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 no later than December 31, 2023.
- Establishes a Superintendent of Marijuana Control to oversee DMC.
- 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- Specifies that COM and PRX rules related to the Medical Marijuana Control Program remain in effect until repealed or amended by DMC, but requires DMC to review and propose revisions to existing rules on retail dispensaries by March 1, 2024.
- 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.
- Makes conforming changes throughout the Revised Code.

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 may issue loans to political subdivisions to assist with costs in removing underground storage tank systems that store petroleum and hazardous substances.
- Repeals the law establishing the Underground Storage Tank Revolving Loan Fund, which is used for purposes of 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 (OCILB) 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 current law.
- Changes the program's name to the "Manufacturing and Construction Mentorship Program."

Real property

Ohio fire and building codes

- Requires 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.
- Requires the Director of Commerce, the State Fire Marshal, the Board of Building Standards, and a representative of local building departments to develop guidelines for the enforcement of the Ohio Building Code and Fire Code in a coordinated manner.
- 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 the bill's 90-day 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 (CSPA).

Division of Liquor Control

B-1 liquor permit holders and craft beer exhibitions

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

D-8 liquor permit changes

- Regarding an applicant for a D-8 liquor permit, which authorizes (1) an agency store to sell spirituous liquor samples, (2) a carryout store (C-1, C-2, or C-2x liquor permit holder) to sell beer, wine, or mixed beverages tasting samples, or (3) a carryout to sell growlers of beer, does both of the following:
  - Lowers the permit fee from $500 to $250 if the permit applicant only conducts one of the above activities; and
  - Retains the $500 permit fee if the permit applicant conducts two or more of the above activities.

Liquor permit premises: outdoor sales area

- Codifies and makes permanent a law that is 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 are not currently 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

- Does both of the following regarding duplicate liquor permits issued by the Division of Liquor Control:
  - Requires all liquor permit holders that may serve alcohol for on-premises consumption, rather than only certain permit holders as in current 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 current 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 permitted to 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 under existing law to the existing 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 may be used.
- Allows instead of requires, as in current law, the Ohio Real Estate Commission to use operating funds (instead of the Real Estate Education and Research Fund) for education and research.
- Allows the Superintendent to collect a service fee from the Real Estate Recovery Fund to defray the cost of administering the fund, rather than requiring the Superintendent to collect the service fee.

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 any law enforcement agency.
- Makes a technical correction.

Division of Securities

Securities registration

- Requires all securities registered under the federal Securities Act of 1933 to be registered in Ohio by coordination.
- Specifies 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.
- Requires business development companies (BDCs) to file a notice with the Division of Securities before conducting business in Ohio, and permits a BDC, after filing the notice, to sell an indefinite amount of securities in Ohio.

Division of Unclaimed Funds

Legal claims

- 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 Director of Commerce.

- 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.
- Gives the Director discretion to defend the lawsuit against the holder, instead of requiring the Director to assume the defense.
- Provides that if the Director elects not to intervene in the lawsuit and judgment is entered against the holder for any amount paid to the Director, then the Director must reimburse the organization for the amount paid, or modify any agreement to reflect satisfaction of the judgement.
- 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

Documentary service charges

- Increases the maximum permitted documentary service charge from $250 to $500 per sale.

Lease-purchase agreements

- Allows a person that offers or displays online personal property owned by the person for lease-purchase to disclose the price of the property, amount of the lease payment, and the total number of lease payments necessary to acquire ownership electronically, rather than affixing such information to the property itself.
- 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 bill consolidates oversight of the Medical Marijuana Control Program within the Division of Marijuana Control (DMC), which the bill creates within the Department of Commerce (COM). To oversee DMC, the bill establishes a Superintendent of Marijuana Control who reports to the Director of Commerce. Currently, oversight of the Medical Marijuana Control Program is

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. Accordingly, the bill transfers all assets, liabilities, and obligations of COM and PRX related to medical marijuana to DMC.

The bill requires the transfer to be complete no later than 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 the 180th day following the effective date of the bill's changes. After that date, such applications must be submitted to DMC. Consequently, it appears that PRX will continue to receive applications for patient and caregiver registrations for a least three months after the Medical Marijuana Control Program is fully transferred to DMC. Presumably, PRX would send those applications to DMC for processing.

The bill specifies that medical marijuana licenses and registrations issued by PRX and COM remain 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 under the law as it existed before the bill's effective date. Forms of medical marijuana previously approved by PRX remain approved unless DMC later revokes the approval.

