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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

H.B. 507
134th General Assembly

Final Analysis

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Primary Sponsor: Rep. Koehler

Effective date: April 7, 2023

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UPDATED VERSION*

SUMMARY

Internet sales exemption from auction laws

- Exempts from auctioneer and auction firm licensure requirements a person who, in any calendar year, sells \$10,000 or less of personal property via an auction mediation company (for example, eBay) if:
 - The company provides fraud protection to the buyer; and
 - The property is the person's own personal property, or the property is the personal property of another (sold without compensation).

Preemption of local pesticide regulation

- Prohibits a political subdivision from regulating or banning the packaging, registration, labeling, sale, storage, distribution, use, or application of a pesticide registered with the Department of Agriculture on private property, including private property that is open to the public.

Evaluations of EHSs

- Requires the Directors of Agriculture and Health each to adopt rules establishing a method for evaluating a registered environmental health specialist's (EHS) and EHS in training's knowledge of the laws governing food safety, including the Ohio Uniform Food Safety Code.
- Specifies that the evaluations must solely use an objective written or electronic assessment that complies with certain requirements.

* This version updates the effective date.

- Requires the evaluations to be part of board of health surveys that determine if individual boards are qualified to administer and enforce the laws governing retail food establishments and food service operations.
- Prohibits the Directors from using any other assessment than that established by the rules.
- Allows the Directors to require a registered EHS or EHS in training to participate in a field review portion of the survey for training and educational purposes, but prohibits the Directors from using that participation for evaluation purposes.

Food safety changes

- Eliminates statutory provisions in the laws governing canning and bottling, cold storage of food, frozen food storage, grading and labeling of produce, labeling and selling of canned fruits and vegetables, and vinegar branding that duplicate other state or federal requirements or are outdated.
- For purposes of the laws governing canning and bottling and cold storage of food, redefines “food” to conform with the definition in the Pure Food and Drug Law.
- For purposes of a device used to process apples for use in apple cider, requires the device to be equipped with a means to add a sanitizer to the water used to wash the apples, rather than a means to chlorinate the water as in former law.
- Aligns the hearing requirements under the Food Processing Law with the Administrative Procedure Act.

State agency oil and gas resources

- Requires, rather than authorizes, each state agency to lease agency-owned or controlled oil and gas resources for development prior to the date that rules governing leasing procedures are adopted by the Oil and Gas Land Management Commission.
- Specifies that a state agency must enter that type of lease in good faith.
- Requires the person seeking to enter into a lease to submit to the state agency proof of insurance and financial assurance and proof of registration with the Division of Oil and Gas Resources Management.

Green energy

- Defines “green energy” as energy generated by using an energy resource that meets certain emissions and sustainability requirements, including energy generated by using natural gas.
- Except for compressed natural gas produced from biologically derived methane gas, prohibits energy generated by using natural gas from being eligible to obtain renewable energy credits.

Towing authorizations

- Authorizes a conservancy district police department to order the towing and storage of a motor vehicle in certain circumstances, including when the vehicle is an abandoned junk vehicle and when the vehicle is left on private or public property for a specified time.
- Authorizes a conservancy district police department to undertake other activities related to towed or abandoned vehicles, including maintaining records of vehicles towed from private tow-away zones and receiving notices from specified entities that are taking title to abandoned vehicles.

Poultry chicks

- Decreases, from six to three, the minimum number of poultry chicks under four weeks old that may be sold, given away, or otherwise distributed in a given lot.

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DETAILED ANALYSIS

Internet sales exemption from auction laws

Under continuing law, a person is generally required to be licensed as an auctioneer or auction firm under the auctioneer's law when auctioning property on the internet. The act creates a new exemption to this requirement that applies to a person who sells property on the internet below a specific monetary threshold. Namely, a person who, in any calendar year, sells personal property valued at \$10,000 or less on the internet via an auction mediation company (e.g., eBay) is exempt from licensure if both of the following apply:

1. The auction mediation company specifically provides a fraud protection or money-back guarantee to the buyer of the property being sold; and
2. The person is either selling the property of another and does not receive any compensation for the sale, or the person is selling the person's own personal property.

