

As Introduced

133rd General Assembly

Regular Session

2019-2020

H. B. No. 671

Representatives Abrams, Stephens

A BILL

To amend sections 101.35, 3709.20, 3709.21, and 1
3709.99 and to enact sections 9.79, 101.36, 2
3701.145, and 3709.212 of the Revised Code to 3
establish limits on certain public health orders 4
issued by boards of health and the Department of 5
Health, to prohibit a licensing authority from 6
taking disciplinary action against a licensee 7
for engaging in permitted activities during a 8
pandemic, and to declare an emergency. 9

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

Section 1. That sections 101.35, 3709.20, 3709.21, and 10
3709.99 be amended and sections 9.79, 101.36, 3701.145, and 11
3709.212 of the Revised Code be enacted to read as follows: 12

Sec. 9.79. (A) As used in this section: 13

(1) "License" means a valid authorization evidenced by a 14
license, certificate, registration, permit, card, or other 15
authority that is issued or conferred by a licensing authority 16
to a person by which the person has or claims the privilege to 17
do either of the following: 18

(a) Engage in a profession, occupation, or occupational 19

activity over which the licensing authority has jurisdiction; 20

(b) Operate a business or other enterprise over which the 21
licensing authority has jurisdiction. 22

(2) "Licensing authority" means a state agency or 23
political subdivision that issues licenses. 24

(3) "Pandemic event" means an emergency caused by a 25
pandemic of a contagious or infectious disease. 26

(4) "Political subdivision" means a county, township, 27
municipal corporation, or any other body corporate and politic 28
that is responsible for government activities in a geographic 29
area smaller than that of the state. 30

(5) "State agency" has the same meaning as in section 1.60 31
of the Revised Code. 32

(B) Notwithstanding any provision of the Revised Code to 33
the contrary, no licensing authority shall take any disciplinary 34
action with respect to a license against a license holder, 35
including suspending or revoking the license, because the 36
license holder does either of the following during a pandemic 37
event: 38

(1) Engages in a profession, occupation, or occupational 39
activity in which the license holder is lawfully permitted to 40
engage by holding the license; 41

(2) Operates a business or other enterprise that the 42
license holder is lawfully permitted to operate by holding the 43
license. 44

(C) Nothing in this section limits the ability of a 45
licensing authority to take disciplinary action with respect to 46
a license against a license holder for violation of any law or 47

ordinance or any rule adopted by the licensing authority that is 48
unrelated to engaging in a profession, occupation, or 49
occupational activity or operating a business or other 50
enterprise during a pandemic event. 51

Sec. 101.35. There is hereby created in the general 52
assembly the joint committee on agency rule review. The 53
committee shall consist of five members of the house of 54
representatives and five members of the senate. Within fifteen 55
days after the commencement of the first regular session of each 56
general assembly, the speaker of the house of representatives 57
shall appoint the members of the committee from the house of 58
representatives, and the president of the senate shall appoint 59
the members of the committee from the senate. Not more than 60
three of the members from each house shall be of the same 61
political party. In the first regular session of a general 62
assembly, the chairperson of the committee shall be appointed by 63
the speaker of the house from among the house members of the 64
committee, and the vice-chairperson shall be appointed by the 65
president of the senate from among the senate members of the 66
committee. In the second regular session of a general assembly, 67
the chairperson shall be appointed by the president of the 68
senate from among the senate members of the committee, and the 69
vice-chairperson shall be appointed by the speaker of the house 70
from among the house members of the committee. The chairperson, 71
vice-chairperson, and members of the committee shall serve until 72
their respective successors are appointed or until they are no 73
longer members of the general assembly. When a vacancy occurs 74
among the officers or members of the committee, it shall be 75
filled in the same manner as the original appointment. 76

Notwithstanding section 101.26 of the Revised Code, the 77
members, when engaged in their duties as members of the 78

committee on days when there is not a voting session of the 79
member's house of the general assembly, shall be paid at the per 80
diem rate of one hundred fifty dollars, and their necessary 81
traveling expenses, which shall be paid from the funds 82
appropriated for the payment of expenses of legislative 83
committees. 84

