
DEPARTMENT OF COMMERCE

Underground Storage Tank Revolving Loan Program

- Creates the Underground Storage Tank Revolving Loan Program, to be administered by the State Fire Marshal (or designee).
- Requires that interest-free loans be made under the Program to certain political subdivisions, as follows:
 - To a political subdivision that seeks to take action with regard to an underground storage tank, if the political subdivision is the owner but not the operator of the tank.
 - To a political subdivision that seeks to take action with regard to the site of a previously existing release, if the political subdivision is neither the tank's owner nor the operator, and if the owner or operator cannot be identified or cannot pay for the action.
- Requires that the loans under the Program be financed exclusively through penalties and repaid loan amounts.
- For actions taken with regard to the site of a previously existing release, permits a political subdivision to take legal action to recover costs incurred if the tank owner or operator is identified or is determined to have been or be able to pay the costs of action taken by the political subdivision.

Video-service disconnections

- Permits video-service disconnection without notice if disconnection is necessary to prevent the use of video service through fraud.
- Shortens the grace period for video-service disconnection for nonpayment from 45 days to 14 days, and expressly permits disconnection if only part of a billed amount is past due.
- Requires video service providers to establish billing due dates of at least 14 days after bills are issued.

Mortgage loan originator written test and NMLS call reports

- Removes the requirement that an applicant for a mortgage loan originator license or a loan originator license must achieve a test score of at least 75% correct answers on



all questions relating to Ohio Mortgage Lending Laws and the Ohio Consumer Sales Practices Act in order to be considered to have passed the written test.

- Changes references to the "Nationwide Mortgage Licensing System and Registry," to the "NMLS" to reflect industry usage of the term.
- Makes confidential and not a public record a call report the Division of Financial Institutions obtains from the NMLS.

Liquor control provisions

- Exempts from the Open Container Law a person on the property of an outdoor motorsports facility with a container of beer or intoxicating liquor that was not purchased from the owner of the facility if both of the following apply:
 - The person is attending a racing event at the facility; and
 - The owner of the facility grants permission for the possession and consumption of beer or intoxicating liquor on the property or facility.
- Allows for the issuance of a D-5p liquor permit for restaurants located in park districts that are adjacent to Lake Erie and meet specified criteria.
- Authorizes D-5p liquor permit holders to sell beer and intoxicating liquor for on- and off-premises consumption.
- Revises the definitions of "intoxicating liquor" and "mixed beverages" for the purposes of the Liquor Control Laws.
- Revises the law governing sales of spirituous liquor tasting samples at agency stores in several ways, including:
 - Allowing samples to be offered for sale in an area that is immediately adjacent to an agency store if specified criteria are met rather than allowing the sale of samples only in the area of an agency store that is open to the public as provided in current law;
 - Requiring, for purposes of offering samples, specified individuals that offer the tasting samples to purchase the spirituous liquor from the agency store at which the samples are offered at the current retail price rather than requiring an agency store to purchase the spirituous liquor at the current retail price; and

--Allowing three spirituous liquor sample events in a calendar week provided that specified criteria are met rather than five in a calendar month as provided in current law.

- Revises one of the conditions under which the D-5j liquor permit may be issued in a community entertainment district by specifying that the municipal corporation in which the permitted premises will be located in the district must have been incorporated as a village prior to 1860 rather than prior to 1840 as provided in current law.

Unclaimed Funds Law

- Provides for the payment of interest to claimants of unclaimed funds in accordance with a formula devised in the 2009 Ohio Supreme Court case of *Sogg v. Zurz*, 121 Ohio St.3d 449 (2009), its progeny, and final settlement agreement.
- Removes the current prohibition against the payment of interest on unclaimed funds in the possession of the state.
- Specifies time frames and amounts of interest allowed to claimants who otherwise are entitled to the unclaimed funds.

