

As Introduced

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H. B. No. 286

Representative Seitz

**Cosponsors: Representatives Abrams, Bird, Click, Cross, Fowler Arthur, Grendell,
Gross, Jordan, McClain, Riedel, Schmidt, Stoltzfus, Swearingen**

A BILL

To amend sections 119.12, 124.34, 956.11, 956.15, 1
3794.09, 3901.321, 3913.13, 3913.23, 5101.35, 2
and 5164.38 of the Revised Code to change the 3
venue in which appeal from an agency order is 4
proper to the local court of common pleas. 5

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 119.12, 124.34, 956.11, 956.15, 6
3794.09, 3901.321, 3913.13, 3913.23, 5101.35, and 5164.38 of the 7
Revised Code be amended to read as follows: 8

Sec. 119.12. (A) (1) Except as provided in division (A) (2) 9
~~or (3) of this section, any party adversely affected by any 10~~
~~order of an agency issued pursuant to an adjudication denying an 11~~
~~applicant admission to an examination, or denying the issuance 12~~
~~or renewal of a license or registration of a licensee, or 13~~
~~revoking or suspending a license, or allowing the payment of a 14~~
~~forfeiture under section 4301.252 of the Revised Code may appeal 15~~
from the order of the agency to the court of common pleas of the 16
county in which the place of business of the licensee party is 17
located or the county in which the licensee party is a resident. 18

~~(2) An appeal from an order described in division (A) (1) of this section issued by any of the following agencies shall be made to the court of common pleas of Franklin county:~~ 19
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~~(a) The liquor control commission;~~ 22

~~(b) The Ohio casino control commission,~~ 23

~~state medical board;~~ 24

~~(c) The state chiropractic board;~~ 25

~~(d) The board of nursing;~~ 26

~~(e) The bureau of workers' compensation regarding participation in the health partnership program created in sections 4121.44 and 4121.441 of the Revised Code.~~ 27
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~~(3) If any party appealing from an order described in division (A) (1) of this section is not a resident of and has no place of business in this state, the party may appeal to the court of common pleas of Franklin county.~~ 30
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~~(B) Any party adversely affected by any order of an agency issued pursuant to any other adjudication may appeal to the court of common pleas of Franklin county, except that appeals from orders of the fire marshal issued under Chapter 3737. of the Revised Code may be to the court of common pleas of the county in which the building of the aggrieved person is located and except that appeals under division (B) of section 124.34 of the Revised Code from a decision of the state personnel board of review or a municipal or civil service township civil service commission shall be taken to the court of common pleas of the county in which the appointing authority is located or, in the case of an appeal by the department of rehabilitation and correction, to the court of common pleas of Franklin county.~~ 34
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~~(C)~~—This section does not apply to appeals from the department of taxation.

~~(D)~~—(C) Any party desiring to appeal shall file a notice of appeal with the agency setting forth the order appealed from and stating that the agency's order is not supported by reliable, probative, and substantial evidence and is not in accordance with law. The notice of appeal may, but need not, set forth the specific grounds of the party's appeal beyond the statement that the agency's order is not supported by reliable, probative, and substantial evidence and is not in accordance with law. The notice of appeal shall also be filed by the appellant with the court. In filing a notice of appeal with the agency or court, the notice that is filed may be either the original notice or a copy of the original notice. Unless otherwise provided by law relating to a particular agency, notices of appeal shall be filed within fifteen days after the mailing of the notice of the agency's order as provided in this section. For purposes of this paragraph, an order includes a determination appealed pursuant to division (C) of section 119.092 of the Revised Code. The amendments made to this paragraph by Sub. H.B. 215 of the 128th general assembly are procedural, and this paragraph as amended by those amendments shall be applied retrospectively to all appeals pursuant to this paragraph filed before September 13, 2010, but not earlier than May 7, 2009, which was the date the supreme court of Ohio released its opinion and judgment in *Medcorp, Inc. v. Ohio Dep't. of Job and Family Servs.* (2009), 121 Ohio St.3d 622.

~~(E)~~—(D) The filing of a notice of appeal shall not automatically operate as a suspension of the order of an agency. If it appears to the court that an unusual hardship to the appellant will result from the execution of the agency's order

pending determination of the appeal, the court may grant a 78
suspension and fix its terms. If an appeal is taken from the 79
judgment of the court and the court has previously granted a 80
suspension of the agency's order as provided in this section, 81
the suspension of the agency's order shall not be vacated and 82
shall be given full force and effect until the matter is finally 83
adjudicated. No renewal of a license or permit shall be denied 84
by reason of the suspended order during the period of the appeal 85
from the decision of the court of common pleas. In the case of 86
an appeal from the Ohio casino control commission, the state 87
medical board, or the state chiropractic board, the court may 88
grant a suspension and fix its terms if it appears to the court 89
that an unusual hardship to the appellant will result from the 90
execution of the agency's order pending determination of the 91
appeal and the health, safety, and welfare of the public will 92
not be threatened by suspension of the order. This provision 93
shall not be construed to limit the factors the court may 94
consider in determining whether to suspend an order of any other 95
agency pending determination of an appeal. 96

~~(F)~~ (E) The final order of adjudication may apply to any 97
renewal of a license or permit which has been granted during the 98
period of the appeal. 99

~~(G)~~ (F) Notwithstanding any other provision of this 100
section, any order issued by a court of common pleas or a court 101
of appeals suspending the effect of an order of the liquor 102
control commission issued pursuant to Chapter 4301. or 4303. of 103
the Revised Code that suspends, revokes, or cancels a permit 104
issued under Chapter 4303. of the Revised Code or that allows 105
the payment of a forfeiture under section 4301.252 of the 106
Revised Code shall terminate not more than six months after the 107
date of the filing of the record of the liquor control 108

commission with the clerk of the court of common pleas and shall 109
not be extended. The court of common pleas, or the court of 110
appeals on appeal, shall render a judgment in that matter within 111
six months after the date of the filing of the record of the 112
liquor control commission with the clerk of the court of common 113
pleas. A court of appeals shall not issue an order suspending 114
the effect of an order of the liquor control commission that 115
extends beyond six months after the date on which the record of 116
the liquor control commission is filed with a court of common 117
pleas. 118

~~(H)~~ (G) Notwithstanding any other provision of this 119
section, any order issued by a court of common pleas or a court 120
of appeals suspending the effect of an order of the Ohio casino 121
control commission issued under Chapter 3772. of the Revised 122
Code that limits, conditions, restricts, suspends, revokes, 123
denies, not renews, fines, or otherwise penalizes an applicant, 124
licensee, or person excluded or ejected from a casino facility 125
in accordance with section 3772.031 of the Revised Code shall 126
terminate not more than six months after the date of the filing 127
of the record of the Ohio casino control commission with the 128
clerk of the court of common pleas and shall not be extended. 129
The court of common pleas, or the court of appeals on appeal, 130
shall render a judgment in that matter within six months after 131
the date of the filing of the record of the Ohio casino control 132
commission with the clerk of the court of common pleas. A court 133
of appeals shall not issue an order suspending the effect of an 134
order of the Ohio casino control commission that extends beyond 135
six months after the date on which the record of the Ohio casino 136
control commission is filed with the clerk of a court of common 137
pleas. 138

