DEPARTMENT OF COMMERCE

Medical marijuana

- Creates the Division of Marijuana Control (DMC) within the Department of Commerce (COM) and requires the State Board of Pharmacy (PRX) and COM to transfer the Medical Marijuana Control Program to DMC by December 31, 2023.
- Establishes a Superintendent of Marijuana Control to oversee DMC.
- Specifies that no pending action or proceeding is affected by the transfer.
- Specifies that any reference to PRX in any document related to the administration of the program is deemed to refer to the DMC, the COM Director, or COM, as appropriate.
- Provides for the transfer of certain PRX employees who perform duties related to the program to COM.
- Authorizes COM to contract with private or public entities for staff training and development to facilitate the transfer of staff and duties.
- Specifies that licenses and registrations issued by COM and PRX remain in effect for the remainder of their term and that forms of medical marijuana approved by PRX remain approved unless that approval is later revoked by DMC.
- Specifies that COM and PRX rules related to the program remain in effect until repealed or amended by DMC, but requires DMC to review and propose revisions to existing rules on retail dispensaries by March 1, 2024.
- Requires the Legislative Service Commission (LSC) to renumber the PRX rules involving medical marijuana to reflect the transfer of the program to COM.
- Allows DMC to investigate alleged violations of the Medical Marijuana Law, including by subpoenaing documents and witnesses.
- Requires PRX, upon receipt of a request, to provide DMC with information from the Ohio Automated Rx Reporting System (OARRS) relating to an individual or entity being investigated by DMC.
- Requires the OBM Director to make budget and accounting changes as necessary to facilitate the transfer.
- Allows holders of a provisional medical marijuana dispensary license that missed their initial operation deadline until December 31, 2023, to demonstrate compliance with dispensary operational requirements and begin operations.
- Specifies that any disciplinary actions levied against these provisional license holders for failure to begin operations in a timely manner are suspended until January 1, 2024.
- Specifies that any such disciplinary actions are to be dismissed if the license holder obtains a certificate of operation on or before the December 31, 2023, deadline.

- Clarifies that, if the license holder does not obtain a certificate of operation by that date, any such disciplinary actions are to be completed by DMC.

Division of Financial Institutions

- Replaces the requirement that the Superintendent of Financial Institutions obtain a criminal records check in relation to a person who controls a bank, or has a substantial interest in or participates in managing a bank, with a requirement that the Superintendent request a criminal records check of a person who exercises "control" of a bank.
- Defines "control" as the power to vote, directly or indirectly, at least 25% of the voting shares or interests or the power to elect or appoint a majority of executive officers or directors.
- Rebuttably presumes a person to exercise control when the person holds the power to vote, directly or indirectly, at least 10% of the voting shares or interests.

State Fire Marshal

- Eliminates the Underground Storage Tank Revolving Loan Program under which the State Fire Marshal issued loans to political subdivisions to assist in removing underground storage tank systems that store petroleum and hazardous substances.
- Repeals the law establishing the Underground Storage Tank Revolving Loan Fund, which was used for the program.

Division of Industrial Compliance

Elevator safety

- Aligns the law governing the fee for issuing or renewing a certificate of operation for an elevator with the law governing the intervals for inspection.
- Extends the maximum interval between required Elevator Safety Review Board meetings.

Out-of-state specialty contractors

- Prevents the December 29, 2023, scheduled elimination of the Ohio Construction Industry Licensing Board's ability to issue specialty contractor licenses without examination in accordance with reciprocity agreements entered into with other states.
- Exempts a contractor who obtains a license through a reciprocity agreement from the requirement, effective December 29, 2023, that an out-of-state applicant must pass an examination to obtain a license.

Manufacturing and Construction Mentorship Program

- Expands the Manufacturing Mentorship Program to expose minors to construction occupations through temporary employment, in addition to manufacturing occupations as under continuing law.
- Renames the program as the "Manufacturing and Construction Mentorship Program."

- Requires, to be eligible for employment under the expanded program, a minor who is 16 or 17 years of age to possess a valid driver's license.
- Allows an employer of a minor under the program to require the minor to take a drug test in accordance with the employer's drug testing policy.

Real property

Ohio fire and building codes (PARTIALLY VETOED)

- Would have required the State Fire Marshal to exclude an exterior patio that has a means of egress on at least three sides, or within 50 feet of an open side, and that is compliant with the Americans with Disabilities Act, in establishing occupant load for a building (VETOED).
- Would have required the COM Director, the State Fire Marshal, the Board of Building Standards, and a representative of local building departments to develop guidelines for enforcing the Ohio Building Code and Fire Code in a coordinated manner (VETOED).
- Allows a retail establishment to obtain a temporary fire permit lasting 14 days in the event the local fire code official is unavailable to conduct an inspection or issue a permit for longer than five business days.
- Allows a retail establishment to obtain a temporary building permit lasting 14 days in the event the state or local building official is unavailable to conduct an inspection or issue a permit for longer than five business days.

Right-to-list home sale agreements

- Prohibits "right-to-list" home sale agreements that purport to run with the land, bind future owners, or create a lien, encumbrance, or other security interest in residential real estate.
- Specifies that right-to-list home sale agreements entered into, modified, or extended after October 3, 2023 (the act's effective date) are void and unenforceable.
- Requires county recorders to refuse to record right-to-list home sale agreements.
- Stipulates that a person, other than the property owner, who seeks to enter a right-to-list home sale agreement commits an unfair and deceptive practice under the Consumer Sales Practices Act.

Self-service storage facilities

- Establishes that if a rental agreement limits the value of property that may be stored in a self-service storage facility, that limit is the maximum value of the stored property.
- Prohibits a rental agreement from limiting the value of stored property to less than $1,000.
- Specifies that an occupant's claim for damages is not limited when those damages are the result of negligence by, or on behalf of, the owner of the storage facility.

Division of Liquor Control

B-1 liquor permit holders and craft beer exhibitions

- Allows a brewery's distributor (B-1 permit holder) to supply the brewery's beer for a craft beer exhibition authorized by an F-11 liquor permit.

