



Bill Analysis

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Legislative Service Commission

H.B. 40*

125th General Assembly
(As Introduced)

Rep. Calvert

BILL SUMMARY

- Increases the state tax on cigarettes from 55¢ per pack (2-3/4¢ per cigarette) to \$1 per pack (5¢ per cigarette), beginning March 1, 2003.
- Doubles the state tax rates on beer, wine, liquor, and other alcoholic beverages.
- Provides that direct payment permit holders and vendors that are required to pay sales taxes by electronic funds transfer, and sellers and consumers that must pay use taxes in the same manner, are required to pay those taxes on or before four dates each month.
- Allows the Tax Commissioner to impose a charge for failure to make a payment under this accelerated schedule.
- Permits the Director of Job and Family Services to prescribe the amount, duration, and scope of publicly funded child day-care benefits in rules establishing eligibility criteria.
- Provides that, when anticipated future expenditures will exceed available funds, existing participants with income above a percentage specified in an order the Director issues may be disenrolled and eligibility for new participants may be limited to those with income above or below the specified percentage.

* *This analysis does not address appropriations, fund transfers, and similar provisions. See the Legislative Service Commission's Fiscal Note for H.B. 40 for an analysis of such provisions.*

- No longer exempts a caretaker parent in need of special needs day-care from the requirement that the parent be employed or participating in an education or training program.
- Provides that a caretaker parent must comply with the requirement that changes in employment or participation in an education or training program be reported not later than ten calendar days after the change occurs.
- Requires the Director to adopt rules establishing reimbursement ceilings for publicly funded child day-care, rather than rules establishing reimbursement rates.
- Requires a provider to be paid at the lowest of the provider's customary charges, the reimbursement ceiling set by rules, or a rate the county department of job and family services negotiates with the provider.
- Eliminates a requirement that a provider of day-care to children of caretaker parents who work nontraditional hours be paid at the reimbursement rate set by rule regardless of whether that is higher than the provider's customary charge.
- Eliminates a county department of job and family services' authority to request a waiver of the reimbursement ceiling when a family has special circumstances or there are unique market conditions.
- Requires the Director to set the reimbursement ceiling for a type B family day-care home provider that has limited certification and provides day-care to children who have the same caretaker parent at 60% of the ceiling for fully certified type B family day-care homes.
- Specifies that any information received or created by ODJFS pursuant to negotiation of a drug rebate agreement or supplemental drug rebate agreement under the Medicaid program or the Disability Medical Assistance Program is confidential and is not a public record.
- Modifies the expenditure guidelines utilized by the Department of Youth Services in allocating appropriations for the care and custody of felony delinquents.

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CONTENT AND OPERATION

Cigarette tax increase

(R.C. 5743.02 and 5743.32; Section 11)

The state currently imposes a tax on cigarettes at the rate of 2.75¢ per cigarette (27.5 mills), which is equivalent to 55¢ per pack of 20 cigarettes. Revenue from the tax is paid into the General Revenue Fund. The tax is payable by wholesale and retail dealers, generally by the purchase of tax stamps that must be affixed to cigarette packages. (A "use" tax also is levied at the same rate on cigarettes purchased by consumers and on which a dealer has not yet paid the Ohio tax.)

The bill increases the total tax to 5¢ per cigarette, or \$1 per pack of 20 cigarettes.

The increased rate takes effect March 1, 2003, and applies to cigarettes on hand (i.e., in a dealer's inventory or not yet sold) on that date. In order for the increase to be collected for "on hand" cigarette stocks, the bill requires dealers to report and pay the additional tax on those cigarettes. The report and payment of the additional tax is due May 31, 2003. Dealers also must pay the increase for stamps they previously purchased but have not yet affixed to packages. A penalty and interest are imposed for each day a dealer is late in paying the increase for on hand cigarettes and not-yet-used stamps; the penalty equals \$50 or 10% of the amount of tax due, whichever is greater. The state may enforce payment of the additional "on hand" tax (and penalty and interest, if they apply) by assessment. If

a dealer is assessed for a deficiency that was not in fact due, the dealer is entitled to a refund of any resulting overpayment, plus interest.

The bill affects only the rate of the state tax on cigarettes; it does not affect the rate at which counties are permitted to tax cigarettes, or the rate of the tax on tobacco products other than cigarettes.

