' Compensation (BWC) and the Industrial Commission, all rules adopted by BWC and the Commission, and the BWC classifications, rates, and rules of procedure. The act eliminates the requirements that the Administrator had to publish the joint rules in a single printed publication and all rules adopted by BWC and the Commission in a single publication, and had to print BWC's classifications, rates, and rules of procedure in pamphlet form to be furnished on demand. Additionally, under the act, BWC can no longer charge the cost of providing the publication of all the BWC and Commission rules. The act also eliminates the former law requirement that the Administrator had to



keep a mailing list of all persons who requested copies of the rules adopted by BWC and the Commission.

### **Sports team workers' compensation coverage**

(R.C. 4123.54)

The act permits an employer, upon approval of the Administrator, to provide workers' compensation coverage to professional athletes and coaches if the employer administers payroll and provides workers' compensation insurance coverage for a professional sports team subject to a collective bargaining agreement that provides for uniform administration of workers' compensation benefits and compensation for professional athletes. The act also permits an employer that is a professional sports league or a member team of a professional sports league that operates as a single entity, upon approval of the Administrator, to provide workers' compensation coverage for players and coaches through an out-of-state league policy provided that: (1) the league at all times maintains workers' compensation coverage for the athletes and coaches and (2) any individual member team is obligated to the sports league to pay any claims not covered by the league's policy. In this second scenario, all of the players and coaches must be employees of the league and not the individual teams. The employer, under either scenario, must submit proof of coverage issued under the laws of another state to be approved.

Under the act, if the Administrator approves the proof of coverage, a professional athlete, coach, or the dependents of a professional athlete or coach who is or was an employee of an employer described in the previous paragraph is not entitled to apply for and is prohibited from receiving compensation or benefits under Ohio's Workers' Compensation Law for an injury or occupational disease suffered in the course of employment. The act makes the laws of the state where the out-of-state policy was issued the exclusive remedy for that injury or occupational disease, regardless of where the injury was suffered or the occupational disease was contracted. Under prior law, an employee under Ohio's Workers' Compensation Law was covered under Ohio law regardless of where an injury was suffered or occupational disease contracted.

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## **DEPARTMENT OF YOUTH SERVICES (DYS)**

- Requires a criminal court that transfers jurisdiction of a specified type of case back to the juvenile court after a juvenile has been convicted of or pleaded guilty to an offense in the criminal court other than the offense that was the basis of the transfer, and all other agencies that have a record of the conviction or guilty plea, to expunge



the criminal record and consider and treat the conviction or guilty plea as a delinquent child adjudication.

- Specifies that judicial release of a child after one year of an aggregate term of commitment to the Department of Youth Services (DYS) for specifications and underlying delinquent act is a possible alternative to other types of judicial release.
- Specifies that the training standards established by the Adult Parole Authority are for adult probation officers rather than all probation officers.
- Requires DHS to attempt to verify a youth's identity with a birth certificate and social security number before the youth is released from a secure facility under the control of DHS and to issue the youth an identification card if able to so verify the youth's identity.
- Specifies that an identification card issued by DHS is sufficient documentary evidence for the Registrar of Motor Vehicles or a deputy registrar to issue an identification card.
- Requires the Registrar or a deputy registrar to destroy an identification card issued by DHS upon the issuance of an identification card by the Registrar or a deputy registrar.
- Modifies the method for determining the allocation of county juvenile program funds.
- Replaces a requirement that moneys in the Felony Delinquent Care and Custody Fund be prioritized to research-supported, outcome-based programs and services with a requirement that research-supported, outcome-based programs and services, to the extent they are available, must be encouraged.