Liquor permit premises: outdoor sales area

- Codifies and makes permanent a law that was set to expire December 31, 2023, that allows a qualified liquor permit holder to expand the area in which it may sell alcoholic beverages to the following areas (under certain circumstances):
  - In any area of the permit holder's property that is outdoors and where sales were not previously authorized, including the permit holder's parking area;
  - In any outdoor area of public property that is immediately adjacent to the permit holder's premises and that is owned by a municipal corporation or township, with the public property owner's permission;
  - In any outdoor area of private property that is immediately adjacent to the permit holder's premises, with the private property owner's permission.

Duplicate liquor permits

- Requires all liquor permit holders that may serve alcohol for on-premises consumption, rather than only certain permit holders as in former law, to obtain a duplicate permit in order to serve alcohol from an additional bar at the permit premises beyond the two bars authorized by the original permit; and
- Requires the duplicate permit fee for each added bar to be the higher of $100 or 20% of the fee payable for the original permit issued for the premises, rather than specific fee amounts depending on the type of permit issued as in prior law.

Liquor permit cancellations

- Allows, rather than requires, the Liquor Control Commission to cancel liquor permits for certain reasons, including the permit holder's death or bankruptcy.

Sale of spirituous liquor by agency store

- Stipulates that the statute requiring the Division of Liquor Control to procure, upon request of a person, a specific variety or brand of spirituous liquor that is out of stock at an agency store is subject to the statutes governing the agency store system and the equitable distribution of spirituous liquor brands and varieties that are in high demand.

Division of Real Estate and Professional Licensing

Real estate brokers

- Modifies the prerequisites to take the real estate broker's examination by:
  - Requiring that an applicant have worked as a licensed real estate broker or salesperson for at least two of the five years preceding the application; and

- Removing the requirement that the applicant have worked as a licensed real estate broker or salesperson for an average of 30 hours per week.

- Requires the Superintendent of Real Estate and Professional Licensing to forward any identifying information to the Attorney General if a person fails to pay a civil penalty for certain unlicensed or unregistered activity.

Disciplinary actions

- Limits to state or federally chartered institutions where a person holding a real estate broker or salespersons license must, for the purpose of receiving escrow funds and security deposits, or for the purpose of depositing and maintaining funds in the course of real property management on the behalf of others, maintain a special or trust bank account.

- Permits the Superintendent to take disciplinary action against a license holder for having been judged incompetent in any capacity, as opposed to simply for the purpose of holding a real estate license.

Administration of funds

- Creates the Cemetery Registration Fund and requires burial permit fees to be deposited into the new fund, instead of to the Division generally, but with the same purpose.

- Eliminates the Cemetery Grant Fund and redirects deposits to the Cemetery Registration Fund, and eliminates a restriction on the total value of grants that may be issued in a single fiscal year.

- Eliminates the Real Estate Education and Research Fund, Manufactured Homes Regulatory Fund, Home Inspectors Fund, and Real Estate Appraiser Operating Fund, and redirects deposits going to these funds to the Division of Real Estate Operating Fund.

- Expands the purposes for which the Real Estate Operating Fund may be used to include the purposes for which the eliminated funds could be used.

- Allows, instead of requires, the Ohio Real Estate Commission to use operating funds (instead of the Real Estate Education and Research Fund) for education and research.

- Allows, instead of requires, the Superintendent to collect a service fee from the Real Estate Recovery Fund to defray the cost of administering the fund.

Confidentiality of investigatory information

- Expands the Division of Real Estate and Professional Licensing's ability to share investigatory information with the Division of Securities, Division of Industrial Compliance, and law enforcement agencies.

Ohio Home Inspector Board

- Requires the Ohio Home Inspector Board to elect a chair and vice chair from among its membership by majority vote annually.

- Requires the Board to meet at least once quarterly.
- Specifies that a quorum consists of a majority of the members of the Board and requires a quorum in order for the Board to conduct its business.

Division of Securities

Securities registration (VETOED)

- Would have required all securities registered under the federal Securities Act of 1933 to be registered in Ohio by coordination (VETOED).
- Would have specified that the registration procedures, evaluation standards, and general oversight provisions for a registration by description or registration by qualification do not apply to a registration by coordination (VETOED).
- Would have required business development companies (BDCs) to file a notice with the Division of Securities before conducting business in Ohio, and would have permitted a BDC, after filing the notice, to sell an indefinite amount of securities in Ohio (VETOED).

Division of Unclaimed Funds

- Specifies that only when the holder acts in good faith and in compliance with the Unclaimed Funds Law will the holder be held harmless by the state for any legal claim related to the transfer of the funds to the state, and only to the extent of the value of the unclaimed funds remitted by the holder to the COM Director.
- Requires that if any legal proceedings are initiated against the holder related to the unclaimed funds, the holder must notify the Director within 14 days of any service of process on the holder.
- Allows, rather than requires, the Director to defend the lawsuit against the holder.
- Provides that if the Director does not assume the defense, and judgment is entered against the holder for any amount paid to the Director, the Director must reimburse the organization for the amount paid, or modify any agreement to reflect satisfaction of the judgment.
- Specifies that no person has a claim against the state, the holder, or a transfer agent, registrar, or other person acting for or on behalf of a holder for any change in the market value of the unclaimed funds occurring after delivery by the holder to the Director, or after the sale of the property by the Director.

Uniform Commercial Code

- Allows a person that offers or displays online personal property owned by the person for lease-purchase to disclose electronically, rather than affixing the information to property, the price of the property, amount of the lease payment, and the total number of lease payments necessary to acquire ownership.

- Requires mandated disclosures to be made electronically if the property offered for lease-purchase is not owned by the lessor, regardless of whether the property is offered or displayed online.

Medical marijuana

(R.C. 121.04, 121.08, 3796.02, 3796.03, 3796.032, 3796.04 (repealed), 3796.05, 3796.06, 3796.061, 3796.08, 3796.10, 3796.11, 3796.12, 3796.13, 3796.14, 3796.15, 3796.16, 3796.17, 3796.19, 3796.20, 3796.22, 3796.23, 3796.27, 3796.30, 4729.80, and 4776.01; Section 525.20; conforming changes in R.C. 109.572, 1321.37, 1321.53, 1321.64, 4729.86, 4735.143, 4763.05, 4764.06, 4764.07, 4768.03, and 4768.06)

Transfer to Division of Marijuana Control (DMC)

The act consolidates oversight of the Medical Marijuana Control Program within the Division of Marijuana Control (DMC), which it creates within the Department of Commerce (COM). To oversee DMC, the act establishes a Superintendent of Marijuana Control who reports to the COM Director. Prior to the act, oversight of the program was split between COM and the State Board of Pharmacy (PRX), with COM being responsible for licensing and oversight of cultivators, processors, and testing laboratories, and PRX being responsible for licensing and oversight of medical marijuana patients, caregivers, and dispensaries. The act transfers all assets, liabilities, records, and obligations of COM and PRX related to medical marijuana to DMC.