~~The~~ Except as otherwise provided in section 101.36 of the 85
Revised Code, the committee has the same powers as other 86
standing or select committees of the general assembly. Six 87
members constitute a quorum. The concurrence of six members is 88
required for the recommendation of a concurrent resolution 89
invalidating a proposed rule under section 106.021 of the 90
Revised Code. The concurrence of seven members is required for 91
the recommendation of a concurrent resolution invalidating an 92
existing rule under section 106.031 of the Revised Code. 93

When a member of the committee is absent, the president or 94
speaker, as the case may be, may designate a substitute from the 95
same house and political party as the absent member. The 96
substitute shall serve on the committee in the member's absence, 97
and is entitled to perform the duties of a member of the 98
committee. For serving on the committee, the substitute shall be 99
paid the same per diem and necessary traveling expenses as the 100
substitute would be entitled to receive if the substitute were a 101
member of the committee. 102

The president or speaker shall inform the executive 103
director of the committee of a substitution. If the executive 104
director learns of a substitution sufficiently in advance of the 105
meeting of the committee the substitute is to attend, the 106
executive director shall publish notice of the substitution on 107
the internet, make reasonable effort to inform of the 108

substitution persons who are known to the executive director to 109
be interested in rules that are scheduled for review at the 110
meeting, and inform of the substitution persons who inquire of 111
the executive director concerning the meeting. 112

The committee may meet during periods in which the general 113
assembly has adjourned. 114

At meetings of the committee, the committee may request an 115
agency, as defined in section 106.01 of the Revised Code, to 116
provide information relative to the agency's implementation of 117
its statutory authority. 118

A member of the committee, and the executive director and 119
staff of the committee, are entitled in their official 120
capacities to attend, but not in their official capacities to 121
participate in, a public hearing conducted by an agency on a 122
proposed rule. 123

The executive director serves at the pleasure of the 124
president and speaker by mutual consensus. The executive 125
director may employ such technical, professional, and clerical 126
employees as are necessary to carry out the powers and 127
administrative duties of the committee. 128

Sec. 101.36. The board of health of a city or general 129
health district may apply to the joint committee on agency rule 130
review as described in section 3709.212 of the Revised Code for 131
authority to make an order or regulation or to approve the 132
extension of an order or regulation. Notwithstanding any 133
contrary provision of section 101.35 of the Revised Code, a 134
majority vote of the joint committee, including the affirmative 135
vote of at least three members of the house of representatives 136
and at least three members of the senate, is required to grant 137

authority or approve an extension. The joint committee shall 138
determine the period of the extension, if any. 139

Sec. 3701.145. If the department of health makes a special 140
or standing order or rule for preventing the spread of 141
contagious or infectious diseases as described in section 142
3701.13 of the Revised Code, the order or rule shall not apply 143
to any of the following: 144

(A) The general assembly; 145

(B) The judiciary; 146

(C) A department or division, as defined in section 121.01 147
of the Revised Code; 148

(D) An office, as described in section 121.04 of the 149
Revised Code; 150

(E) A state correctional institution. 151

Sec. 3709.20. (A) The board of health of a city health 152
district may make such orders and regulations as are necessary 153
for its own government, ~~for~~ the public health, the prevention ~~of~~ 154
or restriction of disease other than an epidemic of a contagious 155
or infectious disease, and the prevention, abatement, or 156
suppression of nuisances. Orders and regulations not for the 157
government of the board, but intended for the general public, 158
shall be adopted, advertised, recorded, and certified as are 159
ordinances of municipal corporations and the record thereof 160
shall be given in all courts the same effect as is given such 161
ordinances. In cases of emergency caused by ~~epidemics of~~ 162
~~contagious or infectious diseases,~~ or conditions or events 163
endangering the public health other than epidemics of contagious 164
or infectious diseases, the board may declare such orders and 165
regulations to be emergency measures, and such orders and 166

regulations shall become effective immediately without such 167
advertising, recording, and certifying. 168