### **Transfer of jurisdiction from a criminal court to a juvenile court**

(R.C. 2152.121)

Under continuing law, if a complaint alleges that a child is a delinquent child, if the child's case is transferred to adult court for prosecution pursuant to R.C. 2152.12(A)(1)(a)(i) or (b)(ii), and if the child subsequently is convicted of or pleads guilty to an offense in that case, the court in which the child is convicted of or pleads guilty to that offense must determine whether R.C. 2152.12(A) and (B) would have required a mandatory transfer or allowed a discretionary transfer of the child to an



adult court had a complaint been filed in juvenile court alleging that the child committed an act that would be, if committed by an adult, the offense of which the child was convicted in the adult court. If the adult court determines that the child would not have been subject to mandatory or discretionary transfer to an adult court under R.C. 2152.12(A) or (B) if the child had been alleged to be a delinquent child for committing an act that would be, if committed by an adult, the offense of which the child was convicted in adult court, that court must transfer the case back to the juvenile court that initially transferred the case to adult court, and the juvenile court must impose one or more traditional juvenile dispositions upon the child under R.C. 2152.19 and 2152.20.

Under the act, when the case is transferred back to the juvenile court, the adult court and all other agencies that have any record of the conviction or guilty plea of the child must expunge the conviction or guilty plea and all records of it. In addition, the conviction or guilty plea must be considered and treated for all purposes other than for the purposes discussed above to have never have occurred, and the conviction or guilty plea must be considered and treated for all purposes other than for the purposes discussed above to have been a delinquent child adjudication of the child.

### **Judicial release of juvenile**

(R.C. 2152.22(B)(1) and (C)(1))

Continuing law authorizes the judicial release of a child who is in the custody of DYS. A child may be released *to court supervision* during the *first half* of the prescribed minimum term of commitment or, if the child was committed until the age of 21, during the *first half* of the period that begins on the first day of commitment and ends on the child's 21st birthday, provided that any commitment imposed for specified aggravating circumstances (for example, possession of a firearm) has ended. During the *second half* of the prescribed minimum term of commitment or *second half* of the period that begins on the first day of commitment and ends on the child's 21st birthday, a child may be released to *DYS supervision*, provided that any commitment imposed for specified aggravating circumstances has ended.

Also under continuing law and except as provided in the next sentence, if a child was committed for a prescribed minimum period and a maximum period running until the child's 21st birthday, the court may grant judicial release at any time after the prescribed minimum period. As an *exception* to the authority to grant judicial release as described in the prior sentence, if a child was committed for both (1) one or more definite periods for specified aggravated circumstances and (2) a prescribed minimum period and a maximum period running until the child's 21st birthday, all of the



prescribed minimum periods under (1) and (2) are aggregated, and the court may grant judicial release at any time after the child serves one year of the aggregate period.

The act specifies that judicial release under the exception described in the prior paragraph is an alternative to the two types of judicial release described in the first paragraph above. The authority to grant a judicial release during the first and second halves of a period of commitment described in the first paragraph above apply *unless judicial release is granted under the exception*.

### **Training standards for probation officers**

(R.C. 2301.27 and 2301.271)

The act specifies that the training standards established by the Adult Parole Authority for probation officers apply only to adult probation officers rather than to all probation officers.

### **Identification cards**

(R.C. 4507.51 and 5139.511)

The act requires DYS to attempt to verify each youth's identification and social security number before the youth is released from a secure facility under the control of DYS. If DYS is able to verify the youth's identity with a verified birth certificate and social security number, DYS must issue an identification card that the youth may present to the Registrar of Motor Vehicles or a deputy registrar. If DYS is not able to verify the youth's identity with both a verified birth certificate and social security number, the youth will not receive an identification card.

Additionally, the act specifies that an identification card issued by DYS as described in the preceding paragraph is sufficient documentary evidence as required by the Registrar of the age and identity of a person applying to the Registrar for an identification card, upon verification of the applicant's social security number by the Registrar or a deputy registrar. Upon issuing an identification card for a person who has previously been issued an identification card by DYS, the Registrar or a deputy registrar must destroy the identification card issued by DYS.

### **Method of determining the allocation of county juvenile program funds**

(R.C. 5139.41 and 5139.43)

The act amends the prior law governing DYS' division of county juvenile program allocations among county juvenile courts that administer programs and services for preventions, early intervention, diversion, treatment, and rehabilitation for



alleged or adjudicated unruly or delinquent children or for potential unruly or delinquent children. Under prior law, funding was based on a county's previous year's ratio of DYS' institutional and community correctional facility commitments to the county's four-year average of felony adjudications. Under the act, funding is based on a county's average of felony adjudications rather than a four-year average. Under law unchanged by the act, DYS must give each county a proportional allocation of commitment credits determined according to a statutory funding formula. Prior to the act, that formula required DYS to determine the four-year average of felony adjudications for each county and for the state.