(H) Notwithstanding any other provision of this section, 139

any order issued by a court of common pleas suspending the 140
effect of an order of the state medical board or state 141
chiropractic board that limits, revokes, suspends, places on 142
probation, or refuses to register or reinstate a certificate 143
issued by the board or reprimands the holder of the certificate 144
shall terminate not more than fifteen months after the date of 145
the filing of a notice of appeal in the court of common pleas, 146
or upon the rendering of a final decision or order in the appeal 147
by the court of common pleas, whichever occurs first. 148

(I) Within thirty days after receipt of a notice of appeal 149
from an order in any case in which a hearing is required by 150
sections 119.01 to 119.13 of the Revised Code, the agency shall 151
prepare and certify to the court a complete record of the 152
proceedings in the case. Failure of the agency to comply within 153
the time allowed, upon motion, shall cause the court to enter a 154
finding in favor of the party adversely affected. Additional 155
time, however, may be granted by the court, not to exceed thirty 156
days, when it is shown that the agency has made substantial 157
effort to comply. The record shall be prepared and transcribed, 158
and the expense of it shall be taxed as a part of the costs on 159
the appeal. The appellant shall provide security for costs 160
satisfactory to the court of common pleas. Upon demand by any 161
interested party, the agency shall furnish at the cost of the 162
party requesting it a copy of the stenographic report of 163
testimony offered and evidence submitted at any hearing and a 164
copy of the complete record. 165

(J) Notwithstanding any other provision of this section, 166
any party desiring to appeal an order or decision of the state 167
personnel board of review shall, at the time of filing a notice 168
of appeal with the board, provide a security deposit in an 169
amount and manner prescribed in rules that the board shall adopt 170

in accordance with this chapter. In addition, the board is not 171
required to prepare or transcribe the record of any of its 172
proceedings unless the appellant has provided the deposit 173
described above. The failure of the board to prepare or 174
transcribe a record for an appellant who has not provided a 175
security deposit shall not cause a court to enter a finding 176
adverse to the board. 177

(K) Unless otherwise provided by law, in the hearing of 178
the appeal, the court is confined to the record as certified to 179
it by the agency. Unless otherwise provided by law, the court 180
may grant a request for the admission of additional evidence 181
when satisfied that the additional evidence is newly discovered 182
and could not with reasonable diligence have been ascertained 183
prior to the hearing before the agency. 184

(L) The court shall conduct a hearing on the appeal and 185
shall give preference to all proceedings under sections 119.01 186
to 119.13 of the Revised Code, over all other civil cases, 187
irrespective of the position of the proceedings on the calendar 188
of the court. An appeal from an order of the state medical board 189
issued pursuant to division (G) of either section 4730.25 or 190
4731.22 of the Revised Code, the state chiropractic board issued 191
pursuant to section 4734.37 of the Revised Code, the liquor 192
control commission issued pursuant to Chapter 4301. or 4303. of 193
the Revised Code, or the Ohio casino control commission issued 194
pursuant to Chapter 3772. of the Revised Code shall be set down 195
for hearing at the earliest possible time and takes precedence 196
over all other actions. The hearing in the court of common pleas 197
shall proceed as in the trial of a civil action, and the court 198
shall determine the rights of the parties in accordance with the 199
laws applicable to a civil action. At the hearing, counsel may 200
be heard on oral argument, briefs may be submitted, and evidence 201

may be introduced if the court has granted a request for the presentation of additional evidence.

(M) The court may affirm the order of the agency complained of in the appeal if it finds, upon consideration of the entire record and any additional evidence the court has admitted, that the order is supported by reliable, probative, and substantial evidence and is in accordance with law. In the absence of this finding, it may reverse, vacate, or modify the order or make such other ruling as is supported by reliable, probative, and substantial evidence and is in accordance with law. The court shall award compensation for fees in accordance with section 2335.39 of the Revised Code to a prevailing party, other than an agency, in an appeal filed pursuant to this section.

(N) The judgment of the court shall be final and conclusive unless reversed, vacated, or modified on appeal. These appeals may be taken either by the party or the agency, shall proceed as in the case of appeals in civil actions, and shall be pursuant to the Rules of Appellate Procedure and, to the extent not in conflict with those rules, Chapter 2505. of the Revised Code. An appeal by the agency shall be taken on questions of law relating to the constitutionality, construction, or interpretation of statutes and rules of the agency, and, in the appeal, the court may also review and determine the correctness of the judgment of the court of common pleas that the order of the agency is not supported by any reliable, probative, and substantial evidence in the entire record.

The court shall certify its judgment to the agency or take any other action necessary to give its judgment effect.

Sec. 124.34. (A) The tenure of every officer or employee 232
in the classified service of the state and the counties, civil 233
service townships, cities, city health districts, general health 234
districts, and city school districts of the state, holding a 235
position under this chapter, shall be during good behavior and 236
efficient service. No officer or employee shall be reduced in 237
pay or position, fined, suspended, or removed, or have the 238
officer's or employee's longevity reduced or eliminated, except 239
as provided in section 124.32 of the Revised Code, and for 240
incompetency, inefficiency, unsatisfactory performance, 241
dishonesty, drunkenness, immoral conduct, insubordination, 242
discourteous treatment of the public, neglect of duty, violation 243
of any policy or work rule of the officer's or employee's 244
appointing authority, violation of this chapter or the rules of 245
the director of administrative services or the commission, any 246
other failure of good behavior, any other acts of misfeasance, 247
malfeasance, or nonfeasance in office, or conviction of a felony 248
while employed in the civil service. The denial of a one-time 249
pay supplement or a bonus to an officer or employee is not a 250
reduction in pay for purposes of this section. 251

This section does not apply to any modifications or 252
reductions in pay or work week authorized by section 124.392, 253
124.393, or 124.394 of the Revised Code. 254

An appointing authority may require an employee who is 255
suspended to report to work to serve the suspension. An employee 256
serving a suspension in this manner shall continue to be 257
compensated at the employee's regular rate of pay for hours 258
worked. The disciplinary action shall be recorded in the 259
employee's personnel file in the same manner as other 260
disciplinary actions and has the same effect as a suspension 261
without pay for the purpose of recording disciplinary actions. 262

A finding by the appropriate ethics commission, based upon 263
a preponderance of the evidence, that the facts alleged in a 264
complaint under section 102.06 of the Revised Code constitute a 265
violation of Chapter 102., section 2921.42, or section 2921.43 266
of the Revised Code may constitute grounds for dismissal. 267
Failure to file a statement or falsely filing a statement 268
required by section 102.02 of the Revised Code may also 269
constitute grounds for dismissal. The tenure of an employee in 270
the career professional service of the department of 271
transportation is subject to section 5501.20 of the Revised 272
Code. 273

Conviction of a felony while employed in the civil service 274
is a separate basis for reducing in pay or position, suspending, 275
or removing an officer or employee, even if the officer or 276
employee has already been reduced in pay or position, suspended, 277
or removed for the same conduct that is the basis of the felony. 278
An officer or employee may not appeal to the state personnel 279
board of review or the commission any disciplinary action taken 280
by an appointing authority as a result of the officer's or 281
employee's conviction of a felony. If an officer or employee 282
removed under this section is reinstated as a result of an 283
appeal of the removal, any conviction of a felony that occurs 284
during the pendency of the appeal is a basis for further 285
disciplinary action under this section upon the officer's or 286
employee's reinstatement. 287