The act requires the transfer to be complete by December 31, 2023. Until then, PRX and COM retain their respective marijuana licensing and oversight responsibilities. Persons seeking registration as a medical marijuana patient or caregiver must apply to PRX until April 1, 2024. After that, they must submit applications must to DMC. Consequently, PRX will continue to receive applications for patient and caregiver registrations for three months after the program is fully transferred to DMC. PRX will, presumably, send those applications to DMC for processing.

The act specifies that medical marijuana licenses and registrations issued by PRX and COM continue in effect for the remainder of their term. If a license or registration expires before the program transfer is complete, the original issuer (PRX or COM) may renew it in the same manner as under prior law. Forms of medical marijuana previously approved by PRX remain approved unless DMC later revokes that approval by rule.

The act specifies that no pending action or proceeding is affected by the transfer of the Medical Marijuana Control Program to DMC. The Superintendent of Marijuana Control, COM Director, or COM must continue prosecution or defense of a pending action or proceeding after the transfer is complete. Any reference to PRX in any document related to the program's administration is deemed to refer to DMC, the COM Director, or COM, as appropriate.

The act authorizes the Office of Budget and Management (OBM) to make any budget and accounting changes necessary for the transfer of the program to DMC. Furthermore, it requires the PRX Executive Director and the COM Director to identify employees who administer the program, and transfer them to COM. From July 1, 2023, to January 1, 2024, COM may alter the positions and duties of program employees as needed, other than those employees subject to

collective bargaining. The act specifies that such actions are not subject to collective bargaining. The act authorizes COM to enter into one or more contracts to provide for training of program employees.

Rules

DMC must adopt rules, standards, and procedures for the Medical Marijuana Control Program. The topics of those rules closely mirror those mandated for COM and PRX under former law. COM and PRX rules continue in effect unless they are repealed or amended by DMC. However, the act requires DMC to review and propose revisions to the PRX rules concerning medical marijuana retail dispensaries by March 1, 2024. Additionally, the Director of the Legislative Service Commission (LSC) must renumber PRX rules pertaining to the program to reflect the transfer of the program to DMC.

Investigations

The act allows DMC to initiate and conduct an investigation, and subpoena witnesses and documents, whenever there appears to be a violation of the Medical Marijuana Law, or when DMC otherwise believes it to be in the best interest of medical marijuana patients or the general public. A person that fails to comply with a DMC order or subpoena may be held in contempt by a court of common pleas of appropriate jurisdiction.

Drug database usage

The act requires PRX, upon receipt of a request from a designated representative of DMC, to provide to the representative information from the Ohio Automated Rx Reporting System (OARRS) relating to an individual who, or entity that, is the subject of an active DMC investigation. OARRS is a drug database used by PRX to prevent the misuse of controlled substances and other dangerous drugs.

Provisional dispensary license

(Section 737.50)

The act allows the holder of a provisional medical marijuana dispensary license issued by PRX as part of its second request for applications (commonly referred to as "RFA II") until December 31, 2023, to demonstrate compliance with dispensary operational requirements and begin operations. Current administrative rules require holders to commence operations within 270 days after the provisional dispensary license is issued. Failure to meet the operation deadline may result in an administrative action by PRX, with consequences up to and including license revocation. PRX may grant a variance from the deadline if doing so is in the public interest, no party will be injured as a result, and the deadline is unreasonably and unnecessarily burdensome as applied to the holder.[30]

The act grants an extension to all RFA II provisional license holders that missed the initial operation deadline, and further specifies that any disciplinary action levied as a result of missing the deadline is suspended until January 1, 2024. Any such disciplinary actions must be dismissed

[30] O.A.C. 3796:6-2-04(L) and 3796:6-4-10.

if the holder obtains a certificate of operation by the act's December 31, 2023, deadline. In that case, the holder is not considered to have undergone discipline, been the subject of a disciplinary action, entered into a settlement to resolve a disciplinary action, or been fined for missing the operations deadline.

If the provisional license holder does not obtain a certificate of operation by the new deadline, DMC must complete any related disciplinary actions.

Division of Financial Institutions

Criminal records checks

(R.C. 1121.23)

The act replaces the requirement that the Superintendent of Financial Institutions obtain a criminal records check in relation to a person who directly or indirectly controlled a bank, or had a substantial interest in or participated in the management of a bank, with a requirement that the Superintendent request a criminal records check of a person who exercises "control" of a bank. The act defines "control" as the power to vote, directly or indirectly, at least 25% of outstanding voting shares or voting interests of a licensee or person in control of a licensee, or the power to elect or appoint a majority of executive officers or directors.

The act creates a presumption that a person exercises control when that person holds the power to vote, directly or indirectly, at least 10% of outstanding voting shares or voting interests of a licensee or a person in control of a licensee. However, this presumption can be rebutted by establishing that the person is a passive investor by a preponderance of the evidence. To determine the percentage of voting shares or voting interests controlled by any person, that person's interest is aggregated with any other immediate family members. This includes a spouse, parents, children, siblings, in-laws, and any other person who shares the person's home.

The act also defines several terms for purposes of this provision.

"**Director**" means an individual elected to serve as the director of a for-profit corporation or a nonprofit corporation.

"**Executive officer**" means president, treasurer, secretary, any individual at or above the senior vice-president level or its functional equivalent, any individual at the vice-president level or its functional equivalent if the organization does not have senior vice-presidents, and "manager" as that term is defined in the Ohio Revised Limited Liability Company Act (LLC Law) (a person designated by the LLC or its members with the authority to manage all or part of the activities or affairs of the LLC on its behalf, regardless of their title).

"**Incorporator**" has the same meaning as in Ohio's General Corporation Law: a person who signed the original articles of incorporation.

"**Organizer**" has the same meaning as in the LLC Law: a person executing the initial articles of organization.[31]

[31] R.C. 1701.01, 1701.55, 1702.26, and 1706.01, not in the act.