Other provisions

- Reduces from two to one the number of reports that bedding and stuffed toy manufacturers and importers must submit annually to the Superintendent of Industrial Compliance.
- Requires the Director of Commerce to fill mid-term vacancies on the Historical Boilers Licensing Board, but does not require the advice and consent of the Senate for the Director's appointments.
- Changes the index used to calculate biennial changes to the threshold levels that are used to determine whether a horizontal public improvement project is subject to Ohio's Prevailing Wage Law.

Underground Storage Tank Revolving Loan Program

(R.C. 3737.02, 3737.882, 3737.883; conforming changes in R.C. 3737.88 and 3737.884 (renumbered from 3737.883))

Program overview and explanation of "corrective actions"

The bill creates the Underground Storage Tank Revolving Loan Program, to be administered by the State Fire Marshal or the Fire Marshal's designee. The Program is designed to assist certain political subdivisions seeking to take action with regard to underground storage tanks and sites of previously existing releases from such tanks. An underground storage tank is a stationary containment device (including the connected underground pipes) used to contain an accumulation of petroleum or any substance classified as hazardous by the Fire Marshal, the volume of which, including the volume of connecting pipes, is 10% or more beneath the surface of the ground.¹² Under the Program, the Fire Marshal is required to issue interest-free loans to certain political subdivisions that meet the bill's application requirements and plan to spend from their own funds an amount equal to at least 5% of the requested loan amount.

The bill expressly permits political subdivisions to take the actions for which the loans may be requested. Specifically, it permits a political subdivision that owns but does not operate an underground storage tank to do any of the following for the tank, provided the tank is within the subdivision's territorial boundaries:

- Initiate, continue, or properly complete the closure in place or removal of an underground storage tank system;
- Initiate, continue, or properly complete an assessment of the site of an underground storage tank or the site of an underground storage tank system;
- Initiate, continue, or properly complete a "corrective action."

"Corrective action" is extensively defined in continuing law. Therefore, by permitting a subdivision to take a corrective action, the bill permits the subdivision to take any action necessary to protect human health and the environment in the event of a release of petroleum into the environment. This includes any action necessary to monitor, assess, and evaluate the release. For a suspected release, "corrective action" includes an investigation to confirm or disprove the occurrence of the release. For a confirmed release, "corrective action" includes any action taken consistent with a remedial action to clean up contaminated ground water, surface water, soils, and subsurface material and to address the residual effects of a release after the initial

¹² R.C. 3737.87(L), (O), and (P), not in the bill.



corrective action is taken.¹³ Despite the bill's grant of authority, continuing law grants the Fire Marshal exclusive jurisdiction, in most cases, to regulate the storage, treatment, and disposal of petroleum-contaminated soil generated from corrective actions. Therefore, the bill's grant of authority may be limited by this exclusive jurisdiction.

The bill also permits a political subdivision that is not "the responsible person" (which person is defined as a tank's owner or operator¹⁴) to take any of the actions described in the bullet points above for the site of a previously existing release, provided that:

- The site is within the subdivision's territorial boundaries;
- The responsible person is not identifiable or the Fire Marshal determines that an identified responsible person is unable to pay the costs of the action to be taken; and
- The release has not received a no-further-action determination from the Fire Marshal.

Definition of "political subdivision"

The bill defines a "political subdivision" as a municipal corporation, township, county, school district, or other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state. The term includes certain hospital commissions and boards, certain local planning commissions and councils, port authorities, certain regional councils, certain emergency and fire and ambulance districts, solid waste management districts, community schools, and certain community-based correctional facilities and programs and their facility governing boards.¹⁵ The bill also expressly states that the term includes a community improvement corporation, which is defined as an economic development corporation or a county land reutilization corporation.¹⁶

Loan applications

In the loan application, the political subdivision must describe the action for which it is requesting the loan, state the requested loan amount, explain how it plans to spend at least 5% of the requested loan amount out of its own funds, and provide any

¹³ R.C. 3737.87(B), not in the bill.

¹⁴ R.C. 3737.87(N), not in the bill.

¹⁵ R.C. 2744.01(F), not in the bill.