A person convicted of a felony while employed in the civil 288
service immediately forfeits the person's status as a classified 289
employee in any public employment on and after the date of the 290
conviction for the felony. If an officer or employee is removed 291
under this section as a result of being convicted of a felony or 292
is subsequently convicted of a felony that involves the same 293

conduct that was the basis for the removal, the officer or 294
employee is barred from receiving any compensation after the 295
removal notwithstanding any modification or disaffirmance of the 296
removal, unless the conviction for the felony is subsequently 297
reversed or annulled. 298

Any person removed for conviction of a felony is entitled 299
to a cash payment for any accrued but unused sick, personal, and 300
vacation leave as authorized by law. If subsequently reemployed 301
in the public sector, the person shall qualify for and accrue 302
these forms of leave in the manner specified by law for a newly 303
appointed employee and shall not be credited with prior public 304
service for the purpose of receiving these forms of leave. 305

As used in this division, "felony" means any of the 306
following: 307

(1) A felony that is an offense of violence as defined in 308
section 2901.01 of the Revised Code; 309

(2) A felony that is a felony drug abuse offense as 310
defined in section 2925.01 of the Revised Code; 311

(3) A felony under the laws of this or any other state or 312
the United States that is a crime of moral turpitude; 313

(4) A felony involving dishonesty, fraud, or theft; 314

(5) A felony that is a violation of section 2921.05, 315
2921.32, or 2921.42 of the Revised Code. 316

(B) In case of a reduction, a suspension of more than 317
forty work hours in the case of an employee exempt from the 318
payment of overtime compensation, a suspension of more than 319
twenty-four work hours in the case of an employee required to be 320
paid overtime compensation, a fine of more than forty hours' pay 321

in the case of an employee exempt from the payment of overtime 322
compensation, a fine of more than twenty-four hours' pay in the 323
case of an employee required to be paid overtime compensation, 324
or removal, except for the reduction or removal of a 325
probationary employee, the appointing authority shall serve the 326
employee with a copy of the order of reduction, fine, 327
suspension, or removal, which order shall state the reasons for 328
the action. 329

Within ten days following the date on which the order is 330
served or, in the case of an employee in the career professional 331
service of the department of transportation, within ten days 332
following the filing of a removal order, the employee, except as 333
otherwise provided in this section, may file an appeal of the 334
order in writing with the state personnel board of review or the 335
commission. For purposes of this section, the date on which an 336
order is served is the date of hand delivery of the order or the 337
date of delivery of the order by certified United States mail, 338
whichever occurs first. If an appeal is filed, the board or 339
commission shall forthwith notify the appointing authority and 340
shall hear, or appoint a trial board to hear, the appeal within 341
thirty days from and after its filing with the board or 342
commission. The board, commission, or trial board may affirm, 343
disaffirm, or modify the judgment of the appointing authority. 344
However, in an appeal of a removal order based upon a violation 345
of a last chance agreement, the board, commission, or trial 346
board may only determine if the employee violated the agreement 347
and thus affirm or disaffirm the judgment of the appointing 348
authority. 349

In cases of removal or reduction in pay for disciplinary 350
reasons, either the appointing authority or the officer or 351
employee may appeal from the decision of the state personnel 352

board of review or the commission, and any such appeal shall be 353
to the court of common pleas ~~of the county in which the~~ 354
~~appointing authority is located, or to the court of common pleas~~ 355
~~of Franklin county, as provided by section 119.12 of the Revised~~ 356
~~Code~~ in accordance with section 119.12 of the Revised Code. 357

(C) In the case of the suspension for any period of time, 358
or a fine, demotion, or removal, of a chief of police, a chief 359
of a fire department, or any member of the police or fire 360
department of a city or civil service township, who is in the 361
classified civil service, the appointing authority shall furnish 362
the chief or member with a copy of the order of suspension, 363
fine, demotion, or removal, which order shall state the reasons 364
for the action. The order shall be filed with the municipal or 365
civil service township civil service commission. Within ten days 366
following the filing of the order, the chief or member may file 367
an appeal, in writing, with the commission. If an appeal is 368
filed, the commission shall forthwith notify the appointing 369
authority and shall hear, or appoint a trial board to hear, the 370
appeal within thirty days from and after its filing with the 371
commission, and it may affirm, disaffirm, or modify the judgment 372
of the appointing authority. An appeal on questions of law and 373
fact may be had from the decision of the commission to the court 374
of common pleas in the county in which the city or civil service 375
township is situated. The appeal shall be taken within thirty 376
days from the finding of the commission. 377

(D) A violation of division (A) (7) of section 2907.03 of 378
the Revised Code is grounds for termination of employment of a 379
nonteaching employee under this section. 380

(E) The director shall adopt a rule in accordance with 381
Chapter 119. of the Revised Code to define the term 382

"unsatisfactory performance" as it is used in this section with 383
regard to employees in the service of the state. 384

(F) As used in this section, "last chance agreement" means 385
an agreement signed by both an appointing authority and an 386
officer or employee of the appointing authority that describes 387
the type of behavior or circumstances that, if it occurs, will 388
automatically lead to removal of the officer or employee without 389
the right of appeal to the state personnel board of review or 390
the appropriate commission. 391

Sec. 956.11. (A) The director of agriculture may enter 392
into contracts or agreements with an animal rescue for dogs, an 393
animal shelter for dogs, a boarding kennel, a veterinarian, a 394
board of county commissioners, or a humane society for the 395
purposes of this section. 396

(B) (1) If the director or the director's authorized 397
representative determines that a dog is being kept by a high 398
volume breeder or dog broker in a manner that materially 399
violates this chapter or rules adopted under it, the director 400
may impound the dog and order it to be seized by an animal 401
rescue for dogs, an animal shelter for dogs, a boarding kennel, 402
a veterinarian, a board of county commissioners, or a humane 403
society with which the director has entered into a contract or 404
agreement under division (A) of this section. Upon receiving the 405
order from the director, the animal rescue for dogs, animal 406
shelter for dogs, boarding kennel, veterinarian, board of county 407
commissioners, or humane society shall seize the dog and keep, 408
house, and maintain it. 409

(2) The director or the director's authorized 410
representative shall give written notice of the impoundment by 411
posting a notice on the door of the premises from which the dog 412

was taken or by otherwise posting the notice in a conspicuous 413
place at the premises from which the dog was taken. The notice 414
shall provide a date for an adjudication hearing, which shall 415
take place not later than five business days after the dog is 416
taken and at which the director shall determine if the dog 417
should be permanently relinquished to the custody of the 418
director. 419

(C) The owner or operator of the applicable high volume 420
breeder or the person acting as or performing the functions of a 421
dog broker may appeal the determination made at the adjudication 422
hearing in accordance with section 119.12 of the Revised Code, 423
~~except that the appeal may be made only to the environmental-~~ 424
~~division of the Franklin county municipal court.~~ 425

(D) If, after the final disposition of an adjudication 426
hearing and any appeals from that adjudication hearing, it is 427
determined that a dog shall be permanently relinquished to the 428
custody of the director, the dog may be adopted directly from 429
the animal rescue for dogs, animal shelter for dogs, boarding 430
kennel, veterinarian, county dog pound, or humane society where 431
it is being kept, housed, and maintained, provided that the dog 432
has been spayed or neutered unless there are medical reasons 433
against spaying or neutering as determined by a veterinarian. 434
The animal rescue for dogs, animal shelter for dogs, boarding 435
kennel, veterinarian, county dog pound, or humane society may 436
charge a reasonable adoption fee. The fee shall be at least 437
sufficient to cover the costs of spaying or neutering the dog 438
unless it is medically contraindicated. Impounded dogs shall be 439
returned to persons acquitted of any alleged violations. 440

