



Ohio Legislative Service Commission

Bill Analysis

Jeff Grim

Sub. H.B. 229*

129th General Assembly

(As Reported by S. Agriculture, Environment, and Natural Resources)

Reps. Buchy, Hall, Derickson, Thompson, Maag, Boose, R. Adams, Hayes, Ruhl, Balderson, Amstutz, Baker, Barnes, Beck, Blair, Blessing, Bubp, Combs, Duffey, Garland, Hackett, C. Hagan, Henne, Johnson, Kozlowski, Lundy, Mallory, McClain, McGregor, Murray, Newbold, O'Brien, Peterson, Rosenberger, Schuring, Sears, Slaby, Stebelton, Weddington, Young, Batchelder

BILL SUMMARY

Concentrated animal feeding facilities

- Requires an applicant for a permit to install to construct or expand a concentrated animal feeding facility to submit a notarized affidavit regarding township and county infrastructure improvements with the application, rather than written statements from the board of township trustees and board of county commissioners regarding those improvements, if either board does not provide the written statement within 75 days of receiving notification from the applicant.

Sales of seed

- Authorizes the owner or custodian of a lot of seed to appeal a stop-sale order issued by the Director of Agriculture or the Director's designee.

Livestock feeds

- Excludes drugs and negligible amounts of feed added to drugs to facilitate their administration from regulation under the Livestock Feeds Law.
- Authorizes a manufacturer or distributor of commercial feed to appeal an order from the Director to withdraw from distribution any lot of commercial feed that the

* This analysis was prepared before the report of the Senate Agriculture, Environment, and Natural Resources Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

Director believes is offered or exposed for distribution or distributed in violation of the Livestock Feeds Law.

Ohio Grape Industries Committee

- Eliminates the requirement that no less than 30% of the money in the Ohio Grape Industries Fund be expended by the existing Ohio Grape Industries Committee for specified purposes, including the marketing of grapes and grape products, but retains a 70% cap on those expenditures.
- Authorizes the Committee, for the purpose of promoting the grape industry, to provide to producers and persons that grow grapes in Ohio grape plants, grape vines, equipment, and material to assist in the production of grapes and grape products.

Disposal of dead animals

- Adds dissolution by alkaline hydrolysis to the existing forms of disposal that an owner must use when disposing of a dead animal.

Small livestock dealers, dealers, and brokers

- Exempts an applicant for a license as a poultry dealer or broker from financial responsibility requirements.
- Prohibits a licensed livestock dealer or broker from employing a person whose dealer's or broker's license was revoked or is suspended.
- Eliminates a requirement that a licensed livestock dealer or broker appear at a hearing before the Director or the Director's designee before the licensee can employ a person who, as a dealer or broker, previously defaulted on contracts pertaining to the purchase, exchange, or sale of livestock.
- Eliminates a similar requirement regarding a licensed small livestock dealer or broker.
- Authorizes the Director to refuse to grant or suspend a small livestock dealer's, dealer's, or broker's license, without prior hearing, after determining that there is reasonable cause to believe that the applicant has had another such license suspended or revoked.

Disfigurement of horse tails

- Revises the existing prohibition regarding the pulling out of hairs of the foretop, mane, or wither of a horse, and allows the cutting or amputation of the dock or tail of a horse when necessary to prevent injury.

Amusement ride safety

- Generally applies the Amusement Rides Law to inflatable devices.
- Adds that designees of the Director of Agriculture and the General Manager of the Ohio State Fair may serve on the Council on Amusement Ride Safety, and revises the expiration date of terms of office for Council members.
- Exempts rock climbing walls from the Amusement Rides Law, and adds additional exemptions to that Law, including devices that are regulated by other state and federal agencies.

Retail food establishments

- Revises the exemption from retail food establishment licensure for certain nonprofit organizations that raise funds by selling foods.