Under the act, the funding formula requires DYS to determine an average instead of a four-year average of felony adjudications for each county and for the state to use in allocating commitment credits among counties. Beginning on July 1, 2012, in determining the average felony adjudications for each county and for the state, DYS is required to include felony adjudications for fiscal year 2007 and for each subsequent fiscal year through fiscal year 2016. Beginning July 1, 2017, DYS is required to include the most recent felony adjudication data and to remove the oldest fiscal year data so that a ten-year average of felony adjudication data will be maintained.

The act does not change the rest of the formula.

### **Felony delinquent care and custody fund**

(R.C. 5139.43)

Continuing law, unchanged by the act, requires a county treasurer to create a felony delinquent care and custody fund within the county treasury and to deposit certain specified moneys into that fund. The county and the juvenile court that serves the county must use the moneys in its felony delinquent care and custody fund in accordance with rules promulgated by DYS and pursuant to several specified guidelines.

Under continuing law, one of the specified guidelines for the fund is that money in the fund must not be used to support programs or services that do not comply with federal juvenile justice and delinquency prevention core requirements or to support programs or services that research has shown to be ineffective. Prior to the act, the guideline also required that *moneys in the fund be prioritized* to research-supported, outcome-based programs and services. The act instead requires that research-supported, outcome-based programs and services, *to the extent they are available, be encouraged*.



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## MISCELLANEOUS (MSC)

- Adds, as a condition under which the state or a political subdivision may use the abbreviated publication procedure for publishing notices or advertisements, that the second, abbreviated notice or advertisement must be published on the state public notice web site.
- Eliminates the requirement that the first publication of legal advertisements or notices be posted on the state public notice web site.
- Defines "state agency" and "political subdivision" for purposes of the abbreviated publication procedure.
- Changes the deadline for the Redistricting Reform Task Force to issue its report from June 30, 2012 to December 15, 2012.
- Requires the Departments of Aging, Alcohol and Drug Addiction Services, Development, Developmental Disabilities, Education, Health, Job and Family Services, and Mental Health and the Rehabilitation Services Commission to collaborate to revise eligibility standards and eligibility determination procedures of programs they administer for the purpose of making the standards and procedures more uniform.
- Creates in the state treasury the SellOhio Global Initiative Fund.
- Repeals the statute authorizing the Legislative Committee on Education Oversight and the Legislative Office of Education Oversight, which ceased operations in 2005.
- Adds the State Fire Marshal, or the State Fire Marshal's designee, to the Multi-Agency Radio Communications System Steering Committee.
- Requests the Congressional Joint Committee on the Library of Congress to approve the replacement of Ohio's statue of Governor William Allen in the National Statuary Hall Collection with a statue of Thomas Edison.
- Authorizes the Governor to convey any or all parcels of real estate held for the use and benefit of Youngstown State University in Youngstown, in the area known as "Smokey Hollow."
- Amends a previously authorized land conveyance, of property formerly used as Highway Patrol Post 23 in Fairfield County, to include a complete legal description of the property.



- Corrects the property description in a previously authorized state land conveyance to the Board of County Hospital Trustees of the MetroHealth System in Cuyahoga County.
- Releases use, ownership, and conveyance restrictions, and rescinds the state's right of reversion, with respect to real estate previously conveyed by the state to the city of Broadview Heights.

## Publication of legal notices and advertisements

(R.C. 7.10 and 7.16)

R.C. 7.16 allows a state agency or political subdivision that is required by a statute or rule to publish a notice or advertisement two or more times in a newspaper of general circulation to first publish the notice or advertisement in its entirety in the newspaper, but to make the second publication in an abbreviated form in the newspaper and on the newspaper's Internet web site, *if* the statute or rule requiring publication refers to R.C. 7.16. Further publication is not required if the second, abbreviated notice or advertisement meets certain requirements established in ongoing law.