Sec. 956.15. (A) The director of agriculture shall deny an 441
application for a license that is submitted under section 956.04 442

or 956.05 of the Revised Code for either of the following 443
reasons: 444

(1) The applicant for the license has violated any 445
provision of this chapter or a rule adopted under it if the 446
violation materially threatens the health or welfare of a dog. 447

(2) The applicant has been convicted of or pleaded guilty 448
to a disqualifying offense as determined in accordance with 449
section 9.79 of the Revised Code. 450

(B) The director may suspend or revoke a license issued 451
under this chapter for violation of any provision of this 452
chapter or a rule adopted or order issued under it if the 453
violation materially threatens the health and welfare of a dog. 454

(C) An application or a license shall not be denied, 455
suspended, or revoked under this section without a written order 456
of the director stating the findings on which the denial, 457
suspension, or revocation is based. A copy of the order shall be 458
sent to the applicant or license holder by certified mail or may 459
be provided to the applicant or license holder by personal 460
service. In addition, the person to whom a denial, suspension, 461
or revocation applies may request an adjudication hearing under 462
Chapter 119. of the Revised Code. The director shall comply with 463
such a request. The determination of the director at an 464
adjudication hearing may be appealed in accordance with section 465
119.12 of the Revised Code, ~~except that the determination may be~~ 466
~~appealed only to the environmental division of the Franklin-~~ 467
~~county municipal court.~~ 468

Sec. 3794.09. Enforcement; Penalties. 469

(A) Upon the receipt of a first report that a proprietor 470
of a public place or place of employment or an individual has 471

violated any provision of this chapter, the department of health 472
or its designee shall investigate the report and, if it 473
concludes that there was a violation, issue a warning letter to 474
the proprietor or individual. 475

(B) Upon a report of a second or subsequent violation of 476
any provision of this chapter by a proprietor of a public place 477
or place of employment or an individual, the department of 478
health or its designee shall investigate the report. If the 479
director of health or director's designee concludes, based on 480
all of the information before ~~him or her~~ the director or the 481
director's designee, that there was a violation, ~~he or she~~ the 482
director or the director's designee shall impose a civil fine 483
upon the proprietor or individual in accordance with the 484
schedule of fines required to be promulgated under section 485
3794.07 of ~~this chapter~~ the Revised Code. 486

(C) Any proprietor or individual against whom a finding of 487
a violation is made under this chapter may appeal the finding ~~to~~ 488
~~the Franklin County Court of Common Pleas. Such appeal shall be~~ 489
~~governed by the provisions of~~ in accordance with section 119.12 490
of the Revised Code. 491

(D) The director of health may institute an action in the 492
court of common pleas seeking an order in equity against a 493
proprietor or individual that has repeatedly violated the 494
provisions of this chapter or fails to comply with its 495
provisions. 496

Sec. 3901.321. (A) For the purposes of this section: 497

(1) "Acquiring party" means any person by whom or on whose 498
behalf a merger or other acquisition of control is to be 499
effected. 500

(2) "Domestic insurer" includes any person controlling a domestic insurer unless the person, as determined by the superintendent of insurance, is either directly or through its affiliates primarily engaged in business other than the business of insurance.

(3) "Person" does not include any securities broker holding, in the usual and customary broker's function, less than twenty per cent of the voting securities of an insurance company or of any person that controls an insurance company.

(B) (1) Subject to compliance with division (B) (2) of this section, no person other than the issuer shall do any of the following if, as a result, the person would, directly or indirectly, including by means of conversion or the exercise of any right to acquire, be in control of a domestic insurer:

(a) Make a tender offer for any voting security of a domestic insurer;

(b) Make a request or invitation for tenders of any voting security of a domestic insurer;

(c) Enter into any agreement to exchange securities of a domestic insurer;

(d) Seek to acquire or acquire, in the open market or otherwise, any voting security of a domestic insurer;

(e) Enter into an agreement to merge with, or otherwise to acquire control of, a domestic insurer.

(2) (a) No person shall engage in any transaction described in division (B) (1) of this section, unless all of the following conditions are met:

(i) The person has filed with the superintendent of

insurance a statement containing the information required by 529
division (C) of this section; 530

(ii) The person has sent the statement to the domestic 531
insurer; 532

(iii) The offer, request, invitation, agreement, or 533
acquisition has been approved by the superintendent in the 534
manner provided in division (F) of this section. 535

(b) The requirements of division (B) (2) (a) of this section 536
shall be met at the time any offer, request, or invitation is 537
made, or any agreement is entered into, or prior to the 538
acquisition of the securities if no offer or agreement is 539
involved. 540

(3) Any controlling person of a domestic insurer seeking 541
to divest its controlling interest in the domestic insurer shall 542
file a confidential notice of its proposed divestiture with the 543
superintendent at least thirty days prior to the cessation of 544
control, and provide a copy of the confidential notice to the 545
insurer. The superintendent may require the person seeking to 546
divest the controlling interest to file for and obtain approval 547
of the transaction. The information shall remain confidential 548
until the conclusion of the transaction unless the 549
superintendent, in the superintendent's discretion, determines 550
that the confidential treatment will interfere with enforcement 551
of this section. If the statement required by division (B) (2) of 552
this section is otherwise filed with the superintendent in 553
relation to all parties that acquire a controlling interest as a 554
result of the divestiture, this division shall not apply. 555

(C) The statement required by division (B) (2) of this 556
section shall be made under oath or affirmation, and shall 557

contain all of the following information:	558
(1) The name and address of each acquiring party;	559
(2) If the acquiring party is an individual, the individual's principal occupation and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations during the past ten years;	560 561 562 563
(3) If the acquiring party is not an individual, a report of the nature of its business operations during the past five years or for such lesser period as the acquiring party and any of its predecessors shall have been in existence; an informative description of the business intended to be done by the acquiring party and the acquiring party's subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of the acquiring party, who perform or will perform functions appropriate to such positions. The list shall include for each individual the information required by division (C) (2) of this section.	564 565 566 567 568 569 570 571 572 573 574
(4) The source, nature, and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction in which funds were or are to be obtained for any such purpose, including any pledge of the domestic insurer's stock, or the stock of any of its subsidiaries or controlling affiliates, and the identity of persons furnishing such consideration;	575 576 577 578 579 580 581
(5) Fully audited financial information as to the earnings and financial condition of each acquiring party for its preceding five fiscal years, or for such lesser period as the acquiring party and any of its predecessors shall have been in existence, and similar unaudited information as of a date not	582 583 584 585 586

earlier than ninety days prior to the filing of the statement; 587

(6) Any plans or proposals which each acquiring party may 588
have to liquidate such domestic insurer, to sell its assets or 589
merge or consolidate it with any person, or to make any other 590
material change in its business or corporate structure or 591
management; 592

(7) The number of shares of any security of such issuer or 593
such controlling person that each acquiring party proposes to 594
acquire, and the terms of the offer, request, invitation, 595
agreement, or acquisition, and a statement as to the method by 596
which the fairness of the proposal was determined; 597

(8) The amount of each class of any security of such 598
issuer or such controlling person which is beneficially owned or 599
concerning which there is a right to acquire beneficial 600
ownership by each acquiring party; 601

