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.

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.

- Exempts an application for a D liquor permit (on- or off-premises consumption of beer and intoxicating liquor) filed for a premises located within certain park districts from both of the following:
  - The population-based quota restrictions on the issuance of certain D liquor permits; and
  - Provisions of law that require a quota-exempted applicant to attempt to obtain the applicable liquor permit from an existing permit holder.
- Revises the definitions of "intoxicating liquor," "liquor," and "mixed beverages" for the purposes of the Liquor Control Laws.
- 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 must have been incorporated as a village prior to 1860 rather than 1840 as provided in former law.

Unclaimed Funds Law – interest payments

- 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 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 3737.883 (renumbered 3737.884))

Program overview and explanation of "corrective actions"

The act 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.[13] Under the Program, the Fire Marshal is required to issue interest-free loans to certain political subdivisions that meet the act's application requirements and plan to spend from their own funds an amount equal to at least 5% of the requested loan amount.

The act 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 act permits the subdivision to take any action necessary to protect human health and the environment in the event of a

[13] R.C. 3737.87(L), (O), and (P), not in the act.

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 corrective action is taken.[14]

The act also permits a political subdivision that is not "the responsible person" (which person is defined as a tank's owner or operator[15]) 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"

For purposes of the Program, the act 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.[16] The act 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.[17]

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[14] R.C. 3737.87(B), not in the act.

[15] R.C. 3737.87(N), not in the act.

[16] R.C. 2744.01(F), not in the act.

[17] R.C. 1724.01(A)(1), not in the act.

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 other information requested by the Fire Marshal. The subdivision must also agree to written terms and conditions of the Fire Marshal. The act 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 continuing law. The Fire Marshall must make the loans exclusively from those repaid amounts and from penalties collected for violations of continuing law governing underground storage tanks, including rules and orders of the Fire Marshal. The act 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 act 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 act 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 act requires the Fire Marshal to consult with the Director of Development Services before issuing any loan under the Program.

The act 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.[18]

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

The act states that nothing in the provisions governing the Underground Storage Tank Revolving Loan Program limits the powers of the Fire Marshal or the Attorney

[18] R.C. 3737.87(P)(1) to (9), not in the act.

General under continuing law authorizing the imposition of civil penalties for violations of the Underground Storage Tank Law.

Video-service disconnections

(R.C. 1332.26)

Terminology

The act makes some changes to 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.[19]

Changes to requirements

The act permits video-service disconnection without notice if disconnection is necessary to prevent the use of video service through fraud. Normally, ten days' written notice of disconnection is required. The act 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. Prior law permitted disconnection "for failure of the subscriber to pay its video service bill." Also, video service providers under the act are not permitted to establish billing due dates earlier than 14 days after bills are issued.

Enforcement

The enforcement provisions that apply under continuing law to customer-service requirements also apply to the requirements made and changed by the act. 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 compliance

[19] R.C. 1332.21(J) and (M) and 1332.24(A)(1), not in the act.

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.[20]

Liquor control provisions

Open container exemption for racetrack liquor permit holders

(R.C. 4301.62)

Continuing 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 act exempts from the prohibition a person who is 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:

- 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 of the facility.

The act 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:

- It is two and four-tenths miles or more in length;
- It is located on 200 acres or more of land;
- The primary business of the owner of the facility is the hosting and promoting of racing events; and
- 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.

[20] R.C. 1332.24(B) and (C), not in the act.

Exemption from D liquor permit quota restrictions

(R.C. 4303.29)

The act exempts an application for a D liquor permit filed for a premises located within an applicable park district from both of the following:

- The population-based quota restrictions on the issuance of certain D liquor permits; and
- Provisions of law that require a quota-exempted applicant to attempt to obtain the applicable liquor permit from an existing permit holder.

A D liquor permit issued to a premises located within an applicable park district cannot be transferred to another location. An "applicable park district" is a park district created under Park District Law that consists of not less than 22,000 acres of land, a portion of which is adjacent to Lake Erie.

Under continuing law, a D liquor permit generally allows the holder of the permit to sell beer or intoxicating liquor at retail. However, subject to some exemptions, 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), D-3 (retail sale of spirituous liquor until 1 a.m. for on-premises consumption), D-4 (retail sale of beer or intoxicating liquor by a club to club members for on-premises consumption), and D-5 (retail sale of beer or intoxicating liquor by a restaurant or night club for on- or off-premises consumption) liquor permits are subject to quota restrictions based upon the population of the municipal corporation or township in which the permit is located. Generally, applicants who are exempted from the quota restrictions are subject to provisions requiring that, in order to obtain a liquor permit within a municipal corporation or township where the number of liquor permits issued exceeds the number of liquor permits that may be issued under the quota restrictions, the applicant must certify that the applicant has attempted to obtain, but has not obtained, the permit the applicant seeks from a current permit holder within the municipal corporation or township.

Intoxicating liquor and mixed beverages under the Liquor Control Laws

(R.C. 4301.01)

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

Defined term	Definition under prior law	Definition under the act
Intoxicating liquor and liquor	Include all of the following: (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.	Include all of the following: (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	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% of alcohol by volume.	*Include* bottled and prepared cordials, cocktails, highballs, *and solids and confections* 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% of alcohol by volume.

Issuance of D-5j liquor permit

(R.C. 4303.181)

The act 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 former 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.[21]

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.[22] The act, therefore, removes the prohibition, and provides that interest earned by the state will be payable in accordance with final court orders derived from the line of cases and the final settlement agreement. The act 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.

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[21] R.C. 4301.80, not in the act.

[22] *Sogg v. Zurz*, 121 Ohio St.3d 449 (2009).

Bedding and stuffed toys – reporting requirements

(R.C. 3713.06)

The act reduces the number of reports that a bedding and stuffed toy manufacturer or importer must submit annually to the Superintendent of Industrial Compliance. Former law required 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 act requires a registered toy manufacturer or importer to submit the report once every year.

Historical Boilers Licensing Board vacancies

(R.C. 4104.33)

The act requires the Director 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. Former law required mid-term vacancies to be filled in the manner provided for during initial appointments. Initial appointments were made by the Governor, the President of the Senate, and the Speaker of the House.

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. Former law required the Director to adjust the threshold level based on the Implicit Price Deflator for Construction established by the federal government. The federal government no longer establishes that index. The act 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. Continuing law limits any increase or decrease to 3% of the threshold level in existence at the time of the adjustment.[23]

[23] R.C. 4115.03, not in the act.