The bill does not disturb the temporary payment option for cigarette dealers that was enacted when the cigarette tax was increased in 2002 (Am. Sub. S.B. 261, Section 3(D)). The payment option allows dealers to purchase cigarette tax stamps at the pre-increase rate (then 24¢ per pack), and pay the increased tax within 30 days. The payment option expires April 30, 2003, so it appears to apply as well to tax stamps purchased between March 1 (the effective date of the bill's tax increase) and April 30, 2003, meaning that dealers could purchase tax stamps at the rate of 24¢ per pack until April 30, and pay the additional 76¢ within 30 days.

Beer, wine, and liquor tax increase

(R.C. 4301.12, 4301.42, 4301.43, and 4305.01)

The bill doubles the state tax rates on beer, wine, liquor, and other alcoholic beverages. Most of the revenue from the taxes is credited to the General Revenue Fund. A small portion of revenue from the tax on wine, vermouth, and sparkling wine is credited to the Ohio Grape Industries Fund to encourage Ohio's grape industry: until June 30, 2003, three cents per gallon is credited to that fund; after that date, one cent per gallon is credited to that fund.

The tax rates are increased as follows:

Beverage	Current rate	Proposed rate
Spirituous liquor	\$3.38/gal.	\$6.76/gal.
Beer (12 oz. or less)	0.14¢/oz.	0.28¢/oz.
Beer (more than 12 oz)	0.84¢/six oz.	\$1.68/six oz.
Beer (barrel)	\$5.58/bl.	\$11.16/bl.
Wine (up to 14% alc.)	30¢/gal.	60¢/gal.
Wine (14% to 21% alc.)	98¢/gal.	\$1.96/gal.
Vermouth	\$1.08/gal.	\$2.16/gal.
Sparkling wine	\$1.48/gal.	\$2.96/gal.
Bottled mixed beverages	\$1.20/gal.	\$2.40/gal.
Cider	24¢/gal.	48¢/gal.

The bill does not affect the rate of the permissive tax that some counties may levy on beer, wine, liquor, and other alcoholic beverages.

Accelerate sales and use tax payments

(R.C. 5739.031, 5739.032, 5739.12, 5739.122, 5739.21, 5741.03, 5741.12, and 5741.121; Sections 3, 4, and 5)

Under continuing law, a direct payment permit holder, vendor, seller, or consumer pays sales and use taxes by electronic funds transfer (EFT) if the total amount of tax required to be paid by it in 2000 or thereafter equaled or exceeded \$60,000. The bill provides that direct payment permit holders and vendors that pay sales taxes by EFT, and sellers and consumers that pay use taxes in the same manner, must make their sales or use tax payments four times a month, according to the following schedule:

Entity paying sales or use tax by EFT	Required monthly payment dates	Amounts to be paid on or before the date
Direct payment permit holders and consumers	11th, 18th, and 25th	Pay ¼ of total tax liability for the same month in the <i>preceding</i> calendar year.
	23rd	Pay taxes due for the previous month minus amounts already paid for that month.
Vendors and sellers	11th	Pay taxes collected during the first 7 days of the month.
	18th	Pay taxes collected on the 8th through 14th day of the month.
	25th	Pay taxes collected on the 15th through the 21st day of the month.
	In lieu of this method, may remit taxes in same manner as direct payment permit holders.	
	23rd	Pay taxes collected for the previous month minus amounts already paid for that month under either method.



For failure to make a payment as required by this schedule, the bill permits the Tax Commissioner to impose an additional charge of up to 5% of the unpaid amount. If taxes are required to be paid by EFT, but are not, the Commissioner may impose a charge not to exceed the lesser of 5% of the amount required to be paid by EFT or \$5,000. Under existing law, the charge must equal 5% of the amount required to be paid by EFT, but cannot exceed \$5,000.

Since tax payments are accelerated under the above schedule, resulting in some payments being made without tax reports or returns accompanying them, the bill provides that the Commissioner may return taxes to the county or transit authority levying them, based on billings and assessments received, or shown on tax returns or reports filed, during the month.

The bill further provides that the Commissioner may require a vendor that operates from multiple locations or has multiple vendor's licenses to report all sales tax liability on one consolidated return. In determining whether the amount of that vendor's total sales tax payment equals or exceeds the \$60,000 threshold for triggering payment by EFT, the bill provides that the vendor's total tax liability for the previous calendar year for all of the vendor's locations or licenses is the amount to be used in determining whether the threshold is met.