An auction firm is a person that wishes to manage a personal property auction.¹

Preemption of local pesticide regulation

The act prohibits a political subdivision from regulating or banning the packaging, registration, labeling, sale, storage, distribution, use, or application of a pesticide registered with the Department of Agriculture on private property, including private property that is open to the public. A political subdivision is a county, township, municipal corporation, or any other body corporate and politic that is responsible for government activities in a geographic area smaller than that of Ohio.²

Evaluations of EHSs

Background

Under continuing law, the Directors of Agriculture and Health administer the law governing retail food establishments and food service operations. The Director of Agriculture has responsibility over retail food establishments, and the Director of Health has responsibility over food service operations.

A retail food establishment is a place where food is stored, processed, prepared, manufactured, or otherwise held or handled for retail sale (for example, a grocery store). A food service operation is a place, location, site, or separate area where food intended to be served in individual portions is prepared or served for a charge or required donation (for example, a restaurant). Generally, boards of health license these facilities and administer and enforce the food safety regulations that govern them. Registered environmental health specialists (EHS) and environmental health specialists in training (EHS in training) employed by

¹ R.C. 4707.02(B)(10); R.C. 4707.01, not in the act.

² R.C. 921.26(C)(2).

or contracting with boards of health conduct inspections of these facilities. If a board licenses retail food establishments, the Director of Agriculture is responsible for evaluating the board's licensure and inspection program. If a board licenses food service operations, the Director of Health is responsible for evaluating the board's licensure and inspection program.³

Evaluations

The act requires the Director of Agriculture and the Director of Health each to adopt rules establishing a method for evaluating a registered EHS's and EHS in training's knowledge of the laws governing food safety, including the Ohio Uniform Food Safety Code.⁴

It requires the evaluations to be included in the surveys that are conducted to assess a board of health to determine if the board is qualified to administer and enforce the laws governing retail food establishments and food service operations.⁵ If a survey demonstrates that a board of health does not have the capacity to appropriately enforce these regulations, a board of health could lose its authority as the licensor of food service operations or retail food establishments.⁶

Under the act, the Directors may only evaluate a registered EHS or EHS in training through the use of an objective written or electronic assessment that complies with all of the following:

1. It is developed by the appropriate Director in consultation with representatives from the Ohio Environmental Health Association and the Association of Ohio Health Commissioners;
2. It does not exceed 50 questions in length;
3. In order to pass the assessment, the individual must correctly answer 80% or more of the questions in the assessment. Questions on the exam must be derived from the most common violations cited during the previous inspection year; and
4. The individual is allowed to review the Ohio Uniform Food Safety Code during the assessment.⁷

For purposes of any field review portion of the survey (e.g., if an EHS is inspecting a restaurant, a person from the board of health follows the EHS to determine if the EHS is documenting any and all restaurant violations), the Directors may require a registered EHS or EHS in training to participate in the field review for training and educational purposes. However, the act prohibits the Director from using that participation to evaluate whether the

³ R.C. 3717.01, not in the act; R.C. 3717.11, not in the act.

⁴ R.C. 3717.33 and 3717.52.

⁵ R.C. 3717.33(H)(2) and 3717.52(B)(2).

⁶ R.C. 3717.11, not in the act.

⁷ R.C. 3717.33(H)(1) and 3717.52(B)(1).

registered EHS or EHS in training has sufficient knowledge of the laws governing food safety and of the Ohio Uniform Food Safety Code.⁸

The act requires the Directors, in consultation with representatives from the Ohio Environmental Health Association and the Association of Ohio Health Commissioners, to review and update the assessment on at least a biennial basis.⁹ The Directors must complete the initial development and implementation of the assessment by October 4, 2023.¹⁰

Food safety changes

Ohio law establishes various statutory food safety requirements. According to the Department Agriculture, the provisions discussed below are duplicative of other state or federal requirements or are outdated. Consequently, the act eliminates or alters these provisions to conform with current standards.