(9) A full description of any contracts, arrangements, or 602
understandings with respect to any security of such issuer or 603
such controlling person in which any acquiring party is 604
involved, including but not limited to transfer of any of the 605
securities, joint ventures, loan or option arrangements, puts or 606
calls, guarantees of loans, guarantees against loss or 607
guarantees of profits, division of losses or profits, or the 608
giving or withholding of proxies. The description shall identify 609
the persons with whom such contracts, arrangements, or 610
understandings have been made. 611

(10) A description of the purchase of any security of such 612
issuer or such controlling person during the year preceding the 613
filing of the statement, by any acquiring party, including the 614
dates of purchase, names of the purchasers, and consideration 615

paid or agreed to be paid therefor; 616

(11) A description of any recommendations to purchase any 617
security of such issuer or such controlling person made during 618
the year preceding the filing of the statement, by any acquiring 619
party, or by anyone based upon interviews or at the suggestion 620
of the acquiring party; 621

(12) Copies of all tender offers for, requests, or 622
invitations for tenders of, exchange offers for, and agreements 623
to acquire or exchange any securities of such issuer or such 624
controlling person, and, if distributed, of additional 625
solicitation material relating thereto; 626

(13) The terms of any agreement, contract, or 627
understanding made with or proposed to be made with any broker 628
or dealer as to solicitation of securities of such issuer or 629
such controlling person for tender, and the amount of any fees, 630
commissions, or other compensation to be paid to brokers or 631
dealers with regard thereto; 632

(14) With respect to proposed affiliations between 633
depository institutions or any affiliate thereof, within the 634
meaning of Title I, section 104(c) of the "Gramm-Leach-Bliley 635
Act," Pub. L. No. 106-102, 113 Stat. 1338 (1999), and a domestic 636
insurer, the proposed effective date of the acquisition or 637
change of control; 638

(15) An agreement by the person required to file the 639
statement required by division (B) of this section that the 640
person will provide the annual registration required by division 641
(K) of section 3901.33 of the Revised Code for so long as the 642
person has control of the domestic insurer; 643

(16) An acknowledgment by the person required to file the 644

statement required by division (B) of this section that the 645
person and all subsidiaries within the person's control in the 646
insurance holding company system will provide information to the 647
superintendent upon request as necessary to evaluate enterprise 648
risk to the insurer; 649

(17) Such additional information as the superintendent may 650
by rule prescribe as necessary or appropriate for the protection 651
of policyholders of the domestic insurer or in the public 652
interest. 653

(D) (1) If the person required to file the statement 654
required by division (B) (2) of this section is a partnership, 655
limited partnership, syndicate, or other group, the 656
superintendent may require that the information required by 657
division (C) of this section be furnished with respect to each 658
partner of such partnership or limited partnership, each member 659
of such syndicate or group, and each person that controls such 660
partner or member. If any such partner, member, or person is a 661
corporation, or the person required to file the statement is a 662
corporation, the superintendent may require that the information 663
required by division (C) of this section be furnished with 664
respect to the corporation, each officer and director of the 665
corporation, and each person that is directly or indirectly the 666
beneficial owner of more than ten per cent of the outstanding 667
voting securities of the corporation. 668

(2) If any material change occurs in the facts set forth 669
in the statement required by division (B) (2) of this section, an 670
amendment setting forth such change, together with copies of all 671
documents and other material relevant to the change, shall be 672
filed with the superintendent by the person subject to division 673
(B) (2) of this section and sent to the domestic insurer within 674

two business days after such person learns of the occurrence of 675
the material change. 676

(E) If any offer, request, invitation, agreement, or 677
acquisition described in division (B)(1) of this section is 678
proposed to be made by means of a registration statement under 679
the "Securities Act of 1933," 48 Stat. 74, 15 U.S.C.A. 78a, or 680
in circumstances requiring the disclosure of similar information 681
under the "Securities Exchange Act of 1934," 48 Stat. 881, 15 682
U.S.C.A. 78a, or under a state law requiring similar 683
registration or disclosure, the person required to file the 684
statement required by division (B)(2) of this section may use 685
such documents in furnishing the information required by that 686
statement. 687

(F)(1) The superintendent shall approve any merger or 688
other acquisition of control described in division (B)(1) of 689
this section unless, after a public hearing, the superintendent 690
finds that any of the following apply: 691

(a) After the change of control, the domestic insurer 692
would not be able to satisfy the requirements for the issuance 693
of a license to write the line or lines of insurance for which 694
it is presently licensed; 695

(b) The effect of the merger or other acquisition of 696
control would be substantially to lessen competition in 697
insurance in this state or tend to create a monopoly; 698

(c) The financial condition of any acquiring party is such 699
as might jeopardize the financial stability of the domestic 700
insurer, or prejudice the interests of its policyholders; 701

(d) The plans or proposals that the acquiring party has to 702
liquidate the domestic insurer, sell its assets, or consolidate 703

or merge it with any person, or to make any other material 704
change in its business or corporate structure or management, are 705
unfair and unreasonable to policyholders of the domestic insurer 706
and not in the public interest; 707

(e) The competence, experience, and integrity of those 708
persons that would control the operation of the domestic insurer 709
are such that it would not be in the interest of policyholders 710
of the domestic insurer and of the public to permit the merger 711
or other acquisition of control; 712

(f) The acquisition is likely to be hazardous or 713
prejudicial to the insurance-buying public. 714

(2) (a) Chapter 119. of the Revised Code, except for 715
section 119.09 of the Revised Code, applies to any hearing held 716
under division (F) (1) of this section, including the notice of 717
the hearing, the conduct of the hearing, the orders issued 718
pursuant to it, the review of the orders, and all other matters 719
relating to the holding of the hearing, but only to the extent 720
that Chapter 119. of the Revised Code is not inconsistent or in 721
conflict with this section. 722

(b) The notice of a hearing required under this division 723
shall be transmitted by personal service, certified mail, e- 724
mail, or any other method designed to ensure and confirm receipt 725
of the notice, to the persons and addresses designated to 726
receive notices and correspondence in the information statement 727
filed under division (B) (2) of this section. Confirmation of 728
receipt of the notice, including electronic "Read Receipt" 729
confirmation, shall constitute evidence of compliance with the 730
requirement of this section. The notice of hearing shall include 731
the reasons for the proposed action and a statement informing 732
the acquiring party that the party is entitled to a hearing. The 733

notice also shall inform the acquiring party that at the hearing 734
the acquiring party may appear in person, by attorney, or by 735
such other representative as is permitted to practice before the 736
superintendent, or that the acquiring party may present its 737
position, arguments, or contentions in writing, and that at the 738
hearing the acquiring party may present evidence and examine 739
witnesses appearing for and against the acquiring party. A copy 740
of the notice also shall be transmitted to attorneys or other 741
representatives of record representing the acquiring party. 742

(c) The hearing shall be held at the offices of the 743
superintendent within ten calendar days, but not earlier than 744
seven calendar days, of the date of transmission of the notice 745
of hearing by any means, unless it is postponed or continued; 746
but in no event shall the hearing be held unless notice is 747
received at least three days prior to the hearing. The 748
superintendent may postpone or continue the hearing upon receipt 749
of a written request by an acquiring party, or upon the 750
superintendent's motion, provided, however, a hearing in 751
connection with a proposed change of control involving a 752
depository institution or any affiliate thereof, within the 753
meaning of Title I, section 104(c) of the "Gramm-Leach-Bliley 754
Act," Pub. L. No. 106-102, 113 Stat. 1338 (1999), and a domestic 755
insurer, may be postponed or continued only upon the request of 756
an acquiring party, or upon the superintendent's motion when the 757
acquiring party agrees in writing to extend the sixty-day period 758
provided for in section 104(c) of the "Gramm-Leach-Bliley Act," 759
by a number of days equal to the number of days of such 760
postponement or continuance. 761