Because continuing law requires the Superintendent to request a criminal records check for someone to serve as an organizer, incorporator, director, or executive officer, the act adds these definitions to clarify precisely who is included in this context.

State Fire Marshal

Underground Storage Tank Revolving Loan Program

(R.C. 3737.02, 3737.88, and 3737.882; Repealed R.C. 3737.883)

The act eliminates the Underground Storage Tank Revolving Loan Program and the accompanying Underground Storage Tank Revolving Loan Fund. The program allowed a political subdivision to apply for a loan from the State Fire Marshal to assist with the costs of removing underground storage tank systems that stored petroleum and hazardous substances. The loans were directed to sites where a responsible party was unknown or unable to pay for removing the storage tank. The fund used to make the loans had no cash balance when the act was enacted.

Division of Industrial Compliance

Elevator safety

Inspection interval

(R.C. 4105.17)

The act aligns the law governing the fee for issuing or renewing a certificate of operation for an elevator with the law governing the intervals for inspection. Continuing law requires elevators to be inspected twice every 12 months, and sets the fee for a certificate of operation at $220 plus $12 for each floor serviced by the elevator. The act retains the same fee amount, but changes the interval at which it is assessed from "once every six months" to "twice every twelve months." This change makes the interval at which the fee is assessed identical to the interval at which an inspection is required.

Elevator Safety Review Board meetings

(R.C. 4785.09; Section 110.40)

Former law required the Elevator Safety Review Board to meet at least once per month. The act extends the maximum period between meetings to once per quarter.

Out-of-state specialty contractors

(R.C. 4740.05 and 4740.08; Sections 125.20 to 125.26)

The act prevents the December 29, 2023, scheduled elimination of the Ohio Construction Industry Licensing Board's ability to issue specialty contractor licenses without examination in accordance with reciprocity agreements with other states. An individual issued a license through a reciprocity agreement is not subject to the requirement, effective December 29, 2023, that an out-of-state applicant must pass an examination to obtain the license.

Thus, under the act, an individual licensed in another state that has a reciprocity agreement with Ohio remains eligible for an Ohio license without taking an examination. A licensee from a state that does not have a reciprocity agreement with Ohio may take the

examination after providing proof that the individual meets requirements specific to out-of-state licensees. Alternatively, such an individual may apply to take the examination in the same manner as an individual seeking an initial license.[32]

Manufacturing and Construction Mentorship Program

(R.C. 4109.05 and 4109.22)

The act expands the "Manufacturing Mentorship Program" to include construction occupations, and renames the program the "Manufacturing and Construction Mentorship Program." The program exposes minors in Ohio who are 16- or 17-years old to both construction occupations (under the act) and manufacturing occupations (under continuing law) through temporary employment. An employer employing a minor under the program must:

- Determine the duration of the minor's employment;
- Assign a mentor to provide direct and close supervision while the minor is engaged in any workplace activity;
- Provide the minor with the training described under "**Mentorship program training**," below;
- Encourage the minor to participate in a career-technical education program after the minor's employment ends, if the minor is not participating in such a program when the minor begins employment;
- Comply with all state and federal laws and regulations relating to the employment of minors.

As with manufacturing occupations under continuing law, the act allows a minor who is employed under the program to work in any construction occupation that is not prohibited for minors of that age by Ohio's Minor Labor Law or rules adopted under the Law.

For purposes of the program, a "construction occupation" is employment consisting of the construction, reconstruction, enlargement, alteration, repair, remodeling, renovation, demolition, or painting of a building or other structure, road, bridge, or other work, and includes preparing a site for new construction.

Mentorship program training

The act requires an employer to provide a minor employed in a construction occupation under the program with training that includes the following:

- A ten-hour course in construction or general industry safety and health hazard recognition and prevention approved by the U.S. Department of Labor's Occupation Safety and Health Administration (OSHA) (the minor may participate in an OSHA-approved 30-hour course if the minor has already successfully completed a ten-hour course);

[32] See R.C. 4740.06, not in the act.

- Instructions on how to operate the specific tools the minor will use during the minor's employment;
- The general safety and health hazards that the minor may be exposed to at the minor's workplace;
- The value of safety and management commitment;
- Information on the employer's drug testing policy.

The employer must pay any costs associated with providing a minor in a construction occupation with the training.

As with manufacturing employers that employ minors under the program, a construction employer participating in the program is not required to provide the training described above if the minor presents proof of completing the training during the six-month period immediately before employment.

Driver's license and drug testing

The act requires a participating minor to possess a valid driver's license to be eligible for employment in manufacturing or construction under the program.

The act also allows a participating employer to require a participating minor to take a drug test in accordance with the policy on which the employer provided the minor with information. This practice appears to have been permissible before the act's enactment.

List of approved tools

The act requires the COM Director, in consultation with construction employers, to adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119) listing the tools that a 16- or 17-year old minor who is employed in a construction occupation under the program may operate during the minor's employment. The Director must use the "Field Operations Handbook" issued by the U.S. Department of Labor's Wage and Hour Division for guidance in developing the list. The act does not require the Director to include a tool on the list if the federal Fair Labor Standards Act[33] (FLSA) hazardous occupation orders and Ohio's Minor Labor Law or rules adopted under it specifically permit 16- or 17- year olds to operate the tool. These requirements are similar to the requirements for manufacturing under the program.

Prohibitions

The act, similar to the law for manufacturing, prohibits an employer from:

1. Permitting a 16- or 17-year old minor to operate a tool a minor of that age is permitted to operate under the rules described in "**List of approved tools**" above unless the minor is employed under the program;

[33] 29 U.S.C. 201 *et seq.*

2. Permitting a 16- or 17-year old minor who is employed under the program to operate a tool that a minor of that age is prohibited from using by the FLSA and Ohio's Minor Labor Law or rules adopted under it.

Penalty for violation

Under continuing law, the Director must designate enforcement officials to enforce Ohio's Minor Labor Law. An enforcement official who discovers a violation of the Law must notify the offending employer of the violation, then file a complaint against the employer in any court of competent jurisdiction. If the court finds the employer violated the Law, the employer is assessed a penalty, which is paid into the fund of the school district in which the violation was committed.

