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OHIO LEGISLATIVE SERVICE COMMISSION

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Office

H.B. 127
134th General Assembly

Fiscal Note & Local Impact Statement

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Version: As Reported by House State and Local Government

Primary Sponsor: Rep. Merrin

Local Impact Statement Procedure Required: No

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Highlights

- As of the beginning of February 2021, the Liquor Control Commission (LCO) had collected just under \$100,000 in forfeitures from liquor permit establishments that were found to have violated COVID-19 operating restrictions, primarily under LCO Rule 80 which is when alcohol may be served and consumed on premises. Forfeitures are deposited into the GRF.
- State agencies, local boards of health, and possibly local courts may experience an increase in administrative costs to expunge records of violations and to restore any rights or privileges lost. The amount will depend on the number of violations that have taken place under the jurisdiction of each entity.

Detailed Analysis

State agency penalties

Not later than 30 days after the effective date of the bill, the Director of Budget and Management (OBM), in consultation with state agencies, is required to determine the amount of money collected by a state agency in civil or administrative penalties for each violation of an order by each business that occurred between March 14, 2020, and the effective date. Each state agency is required to certify to the Director of Budget and Management a list of businesses that were issued a fine and the amount of that fine. Upon receipt of this list from each state agency, the Director is required to reimburse each business the amount of penalties paid by each business. If the business no longer exists, the Director of OBM is required to make a reasonable effort to locate, and issue the refund to, the owner of the business. The bill appropriates the certified amounts.

Liquor Control Commission and Department of Public Safety

One of the primary entities responsible for disciplinary actions taken during the time periods detailed in the bill is the Liquor Control Commission (LCO). LCO is the rulemaking and adjudication agency that oversees the alcohol beverage industry in Ohio and ensures compliance with Ohio's liquor laws and regulations. Its operations are funded by a portion of liquor permit fee revenue collected by the state and subsequently transferred into the State Liquor Regulatory Fund (Fund 5LPO).

According to Liquor Control Commission records, the Commission did not have any disciplinary hearings related to COVID-19 violations committed by liquor permit holders until August 2020. These hearings primarily involve "Rule 80" violations, although other COVID-19-related rule violations are also involved. Rule 80 went into effect July 31, 2020, and prohibits (1) all liquor permit establishments from making alcohol sales for on-premises consumption after 10:00 p.m., and (2) all on-premises consumption of alcohol between 11:00 p.m. and 5:30 a.m. Rule 80 also increased the number of carry-out alcoholic drinks allowed from two to three. Between August 2020 and February 2021, the Commission heard 200 such COVID-19-related cases. An estimated 40 COVID-19 violation cases have not yet been adjudicated and are scheduled for future disciplinary hearings. As of the beginning of February 2021, the Commission had collected approximately \$95,100 in forfeitures from liquor permit establishments resulting from these cases. These proceeds are deposited into the GRF. Under the bill, the penalties and forfeitures related to Rule 80 violations would be returned to permit holders.

The scope of the bill as it relates to LCO is limited to violations of Rule 80 and two other specific rules for which permit holders have been cited during the COVID-19 epidemic. These are Rule 13 (emergency suspension of sales of liquor, beer, wine, and mixed beverages), and COVID-19-related violations of Rule 52(B)(1) (disorderly activities). Under the process outlined in the bill, the OBM Director would be required to refund liquor permit holders the amount of forfeitures imposed by LCO because of these COVID-19-related violations. (Forfeitures imposed on permit holders for other violations not related to the three rules above that occurred at the time of violation are not affected by the bill and would not be refunded.) The bill also requires that records of these COVID-19-related violations be expunged and that the permit holders who were impacted be notified when this happens. Finally, the bill requires LCO to issue a report to the House of Representatives and the Senate within 30 days after the process of making refunds and expunging records has been completed.

The primary investigative entity related to COVID-19 safety enforcement activities is the Ohio Investigative Unit (OIU) under the Department of Public Safety. During calendar year 2020, OIU conducted nearly 25,000 compliance visits and just over 4,000 Rule 80 visits. OIU issued 185 warnings from these visits, and issued a total of 308 citations for either compliance or curfew violations.

Ohio Department of Health

According to the Ohio Department of Health's (ODH) COVID-19 Dashboard¹ regarding its Retail Compliance Unit, retail locations are inspected by the Retail Compliance Unit to ensure that businesses are following the Director's Order for Retail and Business Compliance for Facial Coverings throughout the state of Ohio.² Under the order, a retailer will receive a warning for a first violation. For repeat violations, the business may be required to immediately close to the public for up to 24 hours. The order does not specify anything about potential fines. According to the dashboard, as of March 11, 2021, approximately 34,100 retail establishments were visited since the first update of the dashboard on December 3, 2020. In that time frame, 228 warnings were issued and zero businesses were ordered to close. This information is provided weekly by inspectors. According to the Director's order, those with enforcement powers specifically include the Ohio Bureau of Workers' Compensation Retail Compliance Unit,³ a local health department or district, and local law enforcement officers who are authorized to enforce the order as representatives of ODH.