(d) For the purpose of conducting any hearing held under 762
this section, the superintendent may require the attendance of 763
such witnesses and the production of such books, records, and 764

papers as the superintendent desires, and may take the 765
depositions of witnesses residing within or without the state in 766
the same manner as is prescribed by law for the taking of 767
depositions in civil actions in the court of common pleas, and 768
for that purpose the superintendent may, and upon the request of 769
an acquiring party shall, issue a subpoena for any witnesses or 770
a subpoena duces tecum to compel the production of any books, 771
records, or papers, directed to the sheriff of the county where 772
such witness resides or is found, which shall be served and 773
returned in the same manner as a subpoena in a criminal case is 774
served and returned. The fees of the sheriff shall be the same 775
as that allowed in the court of common pleas in criminal cases. 776
Witnesses shall be paid the fees and mileage provided for under 777
section 119.094 of the Revised Code. Fees and mileage shall be 778
paid from the fund in the state treasury for the use of the 779
superintendent in the same manner as other expenses of the 780
superintendent are paid. In any case of disobedience or neglect 781
of any subpoena served on any person or the refusal of any 782
witness to testify in any matter regarding which the witness may 783
lawfully be interrogated, the court of common pleas of any 784
county where such disobedience, neglect, or refusal occurs or 785
any judge thereof, on application by the superintendent, shall 786
compel obedience by attachment proceedings for contempt, as in 787
the case of disobedience of the requirements of a subpoena 788
issued from the court or a refusal to testify therein. 789

In any hearing held under this section, a record of the 790
testimony, as provided by stenographic means or by use of audio 791
electronic recording devices, as determined by the 792
superintendent, and other evidence submitted shall be taken at 793
the expense of the superintendent. The record shall include all 794
of the testimony and other evidence, and rulings on the 795

admissibility thereof, presented at the hearing. 796

The superintendent shall pass upon the admissibility of 797
evidence, but a party to the proceedings may at that time object 798
to the rulings of the superintendent, and if the superintendent 799
refuses to admit evidence, the party offering the evidence shall 800
proffer the evidence. The proffer shall be made a part of the 801
record of the hearing. 802

In any hearing held under this section, the superintendent 803
may call any person to testify under oath as upon cross- 804
examination. The superintendent, or any one delegated by the 805
superintendent to conduct a hearing, may administer oaths or 806
affirmations. 807

In any hearing under this section, the superintendent may 808
appoint a hearing officer to conduct the hearing; the hearing 809
officer has the same powers and authority in conducting the 810
hearing as is granted to the superintendent. The hearing officer 811
shall have been admitted to the practice of law in the state and 812
be possessed of any additional qualifications as the 813
superintendent requires. The hearing officer shall submit to the 814
superintendent a written report setting forth the hearing 815
officer's finding of fact and conclusions of law and a 816
recommendation of the action to be taken by the superintendent. 817
A copy of the written report and recommendation shall, within 818
seven days of the date of filing thereof, be served upon the 819
acquiring party or the acquiring party's attorney or other 820
representative of record, by personal service, certified mail, 821
electronic mail, or any other method designed to ensure and 822
confirm receipt of the report. The acquiring party may, within 823
three days of receipt of the copy of the written report and 824
recommendation, file with the superintendent written objections 825

to the report and recommendation, which objections the 826
superintendent shall consider before approving, modifying, or 827
disapproving the recommendation. The superintendent may grant 828
extensions of time to the acquiring party within which to file 829
such objections. No recommendation of the hearing officer shall 830
be approved, modified, or disapproved by the superintendent 831
until after three days following the service of the report and 832
recommendation as provided in this section. The superintendent 833
may order additional testimony to be taken or permit the 834
introduction of further documentary evidence. The superintendent 835
may approve, modify, or disapprove the recommendation of the 836
hearing officer, and the order of the superintendent based on 837
the report, recommendation, transcript of testimony, and 838
evidence, or the objections of the acquiring party, and 839
additional testimony and evidence shall have the same effect as 840
if the hearing had been conducted by the superintendent. No such 841
recommendation is final until confirmed and approved by the 842
superintendent as indicated by the order entered in the record 843
of proceedings, and if the superintendent modifies or 844
disapproves the recommendations of the hearing officer, the 845
reasons for the modification or disapproval shall be included in 846
the record of proceedings. 847

After the order is entered, the superintendent shall 848
transmit in the manner and by any of the methods set forth in 849
division (F)(2)(b) of this section a certified copy of the order 850
and a statement of the time and method by which an appeal may be 851
perfected. A copy of the order shall be mailed to the attorneys 852
or other representatives of record representing the acquiring 853
party. 854

(e) An order of disapproval issued by the superintendent 855
may be appealed to the court of common pleas ~~of Franklin county~~ 856

in accordance with section 119.12 of the Revised Code by filing 857
a notice of appeal with the superintendent and a copy of the 858
notice of appeal with the court, within fifteen calendar days 859
after the transmittal of the copy of the order of disapproval. 860
The notice of appeal shall set forth the order appealed from and 861
the grounds for appeal, in accordance with section 119.12 of the 862
Revised Code. 863

(3) The superintendent may retain at the acquiring party's 864
expense any attorneys, actuaries, accountants, and other experts 865
not otherwise a part of the superintendent's staff as may be 866
reasonably necessary to assist the superintendent in reviewing 867
the proposed acquisition of control. 868

(G) This section does not apply to either of the 869
following: 870

(1) Any transaction that is subject to section 3921.14, or 871
sections 3925.27 to 3925.31, 3941.35 to 3941.46, or section 872
3953.19 of the Revised Code; 873

(2) Any offer, request, invitation, agreement, or 874
acquisition that the superintendent by order exempts from this 875
section on either of the following bases: 876

(a) It has not been made or entered into for the purpose 877
and does not have the effect of changing or influencing the 878
control of a domestic insurer; 879

(b) It is not otherwise comprehended within the purposes 880
of this section. 881

(H) Nothing in this section or in any other section of 882
Title XXXIX of the Revised Code shall be construed to impair the 883
authority of the attorney general to investigate or prosecute 884
actions under any state or federal antitrust law with respect to 885

any merger or other acquisition involving domestic insurers. 886

(I) In connection with a proposed change of control 887
involving a depository institution or any affiliate thereof, 888
within the meaning of Title I, section 104(c) of the "Gramm- 889
Leach-Bliley Act," Pub. L. No. 106-102, 113 Stat. 1338 (1999), 890
and a domestic insurer, not later than sixty days after the date 891
of the notification of the proposed change in control submitted 892
pursuant to division (B) (2) of this section, the superintendent 893
shall make any determination that the person acquiring control 894
of the insurer shall maintain or restore the capital of the 895
insurer to the level required by the laws and regulations of 896
this state. 897