¹⁶ R.C. 1724.01(A)(1), not in the bill.

other information requested by the Fire Marshal. The subdivision must also agree to written terms and conditions of the Fire Marshal. The bill prohibits loans from having terms of more than ten years.

Loan repayment and funding

The interest-free loans must be repaid to the Fire Marshal. The repaid amounts are to be credited to the Underground Storage Tank Administration Fund, which is created in current law. The Fire Marshall must make the loans exclusively from those repaid amounts and from penalties collected for violations of current law governing underground storage tanks, including rules and orders of the Fire Marshal. The bill also permits repaid loan amounts to be used by the Fire Marshal for implementation and enforcement of underground-storage-tank, corrective-action, and installer-certification programs.

Recovery of costs from tank owners or operators

The bill allows that if the Fire Marshal or any law enforcement agency identifies the tank owner or operator or determines, for any reason, that a previously identified owner or operator was or is able to pay the costs of an action for the site of a previously existing release, the political subdivision may bring any appropriate proceedings against the owner or operator to recover its incurred costs. The identification or determination must be made after the political subdivision has spent loan funds. The proceedings may be brought in either the court of common pleas having jurisdiction where the tank is located or the Court of Common Pleas of Franklin County.

Program administration

The bill requires the Fire Marshal to adopt, and permits the Fire Marshal to amend or rescind, rules as necessary for the administration and operation of the Program. The rules may do any of the following:

- Further define the entities considered "political subdivisions" eligible to receive loans;
- Establish qualifying criteria for loan recipients;
- Establish criteria for awarding loans, loan amounts, loan payment terms, and permissible expenditures of loan funds, including methods that the Fire Marshal may use to verify the proper use of loan funds or to obtain reimbursement for or the return of improperly used loan funds.

The bill requires the Fire Marshal to consult with the Director of Development Services before issuing any loan under the Program.



The bill also permits the Fire Marshal to adopt, amend, or rescind rules for the issuance of emergency underground storage tank revolving loans to qualifying entities during a natural disaster or another similar event, as defined in rules.

Facilities excluded from the Program

The following are excluded from the definition of "underground storage tank," and therefore not subject to the Program:

- pipeline facilities, including gathering lines, regulated under federal law;
- farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;
- tanks used for storing heating fuel for consumptive use on the premises where stored;
- surface impoundments, pits, ponds, or lagoons;
- storm or waste water collection systems;
- flow-through process tanks;
- storage tanks located in underground areas, including basements, cellars, mine workings, drifts, shafts, or tunnels, when the tanks are located on or above the surface of the floor;
- septic tanks;
- liquid traps or associated gathering lines directly related to oil or gas production and gathering operations.¹⁷

No limitation on the powers of the Fire Marshal or Attorney General

The bill states that nothing in the provisions governing the Underground Storage Tank Revolving Loan Program limits the powers of the Fire Marshal or the Attorney General under current law authorizing the imposition of civil penalties for violations of the underground storage tank law.

¹⁷ R.C. 3737.87(P)(1) to (9), not in the bill.

Video-service disconnections

(R.C. 1332.26)

Terminology

The bill makes some changes to current customer-service requirements for video-service disconnections. These requirements apply to providers who have video service authorizations issued by the Director of Commerce. "Video service" means the provision of video programming over wires or cables located at least in part in public rights-of-way, regardless of the technology used. Video service includes cable service, but excludes (1) wireless video programming, (2) Internet video programming, and (3) cable service in certain unincorporated areas of townships prior to October 1, 1979, unless a franchise was subsequently issued to the company.¹⁸

Changes to requirements

The bill permits video-service disconnection without notice if disconnection is necessary to prevent the use of video service through fraud. Disconnection without notice is currently permitted for these three other reasons: (1) the subscriber requests it, (2) it is necessary to prevent theft of video service, and (3) it is necessary to reduce or prevent signal leakage. Normally, ten days' written notice of disconnection is required. The bill also changes the timeline for when video service may be disconnected for nonpayment. Specifically, it changes the grace period – or the number of days past the due date during which the subscriber may not be disconnected for an unpaid bill – from 45 to 14 days. It also expressly allows disconnection for a partial nonpayment. Current law permits disconnection "for failure of the subscriber to pay its video service bill." Also, video service providers under the bill are required to establish billing due dates of at least 14 days after bills are issued. There are no due-date requirements in current law.