(B) In any hearing conducted by the board of health of a 169
city health district, general health district, or combined 170
health district, the board may appoint a referee or examiner to 171
conduct the hearing. In a hearing conducted by a board of health 172
of a city health district, a combined health district, or a 173
general health district at least one member of the board shall 174
be present. 175

The referee or examiner appointed to conduct the hearing 176
shall have the same powers and authority in conducting the 177
hearing as is granted to the board. The referee or examiner 178
shall have been admitted to the practice of law in the state and 179
be possessed of such additional qualifications as the board may 180
require. The referee or examiner shall submit to the board a 181
written report setting forth ~~his~~ the referee's or examiner's 182
findings of fact and conclusions of law and a recommendation of 183
the action to be taken by the board. A copy of such written 184
report and recommendation of the referee or examiner shall, 185
within five days of the date of filing thereof, be served upon 186
the party or ~~his~~ the party's attorney or other representative of 187
record, by certified mail. The party may, within ten days of 188
receipt of the copy of the written report or recommendation, 189
file with the board written objections to the report and 190
recommendation, which objections shall be considered by the 191
board before approving, modifying, or disapproving the 192
recommendation. The board may grant extensions of time to the 193
party within which to file such objections. 194

No recommendation of the referee or examiner shall be 195
approved, modified, or disapproved by the board until ten days 196

after the service of the report and recommendation as provided 197
in this section. The board may order additional testimony to be 198
taken or permit the introduction of further documentary 199
evidence. No recommendation shall be final until approved by a 200
quorum of the entire board as indicated by an order on its 201
record of proceedings. 202

Sec. 3709.21. The board of health of a general health 203
district may make such orders and regulations as are necessary 204
for its own government, ~~for the public health, the prevention or~~ 205
restriction of disease other than an epidemic of a contagious or 206
infectious disease, and the prevention, abatement, or 207
suppression of nuisances. Such board may require that no human, 208
animal, or household wastes from sanitary installations within 209
the district be discharged into a storm sewer, open ditch, or 210
watercourse without a permit therefor having been secured from 211
the board under such terms as the board requires. All orders and 212
regulations not for the government of the board, but intended 213
for the general public, shall be adopted, recorded, and 214
certified as are ordinances of municipal corporations and the 215
record thereof shall be given in all courts the same effect as 216
is given such ordinances, but the advertisements of such orders 217
and regulations shall be by publication in a newspaper of 218
general circulation within the district. Publication shall be 219
made once a week for two consecutive weeks or as provided in 220
section 7.16 of the Revised Code, and such orders and 221
regulations shall take effect and be in force ten days from the 222
date of the first publication. In cases of emergency caused by 223
~~epidemics of contagious or infectious diseases, or conditions or~~ 224
events endangering the public health other than epidemics of 225
contagious or infectious diseases, the board may declare such 226
orders and regulations to be emergency measures, and such orders 227

and regulations shall become effective immediately without such 228
advertising, recording, and certifying. 229

Sec. 3709.212. (A) Subject to divisions (B) and (C) of 230
this section, in the case of an emergency caused by an epidemic 231
of a contagious or infectious disease, the board of health of a 232
city or general health district may make any order or regulation 233
as is necessary for the prevention or restriction of disease, 234
including one that establishes a quarantine or isolation. 235

(B)(1) Except as provided in division (B)(2) of this 236
section, the board shall not make an order or regulation under 237
this section if either an order or rule was issued or a 238
quarantine or isolation was established by the department of 239
health under section 3701.13 of the Revised Code for the same 240
epidemic. 241

(2) The board may make an order or regulation if the joint 242
committee on agency rule review grants the board authority to do 243
so as described in section 101.36 of the Revised Code. Such an 244
order or regulation shall be effective for not more than 245
fourteen days, unless extended in accordance with section 101.36 246
of the Revised Code. 247