An employer who violates the act's prohibitions is assessed a civil penalty of up to $1,730 for each violation.[34]

Hazardous occupations prohibited for minors

Continuing law requires the COM Director, after consulting with the Director of Health, to adopt rules prohibiting the employment of minors in occupations that are hazardous or detrimental to the health and well-being of minors. The COM Director must consider the hazardous occupation orders issued pursuant to the FLSA when adopting the rules. The act prohibits the COM Director from adopting any rule that would prohibit a minor who is 16- or 17-years old and employed under the mentorship program from being employed in a construction occupation if the hazardous occupation orders issued pursuant to the FLSA permit the minor's employment in the construction occupation.

Interaction between federal and state minor labor laws

An employer or employee may be subject to the FLSA, Ohio's Minor Labor Law, or both laws, depending on the employer type and size and whether the employer or employee engages in interstate commerce. In a situation where an employer or an employee is subject to both federal and Ohio law and the laws differ, the law that provides the most protection for the minor applies.[35] For example, federal and Ohio law prohibit a minor from using hammering machines such as a power hammer.[36] If Ohio law were amended to permit the minor to use a hammering machine that is prohibited under the FLSA, the federal law would control because it is more restrictive of the minor's activity. Therefore, it appears that a minor's employment would be limited in certain occupations that are prohibited under the federal law, even if Ohio law were amended to permit the minor's employment in those occupations.

[34] R.C. 4109.13 and 4109.99, not in the act.

[35] 29 U.S.C. 218 and 29 C.F.R. 570.50.

[36] 29 C.F.R. 570.59 and O.A.C. 4101:9-2-11.

Real property

Ohio fire and building codes

Exterior patios (VETOED)

(R.C. 3737.83; Sections 110.20 to 110.22)

The Governor vetoed a provision that would have required the State Fire Marshal to establish in the state Fire Code that the occupant load of a building does not include an exterior patio that has a means of egress on at least three sides, or within 50 feet of an open side, and in which each means of egress is compliant with standards established by the Americans with Disabilities Act. To be compliant under the vetoed provision, each means of egress would have needed to provide a continuous and unobstructed way of travel to an area of refuge, a horizontal exit, or a public way.[37] Continuing law, unchanged by the act, requires that structures adhere to occupant load limits and other safety requirements in the Ohio Fire Code and the Ohio Building Code. Occupant load refers to the number of people permitted in a building at one time based on the building's floor space and function – the number of people for which the means of egress is designed.[38]

Coordinated enforcement (VETOED)

(R.C. 3781.062)

The Governor vetoed a provision that would have required the COM Director, in collaboration with the State Fire Marshal, the Board of Building Standards, and representatives of local building departments, to develop guidelines for the enforcement of the Ohio Building Code and state Fire Code in a coordinated manner, including the interaction of exemptions from one code with the requirements of the other code.

Temporary fire and building permits

(R.C. 3737.833 and 3781.032)

Under continuing law, changed in part by the act, permits provided under the Ohio Fire Code must be granted by the State Fire Marshal or a local fire code official (usually the fire chief for municipalities and townships that have fire departments). Similarly, the Ohio Building Code requires permits to be granted by the relevant building official from a department or agency of the state, or a political subdivision, which has jurisdiction to enforce state and local building codes. Building officials are responsible for administering and enforcing both the Ohio Building Code and any local building regulations adopted in accordance with the state law.[39]

Under the act, if the local fire code official or state or local building official is unable to conduct an inspection or issue a permit required by the state fire or building codes for more than

[37] International Building Code § 1007.1 (2003).

[38] O.A.C. 1301:7-7-10 and 4101:1-10-01.

[39] O.A.C. 1301:7-7-01, Sections 105.1.1, 104.1, and 104.2; O.A.C. 4101:1-1-01, Sections 105.1, 104.1, and 104.2; R.C. 3781.01, not in the act.

five business days, the owner, operator, or developer of a retail establishment may obtain a temporary fire or building permit from *any* fire or building code official authorized to conduct that inspection or issue that permit elsewhere in Ohio. In the event that a retail establishment does receive a temporary permit, that permit is valid for only 14 days, after which time the establishment must obtain the permit from the local fire code or building official.

The act defines a "retail establishment" as a place of business open to the general public for the sale of goods or services, including establishments currently under construction and not yet open to the public.

Right-to-list home sale agreements

(R.C. 317.13, 4735.01, 4735.18, and 5301.94)

The act prohibits "right-to-list" home sale agreements, where the owner of residential real estate agrees to provide another person the exclusive right to list the real estate for sale at a future date, in exchange for monetary consideration or something else of value. The prohibition applies to agreements entered into, modified, or extended after October 3, 2023 (the act's effective date), that meet one or both of the following criteria:

- The agreement states that it runs with the land, or otherwise purports to bind future owners;
- The agreement purports to be a lien, encumbrance, or other real property security interest.

Under the act, right-to-list agreements are void and unenforceable. Furthermore, county recorders must refuse to record such an agreement. However, the act clarifies that county recorders do not have a duty to evaluate every document presented to determine whether or not the document is a right-to-list agreement.

Under the act, any person other than the property owner that seeks to enter a right-to-list agreement commits an unfair and deceptive practice under the Consumer Sales Practices Act. Such a person is subject to a lawsuit brought by either the Attorney General or the property owner.[40] Furthermore, real estate agents or brokers who are found to have entered into a right-to-list agreement are subject to the following sanctions:

- Revocation of license;
- Suspension of license;
- A fine of no more than $2,500;
- A public reprimand;
- Additional continuing education.[41]

[40] R.C. 1345.07 and 1345.09, not in the act.

[41] R.C. 4735.051, not in the act.

Self-service storage facilities

(R.C. 5322.06)

The act specifies that if a rental agreement between an owner and occupant of a self-service storage space contains a provision that limits the value of personal property stored in the storage space, that limit is the maximum value of the stored property. In other words, the value recovered in an insurance claim or civil action against the facility's owner or operator for loss of or damage to stored property cannot exceed the maximum value stated in the rental agreement. However, a rental agreement may not limit the value of property stored in a storage space to less than $1,000. Furthermore, the limit does not apply to an occupant's claim for damages based on negligence by, or on behalf of, the facility's owner.

The provision of the rental agreement that contains this maximum limit must be printed in bold type or underlined. The limit stated in the rental agreement may be increased with the written permission of the owner of the storage space.