Sec. 3913.13. Any policyholder adversely affected by an 898
order of the superintendent of insurance pursuant to division 899
(F) of section 3913.11 of the Revised Code, may appeal to the 900
court of common pleas ~~of Franklin county~~ pursuant to section 901
119.12 of the Revised Code. 902

Sec. 3913.23. Any policyholder adversely affected by an 903
order of the superintendent of insurance pursuant to division 904
(F) of section 3913.21 of the Revised Code, may appeal to the 905
court of common pleas ~~of Franklin county~~ pursuant to section 906
119.12 of the Revised Code. 907

Sec. 5101.35. (A) As used in this section: 908

(1) (a) "Agency" means the following entities that 909
administer a family services program: 910

(i) The department of job and family services; 911

(ii) A county department of job and family services; 912

(iii) A public children services agency; 913

(iv) A private or government entity administering, in 914
whole or in part, a family services program for or on behalf of 915
the department of job and family services or a county department 916
of job and family services or public children services agency. 917

(b) If the department of medicaid contracts with the 918
department of job and family services to hear appeals authorized 919
by section 5160.31 of the Revised Code regarding medical 920
assistance programs, "agency" includes the department of 921
medicaid. 922

(2) "Appellant" means an applicant, participant, former 923
participant, recipient, or former recipient of a family services 924
program who is entitled by federal or state law to a hearing 925
regarding a decision or order of the agency that administers the 926
program. 927

(3) (a) "Family services program" means all of the 928
following: 929

(i) A Title IV-A program as defined in section 5101.80 of 930
the Revised Code; 931

(ii) Programs that provide assistance under Chapter 5104. 932
of the Revised Code; 933

(iii) Programs that provide assistance under section 934
5101.141, 5101.461, 5101.54, 5119.41, 5153.163, or 5153.165 of 935
the Revised Code; 936

(iv) Title XX social services provided under section 937
5101.46 of the Revised Code, other than such services provided 938
by the department of mental health and addiction services, the 939
department of developmental disabilities, a board of alcohol, 940
drug addiction, and mental health services, or a county board of 941
developmental disabilities. 942

(b) If the department of medicaid contracts with the 943
department of job and family services to hear appeals authorized 944
by section 5160.31 of the Revised Code regarding medical 945
assistance programs, "family services program" includes medical 946
assistance programs. 947

(4) "Medical assistance program" has the same meaning as 948
in section 5160.01 of the Revised Code. 949

(B) Except as provided by divisions (G) and (H) of this 950
section, an appellant who appeals under federal or state law a 951
decision or order of an agency administering a family services 952
program shall, at the appellant's request, be granted a state 953
hearing by the department of job and family services. This state 954
hearing shall be conducted in accordance with rules adopted 955
under this section. The state hearing shall be recorded, but 956
neither the recording nor a transcript of the recording shall be 957
part of the official record of the proceeding. Except as 958
provided in section 5160.31 of the Revised Code, a state hearing 959
decision is binding upon the agency and department, unless it is 960
reversed or modified on appeal to the director of job and family 961
services or a court of common pleas. 962

(C) Except as provided by division (G) of this section, an 963
appellant who disagrees with a state hearing decision may make 964
an administrative appeal to the director of job and family 965
services in accordance with rules adopted under this section. 966
This administrative appeal does not require a hearing, but the 967
director or the director's designee shall review the state 968
hearing decision and previous administrative action and may 969
affirm, modify, remand, or reverse the state hearing decision. 970
An administrative appeal decision is the final decision of the 971
department and, except as provided in section 5160.31 of the 972

Revised Code, is binding upon the department and agency, unless 973
it is reversed or modified on appeal to the court of common 974
pleas. 975

(D) An agency shall comply with a decision issued pursuant 976
to division (B) or (C) of this section within the time limits 977
established by rules adopted under this section. If a county 978
department of job and family services or a public children 979
services agency fails to comply within these time limits, the 980
department may take action pursuant to section 5101.24 of the 981
Revised Code. If another agency, other than the department of 982
medicaid, fails to comply within the time limits, the department 983
may force compliance by withholding funds due the agency or 984
imposing another sanction established by rules adopted under 985
this section. 986

(E) An appellant who disagrees with an administrative 987
appeal decision of the director of job and family services or 988
the director's designee issued under division (C) of this 989
section may appeal from the decision to the court of common 990
pleas pursuant to section 119.12 of the Revised Code. The appeal 991
shall be governed by section 119.12 of the Revised Code except 992
that: 993

~~(1) The person may appeal to the court of common pleas of 994
the county in which the person resides, or to the court of 995
common pleas of Franklin county if the person does not reside in 996
this state. 997~~

~~(2) The person may apply to the court for designation as 998
an indigent and, if the court grants this application, the 999
appellant shall not be required to furnish the costs of the 1000
appeal. 1001~~

~~(3)~~ (2) The appellant shall mail the notice of appeal to 1002
the department of job and family services and file notice of 1003
appeal with the court within thirty days after the department 1004
mails the administrative appeal decision to the appellant. For 1005
good cause shown, the court may extend the time for mailing and 1006
filing notice of appeal, but such time shall not exceed six 1007
months from the date the department mails the administrative 1008
appeal decision. Filing notice of appeal with the court shall be 1009
the only act necessary to vest jurisdiction in the court. 1010

~~(4)~~ (3) The department shall be required to file a 1011
transcript of the testimony of the state hearing with the court 1012
only if the court orders the department to file the transcript. 1013
The court shall make such an order only if it finds that the 1014
department and the appellant are unable to stipulate to the 1015
facts of the case and that the transcript is essential to a 1016
determination of the appeal. The department shall file the 1017
transcript not later than thirty days after the day such an 1018
order is issued. 1019

(F) The department of job and family services shall adopt 1020
rules in accordance with Chapter 119. of the Revised Code to 1021
implement this section, including rules governing the following: 1022

(1) State hearings under division (B) of this section. The 1023
rules shall include provisions regarding notice of eligibility 1024
termination and the opportunity of an appellant appealing a 1025
decision or order of a county department of job and family 1026
services to request a county conference with the county 1027
department before the state hearing is held. 1028

(2) Administrative appeals under division (C) of this 1029
section; 1030

(3) Time limits for complying with a decision issued under 1031
division (B) or (C) of this section; 1032

(4) Sanctions that may be applied against an agency under 1033
division (D) of this section. 1034

(G) The department of job and family services may adopt 1035
rules in accordance with Chapter 119. of the Revised Code 1036
establishing an appeals process for an appellant who appeals a 1037
decision or order regarding a Title IV-A program identified 1038
under division (A) (4) (c), (d), (e), (f), or (g) of section 1039
5101.80 of the Revised Code that is different from the appeals 1040
process established by this section. The different appeals 1041
process may include having a state agency that administers the 1042
Title IV-A program pursuant to an interagency agreement entered 1043
into under section 5101.801 of the Revised Code administer the 1044
appeals process. 1045

(H) If an appellant receiving medicaid through a health 1046
insuring corporation that holds a certificate of authority under 1047
Chapter 1751. of the Revised Code is appealing a denial of 1048
medicaid services based on lack of medical necessity or other 1049
clinical issues regarding coverage by the health insuring 1050
corporation, the person hearing the appeal may order an 1051
independent medical review if that person determines that a 1052
review is necessary. The review shall be performed by a health 1053
care professional with appropriate clinical expertise in 1054
treating the recipient's condition or disease. The department 1055
shall pay the costs associated with the review. 1056