The act adds to these requirements that the second, abbreviated notice or advertisement must be published on the state public notice web site established under continuing law.<sup>271</sup> The act eliminates a provision prohibiting a state agency or political subdivision from using the abbreviated procedure if it does not operate and maintain a web site. A state agency or political subdivision that otherwise meets the requirements for using the abbreviated procedure would only be prohibited from using the abbreviated procedure if the state public notice web site is not operational, as stated in continuing law.

The act also eliminates the requirement that the first publication of legal advertisements or notices be posted on the state public notice web site.

The act defines "state agency" and "political subdivision" for purposes of the abbreviated publication procedure, as follows:

- A "state agency" is any organized body, office, agency, institution, or other entity established by Ohio law for the exercise of any function of state

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<sup>271</sup> R.C. 125.182 (not in the act).



government, including state institutions of higher education, as defined in continuing law, which are any state university or college, community college, state community college, university branch, or technical college, and includes the University of Akron, Bowling Green State University, Central State University, University of Cincinnati, Cleveland State University, Kent State University, Miami University, Ohio University, Ohio State University, Shawnee State University, University of Toledo, Wright State University, Youngstown State University, and the Northeast Ohio Medical University and its board of trustees.<sup>272</sup>

- A "political subdivision" is a municipal corporation, township, county, school district, or other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state, and includes, but is not limited to, an appointed county hospital commission, board of hospital commissioners appointed for a municipal hospital, board of hospital trustees appointed for a municipal hospital, regional planning commission, county planning commission, joint planning council, interstate regional planning commission, port authority created under ongoing law or in existence on December 16, 1964, regional council established by political subdivisions, emergency planning district and joint emergency planning district, joint emergency medical services district, fire and ambulance district, joint interstate emergency planning district established by an agreement, county solid waste management district and joint solid waste management district, community school, the county or counties served by a community-based correctional facility and program or district community-based correctional facility and program, a community-based correctional facility and program or district community-based correctional facility and program, and the facility governing board of a community-based correctional facility and program or district community-based correctional facility and program.

## **Redistricting Reform Task Force**

(Sections 601.48 and 601.49 (amending Section 8 of Sub. H.B. 369 of the 129th General Assembly))

The act changes the deadline from June 30, 2012, to December 15, 2012, for the Redistricting Reform Task Force to report its recommendations for reforming the redistricting process to the General Assembly.

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<sup>272</sup> R.C. 3345.011 and 3345.12(A)(1) (not in the act).



## **Uniform eligibility standards and procedures in health and human services**

(R.C. 121.35)

The act requires the Departments of Aging, Alcohol and Drug Addiction Services, Development, Developmental Disabilities, Education, Health, Job and Family Services, and Mental Health and the Rehabilitation Services Commission to collaborate to revise eligibility standards and eligibility determination procedures of programs they administer. The purpose of the revisions is to make the programs' eligibility standards and eligibility determination procedures more uniform. An agency is prohibited from making any program's eligibility standards and procedures inconsistent with state or federal law. To the extent authorized by state and federal law, the revisions may provide for the agencies to share administrative operations.

## **SellOhio Global Initiative Fund**

(R.C. 122.862)

The act establishes in the state treasury the SellOhio Global Initiative Fund.

## **Repeal of LOEO statute**

(Repealed R.C. 3301.68)

The act repeals the statute that authorized the establishment of the Legislative Committee on Education Oversight and the Legislative Office of Education Oversight (LOEO). LOEO ceased operations at the end of 2005, as required by H.B. 66 of the 126th General Assembly, which eliminated its funding and required it to complete its pending studies and close by December 31, 2005.<sup>273</sup> However, H.B. 66 did not repeal the codified statute establishing LOEO and its oversight committee.

## **Multi-Agency Radio Communications System Steering Committee**

(Section 701.50)

The act adds the State Fire Marshal, or the State Fire Marshal's designee, to the existing Multi-Agency Radio Communications System Steering Committee. Current members of the Committee are the designees of the Directors of Administrative Services, Budget and Management, Natural Resources, Public Safety, Rehabilitation and Correction, and Transportation.

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<sup>273</sup> Section 206.87 of Am. Sub. H.B. 66 of the 126th General Assembly.



## Replacement of statue in National Statuary Hall

(Section 701.121)

Under the act, the state of Ohio requests that the Joint Committee on the Library of Congress approve the replacement of Ohio's statue of Governor William Allen in the National Statuary Hall Collection with a statue of Thomas Edison.