Division of Liquor Control

B-1 liquor permit holders and craft beer exhibitions

(R.C. 4303.2011)

The act allows a brewery's distributor (B-1 liquor permit holder) to supply the brewery's beer for a craft beer exhibition authorized by an F-11 liquor permit. Continuing law allows an F-11 permit holder to sell at an exhibition beer that it has purchased from breweries (A-1 and A-1c permit holders) that are participating in the exhibition.

Liquor permit premises: outdoor sales area

(R.C. 4301.62 and 4303.188; Sections 610.70 and 803.120)

The act codifies and makes permanent a law that was set to expire on December 31, 2023. The codification takes effect January 1, 2024. The law allows a qualified liquor permit holder to expand the area in which it may sell beer, wine, mixed beverages, or spirituous liquor (alcoholic beverages) by the individual drink for consumption to personal consumers in the following areas:

1. In any area of the permit holder's property that is outdoors and where sales are not currently authorized, including the permit holder's parking area;

2. In any outdoor area of public property that is immediately adjacent to the permit holder's premises and that is owned by a municipal corporation or township, with the public property owner's written permission in accordance with the act;

3. In any outdoor area of private property that is immediately adjacent to the permit holder's premises, with the private property owner's permission.

A qualified permit holder is a large or small brewery (A-1 or A-1c liquor permit holder); a brewery, winery, or small distillery that operates a bar or restaurant (A-1-A permit holder); a winery (A-2 or A-2f permit holder); or a bar or restaurant (D class permit holder). A personal consumer is someone who is at least 21 and who intends to use a purchased alcoholic beverage only for personal consumption and not for resale or other commercial purposes.

If a qualified permit holder sells alcoholic beverages in the outdoor area, the permit holder must clearly delineate the area where personal consumers may consume alcoholic beverages.

For the act's purposes, a qualified permit holder must obtain the written consent of either of the following:

1. If the public property is located in a municipal corporation, the executive officer of the municipal corporation or the executive officer's designee. If the executive officer or designee denies consent, the permit holder may appeal to the municipal corporation's legislative authority. The legislative authority may adopt a resolution requesting the executive officer to reconsider the denial.

2. If the public property is located in the unincorporated area of a township, the township's legislative authority by adoption of a resolution consenting to the sale of alcoholic beverages in the outdoor area.

In addition, a qualified permit holder that intends to sell alcoholic beverages by the individual drink in an outdoor area must notify the Division of Liquor Control and the Department of Public Safety's Investigative Unit of the area in which the permit holder intends to sell the alcoholic beverages. The permit holder must provide the notice within ten days of the commencement of the sales.

A qualified permit holder or the holder's employee must deliver each alcoholic beverage sold to a personal consumer in an outdoor area.

Duplicate liquor permits

(R.C. 4303.30)

The act requires all liquor permit holders, rather than only certain ones, that serve alcohol for on-premises consumption to obtain a duplicate permit if the permit holder wishes to add an additional bar at the permit premises beyond the two bars authorized by the original permit. Under former law, the liquor permit holders solely subject to this requirement were the D-2, D-3, D-3a, D-4, D-4a, D-5, D-5a, D-5b, D-5e to D-5o, and D-6 permit holders. A D-1, D-2x, or D-3x permit holder was not required to obtain a duplicate permit if the additional bar was exclusively used for the sale of beer. Further a D-3x permit holder was not required to obtain a duplicate permit if the additional bar was exclusively used for the sale of wine. An A-1-A permit holder had to obtain a duplicate bar permit for an additional bar only if the permit holder obtained a D-6 permit (Sunday sales of alcohol).

The act also revises the per-bar permit fee for a duplicate permit as follows (the revised fee is the higher of $100 or 20% of the original fee):

Permit	Former law	The act
A-1-A with a D-6	$781.20	$781.20
A-1	Not authorized	$781.20

Permit	Former law	The act
A-1c	Not authorized	$200
A-2/A-2f	Not authorized	$100
A-5	Not authorized	$200
B-1	Not authorized	$625
B-2	Not authorized	$100
B-2a	Not authorized	$100
B-3	Not authorized	$100
B-4	Not authorized	$100
B-5	Not authorized	$312.60
D-1	Not authorized	$100
D-2	$100	$112.80
D-2x	Not authorized	$100
D-3	$400	$150
D-3x	Not authorized	$100
D-3a	$400	$187.60
D-4	$200	$100
D-4a	Not authorized	$150
D-5	$1,000	$468.80
D-5a	$1,000	$468.80
D-5b	$1,000	$468.80
D-5c	$400	$312.60
D-5d	Not authorized	$468.80
D-5e	$650	$243.80

Permit	Former law	The act
D-5f	$1,000	$468.80
D-5g	$375	$375
D-5h	$375	$375
D-5i	$468.80	$468.80
D-5j	$468.80	$468.80
D-5k	$375	$375
D-5l	$468.80	$468.80
D-5m	$468.80	$468.80
D-5n	$4,000	$4,000
D-5o	$1,000	$468.80
E	Not authorized	$100
F class	Not authorized	$100 to $340

Liquor permit cancellations

(R.C. 4301.26)

The act allows, rather than requires, the Liquor Control Commission to cancel a liquor permit for any of the following reasons (except as provided in the rules of the Division of Liquor Control relative to transfers of a permit):

1. In the event of the permit holder's death or bankruptcy;

2. The making of an assignment for the benefit of the permit holder's creditors; or

3. The appointment of the permit holder's property.

Sale of spirituous liquor by agency store

(R.C. 4301.19)

The act stipulates that the statute requiring the Division of Liquor Control to procure, on request, a specific variety or brand of spirituous liquor that is out of stock at an agency store is subject to both of the following:

1. The statute requiring the Division to operate a system for the sale of spirituous liquor at agency stores; and

2. The statute allowing the Superintendent of Liquor Control to establish rules for the equitable distribution of spirituous liquor for brands and varieties that are in high demand.

Division of Real Estate and Professional Licensing

Real estate brokers

Licensure

(R.C. 4735.07)

The act modifies the work requirements to take the real estate broker's examination. Continuing law requires an applicant to have been a licensed real estate broker or salesperson for at least two years. Additionally, under prior law, the applicant must have worked as a licensed real estate broker or salesperson for an average of 30 hours per week during at least two of the five years preceding their application.

The act requires only that the applicant have been a licensed real estate broker or salesperson for two of the five years preceding the application. Therefore, applicants for the examination must have two years of recent experience, but the number of hours worked each week during those two years is no longer a factor.