Rules

DMC is required to 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 current law. COM and PRX rules continue in effect unless they are repealed or amended by DMC. However, the bill requires DMC to review and propose revisions to the PRX rules concerning medical marijuana retail dispensaries no later than March 1, 2024.

Investigations

The bill 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 bill 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 investigation being conducted by DMC. OARRS is a drug database used by PRX to prevent the misuse of controlled substances and other dangerous drugs.

Division of Financial Institutions

Criminal records checks

(R.C. 1121.23)

The bill replaces the requirement that the Superintendent of Financial Institutions obtain a criminal records check in relation to a person who directly or indirectly controls a bank, or has a substantial interest in or participates 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 bill 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 bill 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 a person controlled by any person, that person's interest is aggregated with any other immediate family member. This includes a spouse, parents, children, siblings, in-laws, and any other person who shares their home.

The bill also provides definitions for several terms that are not defined 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.[33]

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 bills adds these definitions to clarify precisely who that includes in this context.

[33] R.C. 1701.01, 1701.55, 1702.26, and 1706.01, not in the bill.

State Fire Marshal

Underground Storage Tank Revolving Loan Program

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

The bill eliminates the Underground Storage Tank Revolving Loan Program and the accompanying Underground Storage Tank Revolving Loan Fund. Under the program, a political subdivision may apply for a loan from the State Fire Marshal to assist with the costs of removing underground storage tank systems that store petroleum and hazardous substances. The loans are for sites where a responsible party is unknown or unable to financially pay for the removal of the storage tank. The State Fire Marshal must adopt rules to administer and operate the program, including establishing qualifying criteria for loan recipients. The fund is used to make underground storage tank revolving loans. The fund currently has no cash balance.

Division of Industrial Compliance

Elevator safety

Inspection interval

(R.C. 4701.17)

The bill 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 for elevators at $220 plus $12 for each floor serviced by the elevator. The bill retains the existing fee, but changes a reference in the fee provision from "once every six months" to "twice every twelve months." This change makes the fee provision consistent with the inspection provision.

Elevator Safety Review Board meetings

(R.C. 4785.09; Section 110.40)

Current law requires that the Elevator Safety Review Board meet at least once per month. The bill extends the period between meetings to occurring at least once per quarter. As such, the maximum period between meetings is extended to three months.

Additionally, the bill clarifies that the amendment to the section does not supersede the future repeal of that section. Continuing law, implemented by H.B. 107 of the 134th General Assembly, repeals the laws that create the Elevator Safety Review Board and require licensure of elevator contractors and mechanics on April 3, 2033.

Out-of-state specialty contractors

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

The bill prevents the December 29, 2023, scheduled elimination of the Ohio Construction Industry Licensing Board's (OCILB) ability to issue specialty contractor licenses without examination in accordance with reciprocity agreements entered into 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.

Currently, OCILB issues reciprocal licenses to individuals who are licensed specialty contractors in states with which Ohio has a reciprocity agreement. To grant a reciprocal license, OCILB must determine the requirements for licensure under the laws of the other state are substantially equal to Ohio's licensure requirements, and that the other state extends similar reciprocity to Ohio licensees. The out-of-state applicant also must pay a fee established by OCILB. The applicant is not required to pass an examination to receive a reciprocal license.

OCILB's authority to issue a license through a reciprocity agreement currently is scheduled to end on December 29, 2023. Beginning on that date, a licensee from another state seeking an Ohio specialty contractor's license must pass an examination to receive the license. The individual may sit for the applicable examination if the individual holds a substantially similar out-of-state license and does all of the following:

- Provides proof that the individual was issued at least five authorizations for construction, erection, equipment, alteration, or addition of any building by an authority with responsibility for enforcing building regulations in the jurisdiction (essentially, building permits) where the individual holds the out-of-state occupational license;
- Provides at least one tax return that reflects income earned for services provided under the individual's out-of-state occupational license;
- Provides proof that the contracting company with whom the individual is employed in the jurisdiction where the individual holds the out-of-state occupational license is licensed as a foreign corporation or registered as a foreign limited liability company under Ohio law and that the corporation or company has designated an agent in Ohio;
- Meets the following requirements applicable to applicants seeking an initial specialty contractor license under continuing law:
  - Be at least 18 years old;
  - Be a U.S. citizen or legal alien residing in the U.S.;
  - Maintain contractor's liability insurance in an amount determined by OCILB;
  - Not violated the OCILB Law or engaged in specific activities involving fraud, misrepresentation, or deception.