Canning and bottling requirements

The act eliminates statutory sanitary requirements governing bottling and flavor manufacturing plants, including requirements that specify that these plants must be:

1. Free from contaminated surroundings, well lighted, drained, plumbed, and ventilated;
2. Kept in a sanitary condition;
3. Provided with adequate sanitary toilet facilities; and
4. Equipped with mechanical container-washing apparatus and machinery.

Similar sanitation requirements are established in rules adopted by the Director of Agriculture.¹¹

Cold storage for food

For the laws governing cold storage of food, the act does all of the following:

1. Redefines “food” to conform with the definition in the Pure Food and Drug Law, which defines it as articles used for food or drink for humans or animals, chewing gum, and articles used for components of any of those articles;
2. Eliminates provisions pertaining to labeling and storage of food stored in cold-storage warehouses (warehouses), including:
 - a. A requirement that a warehouse file with the Director a quarterly itemized report stating the kind and quantities of food products held in the warehouse;

⁸ R.C. 3717.33(H)(3) and 3717.52(B)(3).

⁹ R.C. 3717.33(H)(2) and 3717.52(B)(2).

¹⁰ Section 4.

¹¹ R.C. 913.04 and 913.28; R.C. 913.27, repealed.

- b. A requirement that food deposited in a warehouse bear stamps that indicate the dates of deposit and removal of the food;
- c. A prohibition against selling a container of cold-storage food at wholesale unless the container has a placard on it printed with the words “wholesome cold-storage food”;
- d. A prohibition against selling food from an open container of cold-storage food, including at retail, unless the container includes the placard specified above;
- e. A prohibition against selling whole or partial carcasses of beef, pork, and other meats; fresh fish; eggs; or butter if any of those foods have been kept for more than one year in a warehouse; and
- f. A prohibition against returning food to a warehouse if the food has been withdrawn for the purpose of placing it in the market for sale.

Similar federal labeling and storage requirements are incorporated into Ohio food safety rules adopted by the Director.¹²

Frozen food storage

For the laws governing frozen food storage, the act does all of the following:

1. Redefines “food” to conform with the definition in the Pure Food and Drug Law;
2. Eliminates provisions pertaining to storage of frozen food at an establishment, including:
 - a. A requirement that the establishment include a locker room, chill room, and sharp freezing facility and that the locker room does not exceed +5° F with a tolerance of 5° F higher;
 - b. A prohibition against food that is not for human consumption being stored with food for human consumption, unless inspected by the USDA or the Department of Agriculture; and
 - c. A requirement that every operator of an establishment having frozen food lockers keep an accurate record of the rental period for each locker rented, the charge for the rental, and the payments for the rental.

Similar labeling and storage requirements for slaughterhouses and frozen food lockers and locker rooms are established in rules adopted by the Director for meat inspection. According to the Department, other provisions relating to frozen food locker rooms and lockers that are being eliminated are regulated by local boards of health.¹³

¹² R.C. 915.01 and 915.03; R.C. 915.04 to 915.08, repealed.

¹³ R.C. 915.14 and 915.18; R.C. 915.19 and 915.21, repealed.

Grading and labeling of produce

The act eliminates provisions governing grading and labeling of fresh fruits and vegetables, including:

1. A provision that adopts federal grades for fruits and vegetables;
2. A requirement that apples that do not meet grade requirements be labeled with a sign bearing the word “CULLS”;
3. A requirement that fresh fruits and vegetables prepackaged in the same store or establishment where sold have a label that contains certain information, including the name and address of the store or establishment, and a requirement that the fruits and vegetables be graded according to federal standards; and
4. A requirement that the Director establish standards and grades for cucumbers for use by all commercial plants when cucumbers for pickling are purchased from growers.