Civil penalty

(R.C. 4735.052)

If a person fails to pay a civil penalty assessed by the Ohio Real Estate Commission for certain unlicensed or unregistered activities, the act requires the Superintendent of Real Estate and Professional Licensing to forward to the Attorney General that person's identifying information. Under continuing law, the Superintendent also must forward the person's name and the amount of the penalty, for collection purposes. The Commission may impose a civil penalty up to $1,000 per violation, with each day constituting a separate violation.

Brokerage trust accounts

(R.C. 4735.18(A)(26) and (27))

Continuing law requires licensed real estate brokers to maintain separate special or trust bank accounts in an Ohio depository for deposit and maintenance of (1) rents, security deposits, escrow funds, and other moneys received by the broker in a fiduciary capacity in the course of managing real property, and (2) escrow funds, security deposits, and other moneys received by the broker in a fiduciary capacity, except those related to managing real property. The act requires the accounts to be maintained at an Ohio depository that is state or federally chartered. Continuing law permits the Superintendent of Real Estate and Professional Licensing to take disciplinary actions against a license holder who fails to maintain these accounts.

Other disciplinary actions

(R.C. 4735.18(A)(33) and (39))

The act permits the Superintendent to take disciplinary action against a licensed real estate broker or salesperson for having been judged incompetent by a court in any capacity.

Former law allowed disciplinary action to be taken only when a license holder had been judged incompetent for the purpose of holding the license.

The act also permits disciplinary action against a licensed real estate broker or salesperson who enters into a right-to-list home sale agreement, which is prohibited by the act. See "**Right-to-list home sale agreements**," above.

Administration of funds

(R.C. 3705.17, 4735.03, 4735.06, 4735.09, 4735.12, 4735.13, 4735.15, 4735.211, 4763.15, 4763.16, 4764.18, 4767.03, 4767.10, 4768.14, 4768.15, 4781.17, and 4781.54)

The act consolidates several funds that held fees collected by the Division of Real Estate and Professional Licensing. Under continuing law, when obtaining a burial permit, a funeral director or other person must pay the local registrar or sub-registrar a $3 fee. From this fee, the registrar or sub-registrar keeps 50¢, and the remaining $2.50 goes to the Division for purposes described in the Cemetery Law. Prior law required the Division to deposit $1 of its share of the permit fee to the Cemetery Grant Fund to advance grants to cemeteries. The grants defray the costs of exceptional cemetery maintenance or training cemetery personnel in the maintenance and operation of cemeteries.

The act eliminates the Cemetery Grant Fund, requiring the full $2.50 of the Division's share to be deposited to the Cemetery Registration Fund, which the act creates. The $1 of the fee still must be used for the cemetery grants. In addition, the act eliminates the restriction that grants cannot total more than 80% of the appropriation for that fiscal year.

The act also eliminates the Real Estate Education and Research Fund, Manufactured Homes Regulatory Fund, Home Inspectors Fund, and Real Estate Appraiser Operating Fund. It redirects deposits going to these funds to the Division of Real Estate Operating Fund and makes conforming changes.

The act authorizes, instead of requires, the Ohio Real Estate Commission to use operating funds for education and research in the same manner it is authorized to use the funds in the Real Estate Education and Research Fund under former law.

Lastly, the act authorizes, rather than requires, the Superintendent of Real Estate and Professional Licensing to collect a service fee from the Real Estate Recovery Fund to defray the cost of administering the fund. The amount collected must not exceed the annual interest earnings of the fund multiplied by the federal short-term interest rate (which is 5% for 2023). The Real Estate Recovery Fund is maintained to satisfy judgments against real estate brokers and salespeople who engage in professional misconduct. To support the fund, continuing law requires the Real Estate Commission to impose special assessments on brokers and salespersons renewing their licenses.[42]

[42] "In the matter of the Determination of the Interest Rates Pursuant to Section 5703.47 of the Ohio Revised Code (PDF)," Ohio Department of Taxation, October 14, 2022, available on the Department of Taxation's website: tax.ohio.gov.

Confidentiality of investigatory information

(R.C. 4735.05)

Under continuing law, when the Division of Real Estate and Professional Licensing is investigating a licensee or an applicant pursuant to a complaint, or otherwise pursuant to the Division's enforcement duties, all information obtained as part of the investigation is confidential. However, the Division may release information to the Superintendent of Financial Institutions, as it relates to nonbank consumer lending laws, to the Superintendent of Insurance, as it relates to Title Insurance Law, to the Attorney General, or to local law enforcement agencies and prosecutors. The act further authorizes release of information to the Division of Securities, the Division of Industrial Compliance, and in general to any law enforcement agency or prosecutor, not just a local law enforcement agency or prosecutor. It also clarifies that any release of such information under this authority is permissive – the Division is not required to do so.

The act also makes a technical correction by removing a legacy reference to a repealed statute.

Ohio Home Inspector Board

(R.C. 4764.04; R.C. 4764.05, not in the act)

The act requires the Ohio Home Inspector Board to elect a chair and vice chair from among its members by majority vote annually at the first regularly scheduled meeting after September 1. The Board also must meet at least once per quarter each year. Finally, the act specifies that (1) a majority of Board members constitutes a quorum and (2) a quorum is necessary for the Board to conduct its regular business.

Under continuing law, the COM Director is the ex officio executive officer of the Board. The Director may designate the Superintendent of Real Estate and Professional Licensing to act as the executive officer.

The Board's purpose is to establish standards to govern the issuance, renewal, suspension, and revocation of licenses, other sanctions that may be imposed for violations of state law, the conduct of hearings related to these actions, the process of reactivating a license, and the establishment of various fees.

Division of Securities

Securities registration (VETOED)

(R.C. 1707.01, 1707.09, 1707.091, and 1707.092)

General background

The Ohio Securities Act regulates the sale of securities (e.g., stocks, bonds, options, promissory notes, and investment contracts) in Ohio. It delegates the administration of the law to the Division of Securities in COM. If a device or transaction constitutes a security under the law, it cannot be sold in Ohio without first registering it with the Division or properly exempting

it from registration. Additionally, persons who carry out the sale of securities in Ohio must be licensed by the Division or properly exempted from licensure.