In addition to this order, the Director of Health implemented other orders during March 2020 that ceased operations at hair salons, day spas, and nail salons and limited sale of food and beverages to carry-out and delivery. In the months following these initial orders, amended orders have been issued that would reopen gyms, hair salons, dine-in services, etc. The amended orders specified required measures, including social distancing requirements. These amended orders may be enforced by state and local law enforcement and quarantine and isolation orders and other ODH rules may be enforced by boards of health, state institutions, police, and other state and local officers and employees. The orders to reopen gyms, hair salons, tattoo parlors, etc. state that a violation of R.C. 3701.352 is a misdemeanor of the second degree, which can include a fine of no more than \$750 or not more than 90 days in jail, or both. It does not appear that fines issued for criminal penalties would be refunded under the bill. LBO staff has reached out to ODH regarding the number of violations and if there have been any civil or administrative fines issued.

Board of health penalties

Additionally, the bill requires a board of health to determine the amount of money collected by the board of health in civil or administrative penalties for each violation of an order by each business that occurred March 14, 2020, and the effective date. After that determination, the board of health is required to refund to each business the amount of penalties paid by each business. If the business no longer exists, the board is required to make a reasonable effort to locate, and issue the refund to, the owner of the business.

¹ <https://coronavirus.ohio.gov/wps/portal/gov/covid-19/dashboards/other-resources/retail-compliance-unit>.

² <https://coronavirus.ohio.gov/static/publicorders/retail-and-business-compliance-facial-coverings-all-ohio.pdf>.

³ Currently, all members of the Retail Compliance Unit are Bureau of Workers' Compensation inspectors; they represent ODH while performing such duties.

According to the Association of Ohio Health Commissioners, local boards of health do not have authority to fine businesses while enforcing orders issued by the Ohio Department of Health. However, it is possible that a local board issued an order in which case current law specifies that the penalty for violating such an order or regulation is a minor misdemeanor for a first offense and a fourth degree misdemeanor for subsequent offenses. Additionally, any person that interferes with the execution of an order issued by a board of health can be fined no more than \$100 or imprisoned for no more than 90 days. Any fines collected would likely be collected by a court if a person is found guilty. It is unclear where any fine revenue may be deposited. It does not appear that criminal fine penalties would be refunded under the bill. It is unclear if any civil or administrative fines, which would be returned, could have been collected. In addition to ODH or board-issued orders, local boards might also respond to local rules or ordinances. LBO staff reached out to both Columbus Public Health and Franklin County Public Health to determine if any fine revenue has been collected by either board. Columbus Public Health stated that fines have been collected under city ordinance, such as city of Columbus ordinance 1821-2020,⁴ which has since been repealed, that limited times of operation for bars, night clubs, and restaurants. This ordinance gave authority to Columbus Public Health to investigate and enforce the provisions of the ordinance, including the collection of fines. However, it appears that fines issued under city ordinances are not subject to the provisions of the bill. Franklin County Public Health stated that they were unaware of any fines being collected for violations of the Director's orders, though investigations have been completed.

Violations

The bill specifies that any violation or any sanction imposed in response to any violation of an order by a business that occurred between March 14, 2020, and the effective date of this section is vacated. Additionally, a state agency or board of health is required to expunge any record of a violation, and is required to treat any finding of a violation as a nullity and take the steps within its power to restore any rights or privileges lost as a result of a finding of violation, including reinstatement of a revoked license and other right or privilege to do business. If any disciplinary action has been initiated, but not completed, the state agency or board of health is required to cease taking such action.

State agencies and local boards of health may experience an increase in administrative costs to expunge records of violations and to restore any rights or privileges lost. Additionally, local courts may be involved if criminal records need to be expunged. The amount will depend on the number of violations that have taken place under the jurisdiction of a state agency, board of health, or local court.

Enforcement

The bill permits any business to bring an action in the court of common pleas in a county where the business is located to enforce the rights, privileges, and obligations identified in the bill.

There may be costs to local courts if any additional cases are filed as a result of the bill's provisions. These costs will depend on the number of cases filed.

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⁴ <https://columbus.legistar.com/LegislationDetail.aspx?ID=4600529&GUID=515EE328-6102-47BA-9C9C-EC98182292FE>.