Horse races conducted by agricultural societies

- Requires horse races that are conducted by an agricultural society to be conducted at the society's fairgrounds or, with the approval of the Director of Agriculture, at a track designated by the agricultural society in the applicable county.
- Authorizes the horse races to be transferred to a suitable track with the approval of the Director if the horse races cannot be contested due to unfavorable weather or another cause.
- Requires an agricultural society to return money received from the Ohio Fairs Fund for scheduled races that were not conducted.

Division name changes

- Changes the names of three divisions and creates a new division, Division of Livestock Environmental Permitting, in the Department of Agriculture.

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CONTENT AND OPERATION

Overview

The bill makes changes to provisions in various laws relating to agriculture. Those laws govern concentrated animal feeding facilities, seed, livestock feeds, the Ohio grape industries, animal diseases, livestock dealers and brokers, animal cruelty, amusement ride safety, retail food establishments, and certain horse races. Additionally, the bill changes the names of several divisions and creates a new division in the Department of Agriculture and correspondingly renames one fund.

Concentrated animal feeding facilities

Current law

Currently, the Department of Agriculture regulates animal feeding facilities, concentrated animal feeding facilities (CAFF), and concentrated animal feeding operations under the Concentrated Animal Feeding Facilities Law. That Law includes requirements for the issuance of permits to install, permits to operate, and National

Pollutant Discharge Elimination System permits; requirements regarding insect and rodent control plans; requirements for the issuance of livestock manager certifications; and requirements and procedures governing enforcement of that Law.

Under the Concentrated Animal Feeding Facilities Law, a person who proposes to establish a new major CAFF or to expand an existing CAFF under specified circumstances must provide written notification to the board of county commissioners of the county and the board of township trustees of the township in which a proposed new or expanded facility is or is to be located. Current law establishes specified requirements and procedures regarding a board's responsibilities for reviewing a CAFF's possible impact on local infrastructure, making recommendations for improvements to minimize that impact, and providing a written statement certifying that the board and the person have come to an agreement regarding the improvements. The requirements are identical for county commissioners and township trustees. A board's statement must be filed with an application for a permit to install for the modification of an existing or construction of a new CAFF.

The bill

Under the bill, if a board fails to prepare a written, dated statement as discussed above within 75 days of receiving the initial written notification by certified mail from the person proposing to establish or expand a CAFF, the person instead must file with the application for a permit to install for the facility a notarized affidavit declaring that the person has met the criteria established in current law and that a written, dated statement was not received by the person from the board.¹

As a result of the bill's addition of the notarized affidavit provision, the bill revises the information that must be submitted by an applicant for a permit to install. Thus, with regard to the requirements governing township and county infrastructure, an applicant must submit one of the following:

(1) A written statement from the board of township trustees of the township, board of county commissioners of the county, or both, if applicable, in which the CAFF would be located certifying that the applicant has provided the board with the required written notification and that final recommendations were selected regarding improvements, if any, to township or county infrastructure that are needed as a result of the new or expanded CAFF and the costs of those improvements as provided under existing law; or

¹ R.C. 307.204(F)(2) and 505.266(F)(2).

(2) A notarized affidavit declaring that the applicant has met the criteria established in current law regarding improvements to township or county infrastructure, if any, and that a written, dated statement from the board of township trustees, board of county commissioners, or both, if applicable, was not received by the applicant.²

Sales of seed

The bill authorizes the owner or custodian of a lot of seed for which the Director of Agriculture or the Director's designee has issued a stop-sale order to appeal the order in accordance with the Administrative Procedure Act. Currently, a stop-sale order may be issued by the Director or the Director's designee if it has been found that a lot of seed is in violation of the Seed Law or any rules adopted under it. The seed may be released if certain requirements are met.³