Under the bill, however, an individual licensed in another state that has a reciprocity agreement with Ohio is eligible for an Ohio license without taking an examination. A licensee from a state that does not have a reciprocity agreement with Ohio will need to provide proof that the individual meets the above requirements and pass the examination. Alternatively, such an individual may apply to take the examination in the same manner as an individual seeking an initial license.[34]

[34] See R.C. 4740.06, not in the bill.

Manufacturing and Construction Mentorship Program

(R.C. 4109.05 and 4109.22)

The bill 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 bill) 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 to the minor 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 bill allows a minor who is employed by an employer 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 bill, 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 bill requires an employer to provide a 16- or 17-year old minor employed in a construction occupation under the program with training that includes all of 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);
- 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 bill requires the employer to pay any costs associated with providing a minor in a construction occupation with the training.

As with manufacturing employers employing 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 beginning employment.

List of approved tools

The bill requires the Director of Commerce, in consultation with construction employers, to adopt rules in accordance with the Administrative Procedure Act specifying a list of 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. Nothing in the bill requires the Director to include a tool on the list if the federal Fair Labor Standards Act[35] (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.

Prohibitions

The bill 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 by the employer under the program;

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 file a complaint against an offending employer in any court of competent jurisdiction after providing notice to the employer of the violation. 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 bill's prohibitions is assessed a civil penalty of up to $1,730 for each violation.[36]

[35] 29 U.S.C. 201 *et seq.*

[36] R.C. 4109.13 and 4109.99, not in the bill.

Hazardous occupations prohibited for minors

Continuing law requires the 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 Director of Commerce must consider the hazardous occupation orders issued pursuant to the FLSA when adopting the rules. The bill prohibits the Director from adopting any rule that would prohibit a minor who is 16- or 17-years old and employed by an employer under the "**Construction and Manufacturing Mentorship Program**" above 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 the 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.[37] For example, federal and Ohio law prohibit a minor from using hammering machines such as a power hammer.[38] 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.

Real property

Ohio fire and building codes

Exterior patios

(R.C. 3737.83; Sections 110.20 and 110.21)

Continuing law 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.[39] The bill requires the State Fire Marshal to establish in the state Fire Code that the occupant load 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, each means of egress must provide a continuous and unobstructed way of travel to an area of refuge, a horizontal exit, or a public way.[40]

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[37] 29 U.S.C. 218 and 29 C.F.R. 570.50.

[38] 29 C.F.R. 570.59 and O.A.C. 4101:9-2-11.

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

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

Coordinated enforcement

(R.C. 3737.062)

The bill requires the Director of Commerce, 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 current law, permits provided under the Ohio Fire Code must be granted by the State Fire Marshal or 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.[41]

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 five business days, the bill allows the owner, operator, or developer of a retail establishment to 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 will last for only 14 days, after which time the establishment must obtain the permit in question from the local fire code or building official.

The bill 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 bill 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 the bill's 90-day 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 of the residential real estate;

[41] 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 bill.

- The agreement purports to be a lien, encumbrance, or other real property security interest.

For example, a "right-to-list" agreement might give a real estate agent the exclusive right to list a particular property for the duration of the agreement, no matter who the owner of the property is or how many times the property changes hands.

Under the bill, right-to-list agreements are void and unenforceable. Furthermore, county recorders must refuse to record such an agreement. However, the bill 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.

Persons other than the property owner that seek to enter a right-to-list agreement commit an unfair and deceptive practice under the Consumer Sales Practices Act (CSPA). Such persons would be subject to a lawsuit brought by either the Attorney General or the property owner.[42] Furthermore, real estate agents or brokers who are found to have entered into a right-to-list agreement would be 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.[43]

Division of Liquor Control

B-1 liquor permit holders and craft beer exhibitions

(R.C. 4303.2011)

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

D-8 liquor permit changes

(R.C. 4303.184)

Regarding an applicant for a D-8 liquor permit, the bill does both of the following:

1. Lowers the permit fee from $500 to $250 if the permit applicant only conducts one of the activities specified below; and

[42] R.C. 1345.07 and 1345.09, not in the bill.

[43] R.C. 4735.051, not in the bill.