Enforcement

The enforcement provisions that apply to the current customer-service requirements also apply to the requirements made and changed by the bill. The Director may investigate alleged violations of or failures to comply with the requirements, but "has no authority to regulate video service." However, if the Director finds that a violation or a failure to comply exists, the Director may, after written notice to the provider and a reasonable time for compliance, apply for a court order enjoining the activity or requiring compliance, enter into a written assurance of voluntary

¹⁸ R.C. 1332.21(J) and (M) and 1332.24(A)(1), not in the bill.



compliance with the provider, or assess a civil penalty. Civil penalties are capped at \$1,000 per day of violation or noncompliance, not to exceed a total of \$10,000.¹⁹

Mortgage loan originator written test and NMLS call reports

(R.C. 1321.51, 1321.535, 1321.55, 1322.01, and 1322.051)

Under continuing law, each applicant for a mortgage loan originator license or a loan originator license must submit to a written test that is developed and approved by the Nationwide Mortgage Licensing System Registry, also known as the NMLS, and administered by a test provider approved by the NMLS based upon reasonable standards. Continuing law requires an applicant to achieve a test score of at least 75% correct answers on all questions to be considered to have passed the test. The bill removes the current requirement that an applicant must also achieve a test score of at least 75% correct answers on all questions relating to Ohio Mortgage Lending Laws and the Ohio Consumer Sales Practices Act as it applies to licensees and registrants under the Second Mortgage Law in order to be considered to have passed the written test.

Additionally, the bill requires that if the Division of Financial Institutions obtains a call report from the NMLS, the call report is confidential and not a public record for the purposes of the Public Records Law. Continuing law requires each mortgage licensee to, among other things, submit to the NMLS call reports or other reports of condition, which must be in the form and contain the information as required by the NMLS.

The bill makes several conforming changes by changing the references to the "Nationwide Mortgage Licensing System and Registry" to the "NMLS" to reflect industry usage of the term.

Exemption from Open Container Law for racetrack liquor permit holders

(R.C. 4301.62)

Current law prohibits a person from having in the person's possession an opened container of beer or intoxicating liquor in a number of specified circumstances, including in a public place. It also establishes several exemptions to that prohibition.

The bill also exempts from the prohibition a person on the property of an outdoor motorsports facility with an opened or unopened container of beer or intoxicating liquor that was not purchased from the owner of the facility if both of the following apply:

¹⁹ R.C. 1332.24(B) and (C), not in the bill.



(1) The person is attending a racing event at the facility; and

(2) The owner of the facility grants permission for the possession and consumption of beer or intoxicating liquor on the property of the facility.

The bill defines "racing event" as a motor vehicle racing event sanctioned by one or more motor racing sanctioning organizations. "Outdoor motorsports facility" means an outdoor racetrack to which all of the following apply:

(1) It is two and four-tenths miles or more in length;

(2) It is located on 200 acres or more of land;

(3) The primary business of the owner of the facility is the hosting and promoting of racing events; and

(4) The holder of a D-1 (retail sale of beer for on- or off-premises consumption), D-2 (retail sale of wine and mixed beverages for on- or off-premises consumption), or D-3 (retail sale of spirituous liquor until 1 a.m. for on-premises consumption) liquor permit is located on the property of the facility.

Issuance of D-5p liquor permit in certain park districts

(R.C. 4303.181)

Under the bill, a D-5p liquor permit may be issued to the owner or operator of a retail food establishment or a food service operation licensed under the Retail Food Establishments and Food Service Operations Law that is located within certain park districts. Those park districts must be created under the Park Districts Law and consist of not less than 22,000 acres of land, a portion of which is adjacent to Lake Erie.