Eligibility for publicly funded child day-care

(R.C. 5104.30, 5104.38, 5104.382, and 5104.39)

Continuing law designates the Department of Job and Family Services (ODJFS) as the state agency responsible for the administration and coordination of federal and state funding for publicly funded child day-care in Ohio. Under current law, the following categories of persons are to be provided publicly funded child day-care:

(1) Participants in the Ohio Works First Program;¹

(2) An assistance group that ceases to participate in Ohio Works First. This category of publicly funded child day-care is called "transitional child day-care" and is to be provided for a maximum 12-month period during which (a) the assistance group requires day-care due to employment and (b) the assistance group's income does not exceed 150% of the federal poverty guidelines. An assistance group ineligible for Ohio Works First due to receipt of fraudulent assistance or a sanction for failure or refusal to comply in full with a provision of a self-sufficiency contract is not eligible for transitional child day-care.

¹ *Ohio Works First is the state's cash assistance program for low income children and their caretaker parents.*

(3) An individual who would be participating in Ohio Works First if not for a sanction for failure or refusal to comply in full with a provision of a self-sufficiency contract and who continues to participate in a work activity, developmental activity, or alternative work activity pursuant to an assignment by the county department of job and family services.

(4) A family receiving publicly funded child day-care on October 1, 1997, until the family's income reaches 150% of the federal poverty guidelines.

(5) Subject to available funds, individuals who meet eligibility requirements established by ODJFS rules. The rules must give priority to families with lower incomes and must specify the maximum amount of income a family may have for initial eligibility and continued eligibility, which cannot exceed 200% of the federal poverty guidelines.

Under the bill, ODJFS is permitted to prescribe the amount, duration, and scope of benefits available as publicly funded child day-care.

ODJFS is required by existing law to establish a procedure to monitor county expenditures to ensure that they do not exceed federal and state funds available for publicly funded child day-care. If ODJFS determines that expenditures will exceed funds, it must notify the county departments of job and family services and issue and implement an administrative order that specifies priorities for expending the remaining funds and instructions and procedures to be used by the county departments. The order may suspend new enrollment or limit new enrollment to those with incomes below a specified percentage of the federal poverty guidelines, but it may not otherwise narrow eligibility standards established by statute. The bill eliminates the restriction that the order not otherwise narrow eligibility standards established by statute. The department is not restricted to limiting new enrollment to participants with income below a specified percentage of the federal poverty guidelines but rather may limit new enrollment to participants with income above or below the specified percentage. The bill also provides that in addition to suspending or limiting enrollment of new participants, the order may disenroll existing participants with income above a specified percentage of the federal poverty guidelines.

Special needs day-care no longer exempt from work requirement

(R.C. 5104.01(NN) and 5104.34)

Under existing law, to be eligible for publicly funded child day-care, the caretaker parent must be employed or participating in a program of education or training, unless the family's children are eligible for protective or special needs

day-care.² The bill eliminates the exemption for families in need of special needs day-care.

Report of change in employment status

(R.C. 5104.34)

Current law requires a caretaker parent receiving publicly funded child day-care to report to the entity that determined eligibility any change in employment status or participation in a program of education or training. The bill requires that information to be reported not later than ten calendar days after the change occurs.

Reimbursement for publicly funded child day-care

(R.C. 5104.04, 5104.30, 5104.32, and 5104.35)

ODJFS is required to adopt rules establishing a procedure for determining rates of reimbursement for providers of publicly funded child day-care. For the purpose of establishing reimbursement rates, ODJFS must collect information concerning the amounts the provider charges. ODJFS is permitted to establish different rates based on the geographic location of the provider, type of care provided, age of the child served, special needs of the child, whether expanded hours of service are provided, whether weekend service is provided, whether the provider has exceeded the minimum requirements of state law and rules governing child day-care, and any other factors ODJFS considers appropriate. ODJFS must establish an enhanced rate of reimbursement for providers who provide child day-care for caretaker parents who work nontraditional hours.

Providers are reimbursed at the lower of the rate the provider customarily charges or the reimbursement rate established by ODJFS. If the provider provides day-care to parents who work nontraditional hours, however, the provider is reimbursed at the ODJFS reimbursement rate even if the rate the provider customarily charges is lower than the reimbursement rate. A county department of job and family services may request a waiver of the maximum reimbursement rate for the purpose of paying a higher rate for day-care based on the special needs of the child, the special circumstances of a family, or unique day-care market conditions.

² "Caretaker parent" means the father or mother of a child, a person who has legal custody of a child, a guardian of the child, and any other person who stands in loco parentis with respect to the child. "Special needs day-care" means publicly funded child day-care that is provided for a child who is physically or developmentally handicapped, mentally retarded, or mentally ill. (R.C. 5104.01(E) and(NN).)