A review ordered under this division shall be part of the 1057
record of the hearing and shall be given appropriate evidentiary 1058
consideration by the person hearing the appeal. 1059

(I) The requirements of Chapter 119. of the Revised Code 1060
apply to a state hearing or administrative appeal under this 1061
section only to the extent, if any, specifically provided by 1062
rules adopted under this section. 1063

Sec. 5164.38. (A) As used in this section: 1064

(1) "Party" has the same meaning as in division (G) of 1065
section 119.01 of the Revised Code. 1066

(2) "Revalidate" means to approve a medicaid provider's 1067
continued enrollment as a medicaid provider in accordance with 1068
the revalidation process established in rules authorized by 1069
section 5164.32 of the Revised Code. 1070

(B) This section does not apply to either of the 1071
following: 1072

(1) Any action taken or decision made by the department of 1073
medicaid with respect to entering into or refusing to enter into 1074
a contract with a managed care organization pursuant to section 1075
5167.10 of the Revised Code; 1076

(2) Any action taken by the department under division (D) 1077
(2) of section 5124.60, division (D)(1) or (2) of section 1078
5124.61, or sections 5165.60 to 5165.89 of the Revised Code. 1079

(C) Except as provided in division (E) of this section and 1080
section 5164.58 of the Revised Code, the department shall do any 1081
of the following by issuing an order pursuant to an adjudication 1082
conducted in accordance with Chapter 119. of the Revised Code: 1083

(1) Refuse to enter into a provider agreement with a 1084
medicaid provider; 1085

(2) Refuse to revalidate a medicaid provider's provider 1086
agreement; 1087

(3) Suspend or terminate a medicaid provider's provider agreement;	1088 1089
(4) Take any action based upon a final fiscal audit of a medicaid provider.	1090 1091
(D) Any party who is adversely affected by the issuance of an adjudication order under division (C) of this section may appeal to the court of common pleas of Franklin county in accordance with section 119.12 of the Revised Code.	1092 1093 1094 1095
(E) The department is not required to comply with division (C) (1), (2), or (3) of this section whenever any of the following occur:	1096 1097 1098
(1) The terms of a provider agreement require the medicaid provider to hold a license, permit, or certificate or maintain a certification issued by an official, board, commission, department, division, bureau, or other agency of state or federal government other than the department of medicaid, and the license, permit, certificate, or certification has been denied, revoked, not renewed, suspended, or otherwise limited.	1099 1100 1101 1102 1103 1104 1105
(2) The terms of a provider agreement require the medicaid provider to hold a license, permit, or certificate or maintain certification issued by an official, board, commission, department, division, bureau, or other agency of state or federal government other than the department of medicaid, and the provider has not obtained the license, permit, certificate, or certification.	1106 1107 1108 1109 1110 1111 1112
(3) The medicaid provider's application for a provider agreement is denied, or the provider's provider agreement is terminated or not revalidated, because of or pursuant to any of the following:	1113 1114 1115 1116

(a) The termination, refusal to renew, or denial of a 1117
license, permit, certificate, or certification by an official, 1118
board, commission, department, division, bureau, or other agency 1119
of this state other than the department of medicaid, 1120
notwithstanding the fact that the provider may hold a license, 1121
permit, certificate, or certification from an official, board, 1122
commission, department, division, bureau, or other agency of 1123
another state; 1124

(b) Division (D) or (E) of section 5164.35 of the Revised 1125
Code; 1126

(c) The provider's termination, suspension, or exclusion 1127
from the medicare program or from another state's medicaid 1128
program and, in either case, the termination, suspension, or 1129
exclusion is binding on the provider's participation in the 1130
medicaid program in this state; 1131

(d) The provider's pleading guilty to or being convicted 1132
of a criminal activity materially related to either the medicare 1133
or medicaid program; 1134

(e) The provider or its owner, officer, authorized agent, 1135
associate, manager, or employee having been convicted of one of 1136
the offenses that caused the provider's provider agreement to be 1137
suspended pursuant to section 5164.36 of the Revised Code; 1138

(f) The provider's failure to provide the department the 1139
national provider identifier assigned the provider by the 1140
national provider system pursuant to 45 C.F.R. 162.408. 1141

(4) The medicaid provider's application for a provider 1142
agreement is denied, or the provider's provider agreement is 1143
terminated or suspended, as a result of action by the United 1144
States department of health and human services and that action 1145

is binding on the provider's medicaid participation. 1146

(5) The medicaid provider's provider agreement and 1147
medicaid payments to the provider are suspended under section 1148
5164.36 or 5164.37 of the Revised Code. 1149

(6) The medicaid provider's application for a provider 1150
agreement is denied because the provider's application was not 1151
complete; 1152

(7) The medicaid provider's provider agreement is 1153
converted under section 5164.32 of the Revised Code from a 1154
provider agreement that is not time-limited to a provider 1155
agreement that is time-limited. 1156

(8) Unless the medicaid provider is a nursing facility or 1157
ICF/IID, the provider's provider agreement is not revalidated 1158
pursuant to division (B)(1) of section 5164.32 of the Revised 1159
Code. 1160

(9) The medicaid provider's provider agreement is 1161
suspended, terminated, or not revalidated because of either of 1162
the following: 1163

(a) Any reason authorized or required by one or more of 1164
the following: 42 C.F.R. 455.106, 455.23, 455.416, 455.434, or 1165
455.450; 1166

(b) The provider has not billed or otherwise submitted a 1167
medicaid claim for two years or longer. 1168

(F) In the case of a medicaid provider described in 1169
division (E)(3)(f), (6), (7), or (9)(b) of this section, the 1170
department may take its action by sending a notice explaining 1171
the action to the provider. The notice shall be sent to the 1172
medicaid provider's address on record with the department. The 1173

notice may be sent by regular mail. 1174

(G) The department may withhold payments for medicaid 1175
services rendered by a medicaid provider during the pendency of 1176
proceedings initiated under division (C)(1), (2), or (3) of this 1177
section. If the proceedings are initiated under division (C)(4) 1178
of this section, the department may withhold payments only to 1179
the extent that they equal amounts determined in a final fiscal 1180
audit as being due the state. This division does not apply if 1181
the department fails to comply with section 119.07 of the 1182
Revised Code, requests a continuance of the hearing, or does not 1183
issue a decision within thirty days after the hearing is 1184
completed. This division does not apply to nursing facilities 1185
and ICFs/IID. 1186

Section 2. That existing sections 119.12, 124.34, 956.11, 1187
956.15, 3794.09, 3901.321, 3913.13, 3913.23, 5101.35, and 1188
5164.38 of the Revised Code are hereby repealed. 1189

Section 3. Section 956.15 of the Revised Code as presented 1190
in this act takes effect on the later of October 9, 2021, or the 1191
effective date of this section. (October 9, 2021 is the 1192
effective date of an earlier amendment to that section by H.B. 1193
263 of the 133rd General Assembly.) 1194

Section 4. Section 119.12 of the Revised Code is presented 1195
in this act as a composite of the section as amended by both 1196
H.B. 52 and H.B. 64 of the 131st General Assembly. The General 1197
Assembly, applying the principle stated in division (B) of 1198
section 1.52 of the Revised Code that amendments are to be 1199
harmonized if reasonably capable of simultaneous operation, 1200
finds that the composite is the resulting version of the section 1201
in effect prior to the effective date of the section as 1202
presented in this act. 1203