Continuing law provides three ways to register securities with the Division, each of which requires a filing that includes fees, exhibits, and other specified documents:

- An issuer that is registering securities with the U.S. Securities and Exchange Commission (SEC) under the Securities Act of 1933 can file a **registration by coordination**.
- An issuer that is making an offering that involves a limited number of purchasers or limited selling efforts can file a **registration by description**.
- Issuers that are not eligible for registration by coordination or registration by description can pursue **registration by qualification**.

Registration by coordination – oversight by the Division (VETOED)

The Division of Securities can subject securities registered by coordination to the same application rules and evaluation standards that apply to those registered by qualification. These registration by qualification rules and standards are more robust than the baseline requirements for registration by coordination, and allow the Division greater discretion to decline registration if, for example, it determines registration is not in the public interest. The Governor vetoed provisions that would have changed this, so that registration by coordination was mutually exclusive from a registration by qualification, limiting the Division's review discretion. Furthermore, the vetoed provisions would have required that all federally registered securities be registered by coordination. Under continuing law, a federally registered security may be registered in Ohio by either coordination or qualification.

The Division may suspend a security offering under any type of registration or a security subject to an exemption if it finds the proposed offer or disposition is on grossly unfair terms, or the plan of issuance and sale of securities would (or would tend to) defraud or deceive purchasers. It seems that the vetoed provisions would have excluded securities registered by coordination from this oversight.

Timing of effectiveness (VETOED)

Under continuing law, subject to full payment of a registration fee and certain other requirements, a registration statement under the coordination procedure is effective either at the moment the federal registration statement becomes effective or at the time the offering may otherwise be commenced in accordance with the rules, regulations, or orders of the SEC. The vetoed provision retained the same application fee and other requirements, but specified that the effectiveness of the statement is not subject to delay or waiver of any condition by the Division of Securities or the issuer.

Notice filings (VETOED)

Under continuing law, investment companies, as defined under the federal Investment Company Act of 1940, that are registered or have filed a registration statement with the SEC must file a notice with the Division of Securities. The notice filing consists of a fee, based on the aggregate price of securities to be sold in Ohio, and a copy of the investment company's federal

registration statement or form U-1 (Uniform Application to Register Securities) or form NF (Uniform Investment Company Notice Filing) of the North American Securities Administrators Association.

The vetoed provision would have extended the notice filing requirement to business development companies (BDCs) that elect to be subject to federal SEC requirements. A BDC is a closed-end fund that invests in private companies and small public firms that have low trading volumes or are in financial distress. BDCs raise capital through public offerings, corporate bonds, and hybrid investment instruments. The vetoed provision would have authorized a BDC to sell an indefinite amount of securities in Ohio after filing notice with the Division. Under current law, securities sold to a BDC are exempt from the general registration requirements.

Division of Unclaimed Funds

Legal claims against holder

(R.C. 169.07)

The Unclaimed Funds Law specifies the types of funds that must be declared unclaimed and requires holders of the funds to report information relating to the unclaimed funds to the COM Director, give notice to owners or beneficiaries, and pay all or a portion of the funds to the Director. Under former law, when the holder made a payment of unclaimed funds to the Director, the holder was relieved of further responsibility for their safe-keeping and was held harmless by the state from liability for any claim arising out of their transfer to the Director. The act limits the hold harmless provision to holders that act in good faith and in compliance with the Unclaimed Funds Law and caps the state's assumption of liability at the value of the unclaimed funds paid, as of the time of the payment to the Director.

Under continuing law, if a lawsuit is brought against a holder that has transferred unclaimed funds to the Director or that has an agreement with the Director to hold a portion of the funds, the holder must notify the Director in writing about the legal proceedings. The act requires the holder to notify the Director not later than 14 days after the holder is served notice of the lawsuit. Continuing law specifies that failure by a holder to give the notice to the Director absolves the state from any liability the state my otherwise have with regard to the unclaimed funds. The act adds that it absolves the state from liability only beyond the value of the unclaimed funds paid by the holder to the Director.

Under former law, if there was a lawsuit against the holder, the Director was required to intervene and assume the defense of the holder in the lawsuit. Under the act, the Director may take any action the Director considers necessary or expedient to protect the interests of the state, which may or may not include intervening in the lawsuit in defense of the holder. The Director is not required to intervene. The act specifies that if the Director elects not to intervene in the lawsuit and a judgment is entered against the holder for any amount of the unclaimed funds paid to the Director, the Director must reimburse the holder for the amount paid, or enter into an agreement modified to reflect the satisfaction of the judgment, if there was an agreement in place previously in which the holder held the funds. The act also specifies that the Director is not required to hold harmless or intervene in the lawsuit against a holder that does not act in good faith or that does not act in compliance with the Unclaimed Funds Law, and that the act's

changes do not insure or indemnify a holder against a holder's own acts or omission, negligence, bad faith, or breach of any duties owed to the owner of the unclaimed funds or the Director.

Under continuing law, property transferred to the Director that is not cash must be converted to cash and the proceeds are deposited into the Unclaimed Trust Fund. The act specifies that if there is a change in the market value of the unclaimed funds after the holder pays the Director, or after the Director sells the unclaimed funds, a person cannot file a lawsuit against the state, a holder, a transfer agent, registrar, or other person acting for or on behalf of the holder for any change in the market value of the unclaimed funds.

Uniform Commercial Code

Lease-purchase agreements

(R.C. 1351.01 and 1351.07)

The act amends the law related to lease-purchase agreements. A lease-purchase agreement is an agreement for the use of personal property for an initial period of four months or less, that is automatically renewable with each lease payment, and that permits the person leasing the property to purchase it. All of the following are expressly excluded from the law governing lease-purchase agreements:

- A lease for agricultural, business, or commercial purposes;
- A lease made to an organization;
- A lease of money or intangible personal property;
- A lease of a motor vehicle.

Under continuing law, a person offering property for lease-purchase must disclose all of the following:

- The cash price of the property;
- The amount of the lease payment;
- The total number of lease payments necessary to acquire ownership of the property.

Former law required the disclosures to be stamped upon, or otherwise affixed to the property in a manner that is clear and understandable. Under the act, when personal property is being offered or displayed for lease-purchase online by the property owner, the property owner may make the disclosures electronically. If the property is not owned by the person offering it for lease-purchase, the person offering the property must make the disclosures electronically, whether or not the property is offered or displayed online.