2. Retains the $500 permit fee if the permit applicant conducts two or more of the below activities.

The D-8 permit authorizes:

1. An agency store to sell spirituous liquor samples;

2. A carryout store (C-1, C-2, or C-2x liquor permit holder) to sell beer, wine, or mixed beverages tasting samples; or

3. A carryout to sell growlers of beer.

Liquor permit premises: outdoor sales area

(R.C. 4301.62 and 4303.188; Sections 610.70 and 803.20)

The bill codifies and makes permanent a law that is 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 bill;

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 an individual 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 bill'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 authorized under the bill.

Duplicate liquor permits

(R.C. 4303.30)

Current law requires certain liquor permit holders 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. The liquor permit holders subject to this requirement are 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. According to the Division of Liquor Control, a D-1, D-2x, or D-3x permit holder is not required to obtain a duplicate permit if the additional bar is exclusively used for the sale of beer. Further a D-3x permit holder is not required to obtain a duplicate permit if the additional bar is exclusively used for the sale of wine. An A-1-A permit holder must obtain a duplicate bar permit for an additional bar only if the permit holder obtains a D-6 permit (Sunday sales of alcohol).

The bill requires all liquor permit holders that serve alcohol for on-premises consumption to obtain a duplicate permit if the permit holder wishes to add more than two bars. It also revises the per bar permit fee for a duplicate permit as follows:

Permit	Current law	The bill
A-1-A with a D-6	$781.20	$781.20
A-1	Not authorized	$781.20
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

Permit	Current law	The bill
B-5	Not authorized	$312.60
D-2	$100	$112.80
D-3	$400	$150
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
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

Permit	Current law	The bill
F class	Not authorized	$100 to $340

Liquor permit cancellations

(R.C. 4301.26)

The bill 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 bill 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 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 bill modifies the work requirements to take the real estate broker's examination. Current law requires an applicant to have been a licensed real estate broker or salesperson for at least two years. Additionally, 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 that person's application.

The bill changes the requirement that the applicant have been a licensed real estate broker or salesperson for at least two years by requiring that those two years take place during the five years preceding the application. This change means that applicants for the examination must have two years of recent experience, but does not require that those two years be consecutive or immediately precede the application.

The bill also removes the requirement that an applicant have worked as a licensed real estate broker or salesperson for an average of at least 30 hours per week for two of the preceding five years. Under the bill, an applicant only has to have been a licensed real estate broker or salesperson for at least two of the preceding five years, and 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 the Ohio Real Estate Commission assessed for certain unlicensed or unregistered activity, the bill requires the Superintendent of Real Estate and Professional Licensing to forward to the Attorney General identifying information relating to the person. Under continuing law, the Superintendent also must forward to the Attorney General the person's name and the amount of the penalty, for purposes of collecting the penalty. The civil penalty is up to $1,000 per violation, with each day constituting a separate violation.

Disciplinary actions

(R.C. 4735.18)

The bill limits where brokerage trust accounts may be maintained to state or federally chartered institutions located in Ohio. Current law requires that a real estate broker or salesperson license holder must maintain a special or trust bank account in a depository located in Ohio. This change applies to brokerage trust accounts for the purpose of receiving escrow funds and security deposits, as well as brokerage trust accounts for the purpose of depositing and maintaining funds in the course of real property management on behalf of others. 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.

The bill also permits the Superintendent to take disciplinary action against a license holder for having been judged incompetent by a court in any capacity. Current law allows for disciplinary action to be taken only when a license holder has been judged incompetent for the purpose of holding the license.

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 bill makes several changes to the funds that hold fees collected by the Division of Real Estate and Professional Licensing by consolidating several funds. Under existing law, changed in part by the bill, 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 rest, $2.50, goes to the Division to be used for purposes of the Cemetery Law. Of the $2.50 that goes to the Division, $1 goes to the Cemetery Grant Fund to advance grants to cemeteries registered with the Division to defray the costs of exceptional cemetery maintenance or training cemetery personnel in the maintenance and operation of cemeteries. The bill eliminates the Cemetery Grant Fund, creates the Cemetery Registration Fund, and requires burial permit fees to be deposited into the new fund. In addition, under existing law, the Division cannot advance

grants totaling more than 80% of the appropriation to the fund for that fiscal year. The bill also eliminates this restriction.