Livestock feeds

Drugs in commercial feed

Under the Livestock Feeds Law, a person who manufactures commercial feed or customer-formula feed or whose name appears on the label of a feed as the distributor must register with the Director in order to distribute commercial feed in Ohio. Commercial feed and customer-formula feed must be labeled with certain information, including net weight of the contents and the common name of ingredients. Generally, the first distributor of commercial feed must pay to the Director a semiannual inspection fee of 25¢ per ton. That distributor also must file a semiannual report on the number of net tons of commercial feed distributed in Ohio. For purposes of the enforcement of the Livestock Feeds Law and rules adopted under it, the Director or the Director's agent may take samples of commercial feed and inspect records of commercial feed distributors.⁴

For purposes of the Livestock Feeds Law, the bill specifies that "commercial feed" or "feed" does not include either of the following:

(1) Drugs that are not incorporated into feed and that are not distributed to be mixed in feed; or

² R.C. 903.02(A)(4) and (5).

³ R.C. 907.11(C).

⁴ R.C. Chapter 923.

(2) Negligible amounts of feed ingredients added to a drug solely for the purpose of facilitating administration of the drug to an animal.⁵

Currently, "commercial feed" generally means all materials, except unmixed whole seeds or physically altered entire unmixed seeds, that are not adulterated and that are distributed for use as feed or for mixing in feed for animals. "Drug" means any article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of infectious disease in animals or any article other than feed intended to affect the structure or any function of the animal's body.⁶

Withdrawal orders for commercial feed

The bill authorizes a manufacturer or distributor of commercial feed that has been issued an order from the Director to withdraw from distribution any lot of commercial feed that the Director believes is offered or exposed for distribution or distributed in violation of the Livestock Feeds Law to appeal that order in accordance with the Administrative Procedure Act.⁷

Ohio Grape Industries Committee

Expenditures by Committee

The bill eliminates the requirement that no less than 30% of the money in the Ohio Grape Industries Fund, but retains the requirement that no more than 70% of the money, be expended by the existing Ohio Grape Industries Committee on each of the following:

(1) Conducting research on grapes and grape products, including production, processing, and transportation of grapes and grape products;

(2) Performing specified activities regarding the marketing of grapes and grape products.⁸

Assistance to grape growers

For the purpose of promoting the grape industry, the bill authorizes the Committee to provide to producers and persons that grow grapes in Ohio grape plants,

⁵ R.C. 923.41(B).

⁶ R.C. 923.41(B) and (F).

⁷ R.C. 923.52.

⁸ R.C. 924.52(A)(1) and (3).

grape vines, equipment, and material to assist in the production of grapes and grape products.⁹

Disposal of dead animals

The bill adds dissolution by alkaline hydrolysis to the existing forms of disposal that an owner must use when disposing of an animal that has died of, or been destroyed because of, a dangerously infectious or contagious disease. It also adds that type of disposal to the existing forms of disposal that an owner of a premises that contains a dead animal must use when disposing of a dead animal.

Currently, the owner of an animal that has died as discussed above and the owner of a premises that contains a dead animal must dispose of the body by burying it not less than four feet in the ground, removing it in a watertight tank to a rendering establishment, or otherwise disposing of it in accordance with the Rendering Plants Law or the laws governing the composting of dead animals as regulated by the Chief of the Division of Soil and Water Resources in the Department of Natural Resources. Additionally, the owner of an animal that has died must dispose of the animal within 24 hours after learning about the dead animal or receiving written notice from the Department of Agriculture. The owner of a premises that contains a dead animal must dispose of the animal within a reasonable time after learning about the dead animal or receiving written notice from the Department or from the applicable township trustees.¹⁰

Small livestock dealers, dealers, and brokers

Poultry dealers and brokers

The bill exempts an applicant for a license as a poultry dealer or broker from the requirement to maintain financial responsibility or furnish proof of financial responsibility as required for other livestock dealers or brokers. Under existing law, a livestock dealer or broker must furnish proof of financial responsibility before the dealer or broker is issued a license by the Department. The proof may be in the form of a bond, cash, or letter of credit.¹¹

⁹ R.C. 924.52(A)(7).

¹⁰ R.C. 941.14.

¹¹ R.C. 943.03(A).