Under the Procedure for Replacement of Statues in the National Statuary Hall Collection,<sup>274</sup> Ohio submits the following information for consideration by the Joint Committee on the Library of Congress through the act:

First, the act states that Thomas Edison, a native of Milan, Ohio, was a world famous inventor and highly successful businessperson whose inventions, such as the phonograph, the kinoscope (a precursor to the film projector), and the first practical incandescent light bulb, have had a tremendous impact on the world. In addition to these inventions, Edison's service to the U.S. Government has also impacted world history. During World War I, Edison consulted for the government, examining inventions submitted for military use and working on defensive devices for submarines and ships. For his service, Edison eventually was awarded a Distinguished Service Medal by the Department of the Navy. By the time of his death, he had received over 1,000 patents.

Next, the act states that Thomas Edison also has had a significant impact on Ohio. He established the Edison Steel Company in Cleveland, and established one of the first electric power stations in Tiffin. His General Electric Company established the first industrial park in Ohio, which has employed hundreds of thousands of people over time.

Also, the Department of Development sponsors The Thomas Edison Award, which was established in partnership with the Edison Birthplace Museum in Milan. The Edison Birthplace Museum has been instrumental in the issuance of a Thomas Edison stamp and commemorative silver dollar, and has received, on Thomas Edison's behalf, a posthumously awarded GRAMMY Award.

For these reasons, the act concludes that Thomas Edison's impact on the world, and, in particular, on Ohio, through his inventions, business endeavors, and government service, merits inclusion of a statue of him in the National Statuary Hall Collection.

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<sup>274</sup> [http://www.aoc.gov/cc/art/nsh//upload/statue\\_replacement\\_guidelines\\_1.pdf](http://www.aoc.gov/cc/art/nsh//upload/statue_replacement_guidelines_1.pdf).



The Ohio Statuary Hall Commission, a nonprofit Ohio corporation, was established in 2009 for the purpose of assisting with the process of recommending an Ohio citizen for statuary representation in the National Statuary Hall Collection, including raising funds and providing financial support for that effort. If the Joint Committee on the Library of Congress approves the replacement statue request, the Commission is to be responsible for the selection of a sculptor for the Thomas Edison statue as well as for paying all costs incurred for placing the Thomas Edison statue in the United States Capitol, including costs incurred for all of the following: (1) paying the sculptor, (2) carving or casting the statue, (3) creating a pedestal and any inscription, (4) transporting the statue and pedestal to the United States Capitol, (5) removing and transporting the replaced statue, (6) temporarily erecting the new statue in the Rotunda of the Capitol for the unveiling ceremony, (7) expenses related to the unveiling ceremony, and (8) any other expenses that the Ohio Statuary Hall Commission finds it to be necessary to incur.

As required by the Procedure for Replacement of Statues in the National Statuary Hall Collection, the act requires the Governor to submit to the Architect of the Capitol a copy of this act, as enacted, along with a letter from the Governor, requesting approval from the Joint Committee on the Library of Congress to replace Ohio's statue of Governor William Allen in the National Statuary Hall Collection with a statue of Thomas Edison.

### **Youngstown State University land conveyance**

(R.C. 3356.10; Section 105.10)

The act authorizes the Governor, for a period until September 10, 2017, to convey, to one or more purchasers and their heirs and assigns or successors and assigns, all of the state's right, title, and interest in any or all parcels of real estate held for the use and benefit of Youngstown State University in the city of Youngstown, in the area known as "Smokey Hollow," and bounded on the north by the east-bound service road of the Madison Avenue Expressway, on the east by Andrews Avenue, on the south by Rayen Avenue, and on the west by Wick Avenue. The parcel or parcels can be transferred individually or as a group or multiple groups to a single purchaser or to multiple purchasers.

The consideration for conveyance of a parcel or parcels is a purchase price and any terms and conditions that are acceptable to the Board of Trustees of Youngstown State University. The consideration may include in whole or in part the benefit that will inure to the University and the students attending the University from the development of a mixed-use urban neighborhood that will provide convenient housing, retail outlets,



parks, and employment opportunities on a site adjacent to the University's core campus.