Under the bill, ODJFS is required to adopt rules establishing reimbursement ceilings, rather than reimbursement rates. Regardless of whether the provider provides care during nontraditional hours, the provider is to be reimbursed at the lowest of (1) the provider's customary charge, (2) the reimbursement ceiling established by ODJFS, or (3) a rate the county department negotiates with the provider. The bill eliminates a county department's authority to request a waiver of the reimbursement ceiling due to special circumstances of the family or unique day-care market conditions.

Reimbursement of type B day-care homes with limited certification

(R.C. 5104.30)

Current law provides that a type B family day-care home is eligible for reimbursement under the publicly funded child day-care program if the home is certified by the county department of job and family services.³ Eligibility for public funds extends to type B homes with limited certification, which is granted to day-care providers who provide care only for their relatives or only for the children of one parent. Under current law that establishes maximum reimbursement rates for publicly funded day-care, type B homes with limited certification are reimbursed at the greater of (1) the rate that was in effect for the home on October 1, 1997, or (2) 75% of the rate paid to homes with full certification. Under the bill, type B homes with limited certification that provide care to relatives are to be reimbursed at 75% of the reimbursement ceiling that applies to homes with full certification. Type B homes with limited certification that provide care to children of the same caretaker parent are to be reimbursed at 60% of the reimbursement ceiling that applies to homes with full certification.

Confidentiality of drug rebate negotiation information

(R.C. 5101.31)

Background

The federal Omnibus Budget Reconciliation Act of 1990 requires manufacturers of drugs used in state Medicaid programs to enter into national rebate agreements with the U.S. Department of Health and Human Services. In addition, states may negotiate their own rebate agreements, called supplemental rebates, with drug manufacturers. The supplemental rebate to the state is not necessarily received in the form of cash. It can come in the form of other services, such as disease management programs.

³ A type B family day-care home may provide child day-care to one to six children at one time if not more than three of the children are under age two.

Senate Bill 261 of the 124th General Assembly

Ohio participates in the federal rebate program. Ohio is also in the process of establishing a supplemental rebate program separate from the federal program. Senate Bill 261 of the 124th General Assembly authorized ODJFS to establish by administrative rule and implement a supplemental drug rebate program. Under the program, drug manufacturers may be required to provide ODJFS a supplemental rebate as a condition of having the manufacturer's products covered by the Medicaid program without prior authorization.⁴ S.B. 261 also states that supplemental rebates may be either of the following: (1) one or more cash payments by a drug manufacturer to ODJFS or (2) one or more services a drug manufacturer performs that are guaranteed to produce savings to the Medicaid program within one year of the date the Director enters into a supplemental drug rebate agreement with the manufacturer or by another date negotiated by the Director and manufacturer. The act provides examples of services that drug manufacturers may perform, including disease management, drug product donations, drug utilization control, prescriber and beneficiary counseling and education, and fraud and abuse prevention initiatives. (R.C. 5111.082.)

Confidentiality provisions

Under the bill, any information received or created by ODJFS pursuant to negotiation of a drug rebate agreement or a supplemental drug rebate agreement under the Medicaid program or the Disability Medical Assistance Program is confidential and is not a public record.

Allocation of appropriations for the care and custody of felony delinquents

(R.C. 5139.41)

Under current law, the Department of Youth Services is required to develop a formula for each year of a biennium for allocating the appropriations made to the Department for the care and custody of felony delinquents. The formula is to be developed in accordance with specified guidelines, including the utilization of a certain amount of the appropriation for the Contingency Program, for operational costs of specified facilities, and for the Felony Delinquent Care and Custody Program.

The bill provides that, if the Department's appropriation for a fiscal year is subsequently revised, the Department may adjust the amounts that have been allocated under the formula.

⁴ A drug subject to prior authorization is covered by Medicaid only if ODJFS authorizes a pharmacist to dispense it to a particular Medicaid recipient.

Existing law regarding the formula also specifies that, of the amount that must be utilized for the Felony Delinquent Care and Custody Program *for fiscal years 2002 and 2003*, the total number of beds available to all counties via public safety beds and county allocations cannot be less than the total beds used by all the counties during fiscal year 2000 funded by care and custody chargebacks and as public safety beds. The bill eliminates this statutory minimum on the total number of beds available to all counties via public safety beds and county allocations for fiscal years 2002 and 2003.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	---	---

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