According to the Department, federal law duplicates the provisions governing grading and labeling of fresh fruits and vegetables. USDA grades all fresh fruits and vegetables.¹⁴

Labeling and selling of canned fruit and vegetables

The act eliminates the following provisions governing the labeling and selling of canned fruits and vegetables:

1. Prohibitions against a dealer in preserved or canned food or a packer or manufacturer of preserved or canned food from offering the food for sale unless the container contains certain information, including the grade or quality of the food and the name and address of the dealer, packer, or manufacturer;
2. A prohibition against falsely labeling cans or jars containing preserved food;
3. A prohibition against selling cans or jars containing preserved food that are falsely stamped or labeled; and
4. A prohibition against the manufacture or sale of “soaked” goods from products dried before canning without the word “soaked” on the label.

The Department’s food safety rules address the labeling provisions specified above.¹⁵

Food processing license suspension

In the law requiring the Director to afford a hearing for a food processing establishment licensee whose license has been suspended due to a threat to public health, the act specifies

¹⁴ R.C. 925.21; R.C. 925.26 to 925.28, repealed; R.C. 925.52, repealed; R.C. 925.56, repealed; R.C. 925.61, repealed.

¹⁵ R.C. 3715.14 to 3715.17, repealed; R.C. 3715.18 to 3715.20, repealed; R.C. 3715.99.

that the Director must afford “an opportunity for” a hearing. This change makes this reference to a hearing consistent with the Administrative Procedure Act (R.C. Chapter 119).¹⁶

Cider manufacturing

For purposes of a device used to process apples for use in apple cider, the act requires that the device be equipped with a means to add a sanitizer to the water used to wash the apples. Former law required the device to be equipped with a means to chlorinate the water.¹⁷

Vinegar branding

The act eliminates all of the following provisions governing vinegar:

1. A prohibition against manufacturing or selling vinegar with lead, copper, sulphuric or other mineral acid, or other ingredients injurious to health;
2. A requirement that a nondomestic manufacturer of cider vinegar include the name and residence of the manufacturer, the date when manufactured, and the words “cider vinegar” on each cask, barrel, or keg containing the vinegar;
3. A prohibition against branding vinegar as “fruit vinegar” unless it is wholly made from apples, grapes, or other fruits; and
4. A requirement that any farmer who annually manufactures for sale more than 25 barrels of pure cider vinegar or fruit vinegar include on each barrel the brand “domestic cider vinegar” along with the name of the farmer and the date of manufacture.

According to the Department, the eliminated provisions are addressed in other provisions of the Pure Food and Drug Law.¹⁸

State agency oil or gas resources

Continuing law establishes a framework by which parcels of state property may be nominated for oil and gas extraction with the Oil and Gas Land Management Commission. The Commission was required to adopt rules governing the nomination and lease procedures by January 28, 2022. However, as of this writing, the Commission has not yet adopted the rules. Under prior law, before the adoption of the rules, a state agency was authorized to lease oil and gas resources under the agency’s control, but it was not required to do so. If it chose to lease oil and gas resources, the state agency had to include specified statutorily required terms in the lease.

¹⁶ R.C. 3715.041.

¹⁷ R.C. 3715.27.

¹⁸ R.C. 3715.07 and 3715.33; R.C. 3715.34 and 3715.35, repealed; R.C. 3715.36 (renumbered 3715.34); R.C. 3715.37, repealed; R.C. 3715.99.

The act requires, rather than authorizes, every state agency to lease agency-owned or controlled oil and gas resources for development until the date on which standard lease and nomination procedure rules are adopted by the Oil and Gas Land Management Commission. The state agency must enter into the lease in good faith, and the person seeking to lease the resources must submit proof of both of the following to the state agency:

1. Insurance and financial assurance; and
2. Registration with the Division of Oil and Gas Resources Management.

A state agency that enters a lease under the act's new requirement is required to execute that lease on terms that are just and reasonable and that include at least certain statutorily specified terms.¹⁹

The act retains the requirement that the Commission adopt rules establishing a standard lease form and nominating procedures.²⁰ Once the rules are adopted, the requirement that state agencies lease their oil and gas resources ends, and any person seeking to lease those resources must follow the rules and nominating procedures established by the Commission.²¹

Green energy

Definition

The act defines "green energy" as any energy generated by using an energy resource that does one or more of the following:

- Releases reduced air pollutants, thereby reducing cumulative air emissions;
- Is more sustainable and reliable relative to some fossil fuels.