Employment of former small dealers, dealers, and brokers

The bill prohibits a licensed livestock dealer or broker from employing a person whose livestock dealer's or broker's license was revoked or is suspended. It also eliminates a requirement that a licensed dealer or broker appear at a hearing before the Director or the Director's designee conducted in accordance with the Administrative Procedure Act before the licensee can employ a person who, as a dealer or broker, previously defaulted on contracts pertaining to the purchase, exchange, or sale of livestock. However, it retains two additional requirements that must be met by the licensee before the licensee may hire the former dealer or broker.¹²

Similarly, the bill eliminates a requirement that a licensed small livestock dealer appear at such a hearing before the Director or the Director's designee before the licensee can employ a person who, as a small dealer, dealer, or broker, previously defaulted on contracts pertaining to the purchase, exchange, or sale of livestock. However, it retains an additional requirement that must be met by the licensee before the licensee may hire the former small dealer, dealer, or broker.¹³

License suspension or revocation

Under the bill, the Director may refuse to grant or may suspend a small dealer's, dealer's, or broker's license, without prior hearing, after determining from evidence presented to the Director that there is reasonable cause to believe that the applicant has had a small dealer's, dealer's, or broker's license suspended two or more times in the previous five years or revoked. Currently, the Director may suspend or revoke a small dealer's, dealer's, or broker's license for specified reasons, including that the applicant or licensee or an employee has violated Ohio laws or regulations governing the interstate or intrastate movement, shipment, or transportation of animals.¹⁴

Disfigurement of horse tails

The bill revises a prohibition regarding the pulling out of hairs of the foretop, mane, or wither of a horse. It prohibits any person, rather than an owner or person having the custody, control, or possession of a horse or the owner's or person's agent or employee as in current law, from pulling out the hairs of the foretop, mane, or withers of a horse. It then creates an exception for minimum quantities required for medical testing.

¹² R.C. 943.03(D) and (E).

¹³ R.C. 943.031(D).

¹⁴ R.C. 943.05.

The bill also allows the cutting or amputation of the dock or tail of a horse, generally prohibited under current law, when necessary as a proactive measure to prevent injury if performed by a licensed veterinarian. Current law, retained by the bill, allows the cutting or amputation of the dock or tail of a horse when necessary because of accident, malformation, or disease.¹⁵

Amusement ride safety

Inflatable devices

The bill generally applies the Amusement Rides Law to inflatable devices. That Law includes a requirement for a permit to operate, liability insurance requirements, amusement ride record keeping requirements, safety inspections, and responsibilities of ride operators and riders.¹⁶

Council on Amusement Ride Safety

The bill adds that designees of the Director of Agriculture and the General Manager of the Ohio State Fair, in lieu of the Director and General Manager, may serve on the Council on Amusement Ride Safety. Currently, in addition to 11 appointed members, the Director and the General Manager serve on the Council.

Under existing law, any member of the Council must continue in office subsequent to the expiration date of the member's term until the member's successor takes office, or until a period of 60 days has elapsed, whichever occurs first. The bill eliminates the 60-day time period, thus requiring a member to continue in office until the member's successor takes office.¹⁷

Exemptions

The bill revises two of the current exemptions to the Amusement Rides Law and adds several new exemptions. First, it exempts rock climbing walls by adding them to the existing exemption regarding nonmechanized playground equipment.

Additionally, the bill exempts any physical fitness devices regardless of whether an admission fee is charged.¹⁸ Current law includes in the exemption for nonmechanized playground equipment physical fitness devices except where an

¹⁵ R.C. 959.14.

¹⁶ R.C. 1711.50(A).

¹⁷ R.C. 1711.51.