A D-5p liquor permit holder may do all of the following:

(1) Sell beer and any intoxicating liquor at retail, only by the individual drink in glass and from the container, for consumption on the premises where sold;

(2) Sell the same products in the same manner and amounts not for consumption on the premises where sold as may be sold by the holders of D-1 and D-2 liquor permits; and

(3) Exercise the same privileges as a D-5 (retail sale of beer and intoxicating liquor for on- or off-premises consumption) permit liquor holder.



A D-5p permit must not be transferred to another location. No quota restrictions can be placed on the number of such permits that may be issued. The fee for a D-5p permit is \$2,344.

Intoxicating liquor and mixed beverages under the Liquor Control Laws

(R.C. 4301.01)

The bill revises the definitions of "intoxicating liquor" and "mixed beverages" as follows:

Defined term	Definition under current law	Definition under the bill
Intoxicating liquor and liquor	<p>Include all of the following:</p> <ul style="list-style-type: none"> (1) All liquids and compounds, other than beer, containing one-half of 1% or more of alcohol by volume which are fit to use for beverage purposes, from whatever source and by whatever process produced, by whatever name called, and whether they are medicated, proprietary, or patented; (2) Wine even if it contains less than 4% of alcohol by volume; (3) Mixed beverages even if they contain less than 4% of alcohol by volume; (4) Cider; (5) Alcohol; and (6) All solids and confections which contain any alcohol. 	<p>Include all of the following:</p> <ul style="list-style-type: none"> (1) All liquids and compounds, other than beer, containing one-half of 1% or more of alcohol by volume which are fit to use for beverage purposes, from whatever source and by whatever process produced, by whatever name called, and whether they are medicated, proprietary, or patented; (2) Cider; (3) Alcohol; and (4) All solids and confections which contain one-half of 1% or more of alcohol by volume.
Mixed beverages	<p>Such as bottled and prepared cordials, cocktails, and highballs, are products obtained by mixing any type of whiskey, neutral spirits, brandy, gin, or other distilled spirits with, or over, carbonated or plain water, pure juices from flowers and plants, and other flavoring materials. The completed product must contain not less than one-half of 1% of alcohol by volume and not more than 21 per cent of alcohol by volume.</p>	<p><i>Include</i> bottled and prepared cordials, cocktails, highballs, <i>and solids and confections</i> that are obtained by mixing any type of whiskey, neutral spirits, brandy, gin, or other distilled spirits with, or over, carbonated or plain water, pure juices from flowers and plants, and other flavoring materials. The completed product must contain not less than one-half of 1% of alcohol by volume and not more than 21 per cent of alcohol by volume.</p>



Tasting samples of spirituous liquor

(R.C. 4301.171)

The bill revises the law governing the sales of spirituous liquor tasting samples at agency stores. It allows tasting samples of spirituous liquor to be offered for sale in an area that is immediately adjacent to an agency store if beer and other intoxicating liquor are sold in the area and if the area and the agency store are located on the same premises. Currently, the sale of spirituous liquor samples is allowed only in the area of an agency store that is open to the public.

The bill requires a trade marketing professional, broker, or solicitor to do both of the following:

(1) Notify the Division of Liquor Control about specified information related to the sale of tasting samples of spirituous liquor at an agency store not less than ten business days prior to the sale rather than not less than five business days prior to the sale as in current law; and

(2) For purposes of offering tasting samples of spirituous liquor, purchase the spirituous liquor used for tasting samples from the agency store at which the samples are offered at the current retail price rather than requiring an agency store to purchase the spirituous liquor at the current retail price.

The bill removes existing law that requires both of the following:

(1) The aggregate amount charged for the sale of tasting samples to be sufficient to cover the wholesale price of the spirituous liquor being tasted as that price is fixed under current law; and

(2) The trade marketing professional, broker, or solicitor to reimburse the agency store for the amount of the retail price of the spirituous liquor from the amount collected from the sale of tasting samples of spirituous liquor.

Finally, the bill allows three spirituous liquor sample events in a calendar week provided that specified criteria are met rather than five in a calendar month as provided in current law.