(C) In the event the department of health has not issued 248
an order or rule regarding the same subject matter or 249
established a quarantine or isolation under section 3701.13 of 250
the Revised Code for the same epidemic, the board may make an 251
order or regulation. Such order or regulation shall be effective 252
for not more than fourteen days, unless extended in accordance 253
with section 101.36 of the Revised Code. 254

(D) For purposes of this section, an order or regulation 255
is considered to exceed a fourteen-day effective period if the 256

order or regulation states that it is effective for more than 257
fourteen days or if the substance of the order or regulation is 258
contained in multiple subsequently issued orders or regulations 259
with a combined effective period that exceeds fourteen days. 260

(E) In the event an order or regulation made under 261
division (B) or (C) of this section will result in the closure 262
of a business, the board shall notify the business of that fact. 263
The business may appeal the order or regulation to the court of 264
common pleas for the county in which the city health district is 265
located, or, in the case of a general health district, the 266
common pleas court for the most populous county of the health 267
district. The court shall hear the appeal within forty-eight 268
hours of its filing. 269

When considering such an appeal, the court shall weigh 270
both of the following factors: 271

(1) Whether there is clear and convincing evidence that 272
the epidemic significantly endangers the public health; 273

(2) Whether the board has considered more than one means 274
for addressing the epidemic and if the order or regulation was 275
in fact the least restrictive of those means. 276

Should a business prevail on appeal, the court shall award 277
attorney's fees to the business. Such fees are to be paid by the 278
board. 279

(F) An order or regulation made under division (B) or (C) 280
of this section shall not apply to any of the following: 281

(1) The general assembly; 282

(2) The judiciary; 283

(3) A department or division, as defined in section 121.01 284

<u>of the Revised Code;</u>	285
<u>(4) An office, as described in section 121.04 of the</u>	286
<u>Revised Code;</u>	287
<u>(5) A state correctional institution.</u>	288
Sec. 3709.99. (A) Whoever violates section 3709.20,	289
3709.21, or 3709.22 of the Revised Code or any order or	290
regulation of the board of health of a city or general health	291
district adopted in pursuance of those sections, or whoever	292
interferes with the execution of an order or regulation of that	293
nature by a member of the board or person authorized by the	294
board, shall be fined not more than one hundred dollars or	295
imprisoned not more than ninety days, or both. No person shall	296
be imprisoned for the first offense, and the prosecution shall	297
always be for a first offense unless the affidavit upon which	298
the prosecution is instituted contains the allegation that the	299
offense is a subsequent offense.	300
(B) Except in case of an emergency endangering the public	301
health caused by an epidemic, an infectious or a communicable	302
disease, or a disaster emergency condition or event <u>unrelated to</u>	303
<u>an epidemic or infectious or communicable disease,</u> no	304
prosecution for a violation of any regulation or order adopted	305
pursuant to section 3709.20, 3709.21, or 3709.22 of the Revised	306
Code shall take place until twenty days after the board of	307
health of a city or general health district has notified the	308
person subject to the regulation or order of the specific	309
violation alleged. Any person notified by the board of a	310
violation of any regulation or order of that nature may file an	311
action for declaratory judgment pursuant to Chapter 2721. of the	312
Revised Code to have determined whether the regulation or order	313
is unreasonable or unlawful. No prosecution of that nature shall	314

be commenced when, within the twenty-day period described in 315
this division, the violation has been corrected. No prosecution 316
of that nature shall be commenced until a declaratory judgment 317
of that nature has been given. 318

(C) Whoever violates an order or regulation adopted in 319
accordance with section 3709.212 of the Revised Code shall be 320
fined not more than one hundred dollars. 321

Section 2. That existing sections 101.35, 3709.20, 322
3709.21, and 3709.99 of the Revised Code are hereby repealed. 323

Section 3. This act is hereby declared to be an emergency 324
measure necessary for the immediate preservation of the public 325
peace, health, and safety. The reason for such necessity is to 326
ensure the rapid recovery of Ohio businesses currently impacted 327
by public health orders that resulted in the closure of those 328
businesses. Therefore, this act shall go into immediate effect. 329