¹⁸ R.C. 1711.57(C) and (I).

admission fee is charged for usage or an admission fee is charged to areas where such equipment is located.¹⁹

The bill also adds all of the following exemptions:

(1) Devices regulated or licensed by the Federal Aviation Administration or the Federal Railroad Administration in the U.S. Department of Transportation, the Department of Transportation, or the Bureau of Motor Vehicles in the Department of Public Safety;

(2) Vessels regulated by the Department of Natural Resources under the Watercraft and Waterways and Watercraft Certificates of Title Laws or under the jurisdiction of the U.S. Coast Guard;

(3) Tractors, trucks, or similar vehicles at competition events;

(4) Automobiles or motorcycles at competition events;

(5) Animals ridden in competitive events or shows; and

(6) Devices to which the definition of "safe operation" in the Amusement Rides Law does not apply as determined by the Director of Agriculture, including mechanized bulls, surfboards, zip lines, vertical wind tunnels, skateboard or bicycle rodeo devices, cable wakeboard or ski facilities, or other devices that are not intended or manufactured to secure the rider from threat of physical danger, harm, or loss.²⁰

Retail food establishments

The bill revises the exemption from retail food establishment licensure for certain nonprofit organizations that raise funds by selling foods. It exempts a nonprofit organization that is exempt from income taxation, that raises funds by selling food, and that, if required to be licensed, would be classified as Risk Level One in accordance with rules establishing licensing categories for retail food establishments adopted under current law if the sales occur inside a building and are for not more than seven consecutive days or more than 52 separate days during a licensing period. Current law instead exempts a nonprofit organization that is exempt from federal income taxation and that raises funds by selling foods that are not potentially hazardous for not more than seven consecutive days or more than 52 separate days during a licensing period.²¹

¹⁹ R.C. 1711.57(C).

²⁰ R.C. 1711.57(D) to (H) and (J).

²¹ R.C. 3717.22.

Horse races conducted by agricultural societies

The bill requires horse races that are conducted by a county agricultural society or independent agricultural society in accordance with current law to be conducted at the fairgrounds of the sponsoring agricultural society or, with the approval of the Director of Agriculture, at a track designated by the agricultural society in the applicable county. If the horse races cannot be contested due to unfavorable weather or another cause, the races may be transferred to a suitable track with the approval of the Director.

Under the bill, a county agricultural society or independent agricultural society that has received money from the Ohio Fairs Fund and is unable to conduct all of the scheduled horse races for which the money was received must return to the Director the pro rata remainder of the money distributed from the Fund for each race not conducted to be credited to the Fund.²²

Division name changes

The bill changes the names of three divisions in the Department of Agriculture as follows:²³

Current name	New name
Division of Animal Industry	Division of Animal Health
Division of Consumer Analytical Laboratory	Division of Consumer Protection Laboratory
Division of Plant Industry	Division of Plant Health

In addition, the bill creates a new division, the Division of Livestock Environmental Permitting.²⁴ The bill also provides for necessary transfer of assets and liabilities as a result of the name changes and provides that legal actions initiated under existing law by the Division of Animal Industry, Division of Consumer Analytical Laboratory, and Division of Plant Industry are to be continued by the Division of Animal Health, Division of Consumer Protection Laboratory, and Division of Plant Health, respectively.²⁵

²² R.C. 3769.0811.

²³ R.C. 121.04, 121.09, 901.08, 901.43, 941.02, and 955.35.

²⁴ R.C. 121.04 and 901.08.

²⁵ Sections 3, 4, and 5.

As a result of the change in the name of the Division of Consumer Protection Laboratory, the bill changes the name of the Consumer Analytical Laboratory Fund to the Consumer Protection Laboratory Fund.²⁶

Technical changes

The bill makes technical changes in the Livestock Feeds, Animal Diseases, Amusement Rides, and Auctioneers Laws.²⁷

HISTORY

ACTION	DATE
Introduced	05-17-11
Reported, H. Agriculture and Natural Resources	06-09-11
Passed House (88-6)	06-15-11
Reported, S. Agriculture, Environment & Natural Resources	---

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²⁶ R.C. 901.43, 942.02, 943.04, 943.16, and 953.23 and Section 6.

²⁷ R.C. 923.41(A), 923.41(J), 923.411, 941.041(F), 1711.57, and 4707.11(A).