Issuance of D-5j liquor permit

(R.C. 4303.181)

The bill revises one of the conditions under which the D-5j liquor permit may be issued in a community entertainment district by specifying that the municipal



corporation in which the permitted premises will be located in the district must have been incorporated as a village prior to 1860 rather than prior to 1840 as provided in current law.

Under continuing law, the D-5j liquor permit authorizes the owner or operator of a retail food establishment or food service operation licensed under the Retail Food Establishments and Food Service Operations Law to sell beer and intoxicating liquor for on- or off-premises consumption. A D-5j permit can be issued only within a community entertainment district that is designated under continuing law and that is located in a municipal corporation or township that meets certain requirements. Community entertainment districts are created by statute for bounded areas located in municipal corporations or townships. The bounded areas may include a combination of entertainment, retail, educational, sporting, social, cultural, or arts establishments within close proximity to certain establishments such as restaurants, sports facilities, and convention facilities.²⁰

Interest payments on unclaimed funds

(R.C. 169.08, 122.58, 169.05, and 169.07)

In 2009, the Ohio Supreme Court determined that the prohibition in R.C. 169.08 against the payment of interest to claimants for unclaimed funds constituted an unlawful taking. The bill, therefore, removes the prohibition, and provides that interest earned by the state will be payable in accordance with final court orders derived from the *Sogg v. Zurz*, 121 Ohio St.3d 449 (2009), line of cases and final settlement agreement. The bill states that for properties received by the state on or before July 26, 1991, interest must be paid at a rate of 6% per annum from the date the state received the property up to and including July 26, 1991. No interest will be payable on any properties for the period from July 27, 1991, up to and including August 2, 2000. For properties held by the state on August 3, 2000, or after, interest must be paid at the applicable required rate per annum for the period held from August 3, 2000, or the date of receipt, whichever is later, up to and including the date the claim is paid.

The final settlement agreement requires the Department of Commerce to make payments to future claimants (any persons whose unclaimed funds are returned to them on or after October 10, 2012) as well as to members of the *Sogg* class. Applicable required rates per annum are specified for years 2001 to 2011 in the final settlement agreement with direction for the Department to continue future calculations based on certain testimony in the case and other factors used in determining the chart provided for years 2000 to 2011.

²⁰ R.C. 4301.80, not in the bill.



Bedding and stuffed toys – reporting requirements

(R.C. 3713.06)

The bill reduces the number of reports that a bedding and stuffed toy manufacturer or importer must submit annually to the Superintendent of Industrial Compliance. Current law requires a registered toy manufacturer or importer who manufactures or imports bedding or stuffed toys for retail sale or use in Ohio to submit a report showing the total number of items of bedding or stuffed toys imported or manufactured in Ohio once every six months. The bill requires a registered toy manufacturer or importer to submit the report once every year.

Historical Boilers Licensing Board vacancies

(R.C. 4104.33)

The bill requires the Director of Commerce to fill mid-term vacancies on the Historical Boilers Licensing Board, but does not require the advice and consent of the Senate for the Director's appointments. Current law requires mid-term vacancies to be filled in the manner provided for during initial appointments, which gives the Governor, the President of the Senate, and the Speaker of the House appointment authority.

Prevailing wage threshold index

(R.C. 4115.034)

Under continuing law and unless an exception applies, the construction of a public improvement in which the total overall project cost is fairly estimated to exceed a statutory price threshold is subject to Ohio's Prevailing Wage Law. The statutory threshold for horizontal projects (projects that involve roads, streets, alleys, sewers, ditches, and other works connected to road or bridge construction) is adjusted biennially by the Director of Commerce. Current law requires the Director to adjust the threshold level based on the Implicit Price Deflator for Construction established by the federal government, with a maximum adjustment of 3% of the threshold level in existence at the time of the adjustment. The federal government no longer establishes that index. The bill instead requires the Director to use the Construction Cost Index published by the Engineering News-Record. If that index ceases being published, a similar recognized industry index chosen by the Director must be used.²¹

²¹ R.C. 4115.03, not in the bill.