The bill also eliminates several other funds managed by the Division. It eliminates the Real Estate Education and Research Fund, Manufactured Homes Regulatory Fund, Home Inspectors Fund, and Real Estate Appraiser Operating Fund. The bill redirects deposits going to these funds under existing law to the existing Division of Real Estate Operating Fund. The bill makes several conforming changes related to the redirection of these funds.

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

Lastly, the bill 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). Under continuing law, 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.[44]

Confidentiality of investigatory information

(R.C. 4735.05)

Under existing law, unchanged by the bill, when the Superintendent of Real Estate and Professional Licensing is conducting an investigation of a licensee or an applicant pursuant to a complaint, or otherwise pursuant to the Superintendent's enforcement duties, all information obtained as part of the investigation must be held confidentially by the Superintendent. Under existing law, changed in part by the bill, the Division of Real Estate and Professional Licensing is permitted to release information to the Superintendent of Financial Intuitions, 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 local prosecutors.

In addition to not preventing the release of this information to these entities, the bill clarifies that the release of information is permissive – the confidentiality requirement does not *require* the release of this information. In addition, the bill expands this provision to permit the 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.

[44] "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.

The bill also makes a technical correction by removing a legacy reference to a repealed statutory provision.

Division of Securities

Securities registration

(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. The Act delegates the administration of the law to the Division of Securities in the Department of Commerce. If a device or transaction constitutes a security under the Act, 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.

Existing law, unchanged by the bill, provides three ways to register securities with the Division, each of which requires a filing with the Division 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** with the Division.
- An issuer that is making an offering that involves a limited number of purchasers or limited selling efforts can file a **registration by description** with the Division.
- Issuers that are not eligible for registration by coordination or registration by description can pursue **registration by qualification** with the Division.

Registration by coordination – oversight by the Division

Under existing law, changed in part by the bill, 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, the Division determines registration is not in the public interest. The bill changes this, so that the registration by coordination is mutually exclusive from a registration by qualification, limiting the Division's review discretion. Furthermore, the bill requires all federally registered securities to be registered by coordination. Currently, a federally registered security may be registered in Ohio by either coordination or qualification.

Under existing law, changed in part by the bill, 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. The bill seems to exclude securities registered by coordination from this oversight.

Timing of effectiveness

Under existing 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 bill retains the same application fee and other requirements, but also specifies 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

Under existing 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 also 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 bill extends 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 bill authorizes a BDC to sell an indefinite amount of securities in Ohio after filing notice with the Division. Under continuing 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, in part, specifies the types of funds that must be declared unclaimed and requires holders of such funds to report information relating to the unclaimed funds to the Director of Commerce, give notice to owners or beneficiaries, and pay all or a portion of the funds to the Director. Under current law, changed in part by the bill, when the holder makes a payment of unclaimed funds to the Director, the holder is relieved of further responsibility for the safe-keeping of the funds and will be held harmless by the state from liability for any claim arising out of the transfer of the funds to the Director. The bill 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 bill specifies that the holder must 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 bill adds that it absolves the state from liability only beyond the value of the unclaimed funds paid by the holder to the Director.

Under current law, if there is a lawsuit against the holder, the Director must intervene and assume the defense of the holder in the lawsuit. Under the bill, 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 bill specifies that if the Director elects not to intervene in the lawsuit and a judgement 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 judgement, if there was an agreement in place previously in which the holder held the funds. The bill also specifies that the Director is not required to hold harmless or intervene in the lawsuit against the holder that does not act in good faith or that does not act in compliance with the Unclaimed Funds Law and that the changes made in the bill to the Unclaimed Funds Law 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 bill specifies that if there is a change in the market value of the unclaimed funds after the payment is made by the holder to the Director, or after the sale of the unclaimed funds by the Director, 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

Documentary service charges

(R.C. 1317.07)

The bill increases the maximum documentary service charge that a seller may impose as part of a retail installment contract from $250 to $500 per sale. Generally, a retail seller is prohibited from charging any additional fee or similar expense as part of an installment contract. Continuing law allows an exception when the seller is authorized under codified law or by rules to charge the additional fee or expense.

One such exception involves motor vehicle sales, where a motor vehicle dealer may charge the lesser of $250, or 10% of the amount paid for the motor vehicle by the buyer or lessee. The bill increases the maximum charge for motor vehicles to $500, or 10% of the amount paid by the buyer or lessee.

Lease-purchase agreements

(R.C. 1351.01 and 1351.07)

The bill 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 the property. 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.

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