All costs of the conveyance of the parcel or parcels must be paid by the Board of Trustees unless otherwise specified in the agreement for transfer of the property.

Upon adoption of a resolution by the Board of Trustees specifically describing the parcel or parcels of real estate to be conveyed, indentifying the purchaser or purchasers of the real estate, and specifying the consideration paid or to be paid, the Auditor of State, with the assistance of the Attorney General, must prepare a deed or deeds to the parcel or parcels of real estate described in the resolution. The deed or deeds must state the consideration specified in the resolution. The deed or deeds must be executed by the Governor in the name of the state, countersigned by the Secretary of State, sealed with the Great Seal of the State, presented in the Office of the Auditor of State for recording, and delivered to the purchaser or purchasers. The purchaser or purchasers must present the deed or deeds for recording in the Office of the Mahoning County Recorder.

The act also requires that each deed to any property contain any exceptions, reservations, or conditions and any right of re-entry or reverter clause specified in the resolution, and provides that any exceptions, reservations, or conditions or any right of re-entry or reverter clause contained in any deed may be released by the University without the necessity of further legislation, provided the release is specifically authorized by the Board of Trustees of Youngstown State University.

The net proceeds of the sale of the parcel or parcels of real estate are to be paid to Youngstown State University and deposited in University accounts for purposes to be determined by the Board of Trustees.

This conveyance authority is repealed September 10, 2017.

### **Highway Patrol Post 23 land conveyance**

(Sections 600.10 and 600.11)

The act amends a land conveyance that was previously authorized in Am. Sub. H.B. 114 of the 129th General Assembly to include a complete legal description of the property to be conveyed, which is located in Fairfield County, and is known as Highway Patrol Post 23.



## **H.B. 153 land conveyance correction**

(Sections 601.40 and 601.41)

The act corrects the property description in a state land conveyance that previously was authorized in H.B. 153 of the 129th General Assembly.<sup>275</sup> The act continues the authorization for the Governor to convey all of the state's right, title, and interest in the described state-owned real estate to the Board of County Hospital Trustees of the MetroHealth System, in the name of Cuyahoga County, its successors and assigns. The consideration and conditions for the conveyance continue as specified in H.B. 153. The authorization for the conveyance expires one year after its effective date in H.B. 153 (which date is September 29, 2012).

## **Broadview Heights land conveyance**

(Sections 753.13 and 753.14)

The act releases the use, ownership, and conveyance restrictions, and rescinds the state's right of reversion, with respect to real estate that was conveyed to the city of Broadview Heights under Am. Sub. S.B. 63 of the 121st General Assembly. Not later than October 10, 2012, the Auditor of State, with the assistance of the Attorney General, is to prepare a deed to the real estate that releases the restrictions and rescinds the reverter. The deed is to be executed by the Governor in the name of the state, countersigned by the Secretary of State, sealed with the Great Seal of the State, presented in the Office of the Auditor of State for recording, and delivered to the city of Broadview Heights. The city must present the deed for recording in the office of the Cuyahoga County Recorder.

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## **EFFECTIVE DATES**

(Sections 812.10 to 812.30)

The act includes a default provision stating that, except as otherwise specifically provided, the amendment, enactment, or repeal of a section in the act is subject to the referendum and takes effect on the 91st day after the act is filed with the Secretary of State (barring the filing of a referendum petition). The act also includes many exceptions to the default provision, some of which provide that specified provisions are not subject to the referendum and go into immediate effect. For example, appropriations for current expenses go into immediate effect.

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<sup>275</sup> Section 753.25 of H.B. 153, 129th General Assembly.



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## HISTORY

ACTION	DATE
Introduced	03-16-12
Reported, H. Finance & Appropriations	04-25-12
Passed House (62-34)	04-25-12
Reported, S. Finance	05-16-12
Passed Senate (25-8)	05-16-12
House refused to concur in Senate amendments (0-91)	05-16-12
Senate requested conference committee	05-17-12
House acceded to request for conference committee	05-17-12
Senate agreed to conference committee report (24-8)	05-23-12
House agreed to conference committee report (58-38)	05-23-12

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