The act also includes, as "green energy," energy generated by using natural gas as a resource.²²

The term "green energy," enacted in R.C. 4928.01, does not appear in any other section of the act or ongoing law. Because it does not appear in other sections of the law, it is unclear how the term "green energy" will be applied under ongoing law.

Renewable energy credits

The act prohibits energy generated by using natural gas as a resource from being eligible to obtain renewable energy credits under the competitive retail electric service law. By

¹⁹ R.C. 155.33(A)(1).

²⁰ R.C. 155.34, not in the act. See "[Oil and Gas Land Management Commission Announcement of Public Meeting](#)" which may be accessed on the Department of Natural Resources' website under the "Business & Industry" Tab, under "Commissions and Councils": ohiodnr.gov.

²¹ R.C. 155.33(A)(2).

²² R.C. 4928.01(A)(43).

enacting an exception for compressed natural gas produced from biologically derived methane gas, the act retains the ability of electric distribution utilities to acquire renewable energy credits from a seller of this compressed natural gas.²³ Under continuing law, an electric distribution utility may use renewable energy credits from a seller of compressed natural gas that has been produced from biologically derived methane gas.²⁴

Towing authorizations

Towing of vehicles under conservancy district jurisdiction

The act allows a conservancy district's police department to take certain actions regarding towing motor vehicles. Before the act, only entities such as county sheriffs and municipal, township, and port authority police departments were allowed to take these actions. Specifically, a conservancy district police department may order the towing and storage of the following vehicles within the conservancy district's jurisdiction:

- An abandoned junk motor vehicle;
- A motor vehicle that has come into the conservancy district police department's possession;
- A motor vehicle that has been left on public streets or other public property for more than 48 hours or on private property without the property owner's permission for more than four hours; and
- A vehicle that has been in an accident.²⁵

A conservancy district is a political subdivision of the state that is created for certain purposes, generally related to the prevention of floods and the disposal of wastewater. Conservancy districts also may operate various recreational facilities on lands owned by the district.²⁶

Other conservancy district towing authorizations

In addition to the authority specified above, the act authorizes a conservancy district police department to do the following:

- Receive the required notice that must be provided by a towing and storage company to law enforcement when the company tows a motor vehicle from a private tow-away zone;
- Maintain records of motor vehicles towed from private tow-away zones within the department's jurisdiction;

²³ R.C. 4928.645(D).

²⁴ R.C. 4928.645(A)(3).

²⁵ R.C. 4513.60, 4513.61, 4513.63, and 4513.66.

²⁶ R.C. Chapter 6101, not in the act.

- Receive the required notice that must be provided by repair garages and places of storage prior to obtaining title to a motor vehicle abandoned at the repair garage or place of storage;
- Make a determination that a motor vehicle abandoned at a towing and storage company facility or items in the vehicle are not necessary to criminal investigation prior to the company taking title to the vehicle;
- Undertake the sale or disposition of a motor vehicle towed by order of the police department from private or public property; and
- Provide the required notice to a person who willfully leaves an abandoned junk vehicle on private property and to a person who allows a junk motor vehicle to remain on their property.²⁷

Poultry chicks

The act decreases the minimum required lot size applicable to the sale of poultry chicks from six chicks to three chicks. Under continuing law, poultry chicks under four weeks old may be sold, given away, or otherwise distributed only in lots.²⁸ Generally, poultry are domesticated fowl, including chickens, turkeys, geese, and ducks, raised for the production of meat or eggs.

HISTORY

Action	Date
Introduced	12-08-21
Reported, H. Agriculture & Conservation	03-31-22
Passed House (96-0)	04-06-22
Reported, S. Agriculture & Natural Resources	12-07-22
Passed Senate (22-7)	12-07-22
House concurred in Senate amendments (59-33)	12-13-22

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²⁷ R.C. 4505.101, 4505.104, 4513.601, 4513.62, 4513.64, and 4513.65.

²⁸ R.C. 925.62.