



# Ohio Legislative Service Commission

## Final Analysis

Matthew Magner

### Sub. S.B. 110

131st General Assembly  
(As Passed by the General Assembly)

- Sens.** Burke, Manning, Hite, Gardner, Beagle, Jones, Lehner, Balderson, Brown, Coley, Eklund, Hottinger, Oelslager, Patton, Peterson, Sawyer, Schiavoni, Seitz, Tavares, Thomas, Uecker, Yuko
- Reps.** Gonzales, Antonio, Bishoff, Schuring, Amstutz, Anielski, Ashford, Barnes, Blessing, Boose, Boyd, Brown, Burkley, Craig, Dovilla, Fedor, Green, Grossman, Hackett, Hall, Hambley, Howse, Huffman, T. Johnson, Kraus, Kuhns, Lepore-Hagan, Manning, M. O'Brien, S. O'Brien, Patterson, Pelanda, Perales, Ramos, Rogers, Ruhl, Ryan, Sears, Stinziano, Sweeney, Thompson

**Effective date:** October 15, 2015

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## ACT SUMMARY

### Advanced practice registered nurses

- Permits certain advanced practice registered nurses (APRNs) to delegate to persons not otherwise authorized to administer drugs the authority to do so under specified conditions.
- Requires the Ohio Board of Nursing to adopt rules establishing standards and procedures for APRN delegation of the authority to administer drugs.
- Modifies the structure of the course in advanced pharmacology and related topics that an APRN must complete to obtain a certificate to prescribe.

### Physician assistants

- Changes the "certificate to practice" issued to a physician assistant by the State Medical Board to a "license" and requires the Board to begin issuing licenses instead of certificates not later than 90 days after the act takes effect.
- Eliminates the requirement that a physician assistant practicing other than in a health care facility practice under a physician supervisory plan approved by the Board.

- Eliminates a criminal penalty for practice by a physician assistant in a manner that is inconsistent with a physician supervisory plan or the policies of a health care facility.
- Authorizes the Board to review supervision agreements for physician assistants for compliance with the licensing law in place of a process involving approving or disapproving the agreements.
- Provides that a supervision agreement takes effect at the end of the fifth day after it is submitted, unless the Board earlier notifies the supervising physician that the agreement does not comply with the law.
- Eliminates a requirement that a physician assistant receive Board approval to provide services other than those specified in the Revised Code or the Board's rules.
- Eliminates a requirement that a physician assistant who seeks to exercise physician delegated prescriptive authority obtain a certificate to prescribe, and instead provides that prescriptive authority may be delegated to a physician assistant as long as the physician assistant has a prescriber number issued by the Board.

### **Anatomic pathology services**

- Repeals an exception that permitted a physician, under certain circumstances, to bill for having an anatomic pathology service performed on a dermatology specimen despite the general prohibition on physicians billing for anatomic pathology services they did not perform or supervise.

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## **CONTENT AND OPERATION**

### **ADVANCED PRACTICE REGISTERED NURSES**

#### **Delegation of the authority to administer drugs**

##### **Overview**

The act allows an advanced practice registered nurse (APRN) to delegate to a person not otherwise authorized to administer drugs the authority to administer a drug to a specified patient if certain conditions are met.<sup>1</sup> The APRN must be a clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner and hold a certificate to prescribe issued by the Ohio Board of Nursing.

##### **Conditions on APRN delegation**

Prior to delegating the authority to administer a drug, the act requires that the APRN assess the patient and determine that the drug is appropriate for the patient.<sup>2</sup> The APRN must also determine that the person to whom the authority will be delegated has successfully completed education based on a recognized body of knowledge concerning drug administration and demonstrates to the person's employer the knowledge, skills, and ability to administer the drug safely. The delegation must be in accordance with standards and procedures established in rules adopted by the Board.

##### **Authority to administer a drug**

Under the act, a person is authorized to administer a drug under an APRN's delegation only if the following conditions are satisfied:

- (1) The drug will be administered to a specified patient;<sup>3</sup>

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<sup>1</sup> R.C. 4723.48(C).

<sup>2</sup> R.C. 4723.48(C).

<sup>3</sup> R.C. 4723.48(C).



(2) The drug is listed in the formulary established by the Board in rules for APRNs with authority to prescribe drugs and is not a controlled substance or to be administered intravenously;<sup>4</sup>

(3) The drug is to be administered at a location other than a hospital inpatient care unit, a hospital emergency department, a freestanding emergency department, or an ambulatory surgical facility;

(4) The person has successfully completed education based on a recognized body of knowledge concerning drug administration and demonstrates to the person's employer the knowledge, skills, and ability to administer the drug safely;

(5) The person's employer has given the APRN access to documentation, in written or electronic form, showing that the person has successfully completed the required education and demonstrates to the employer the knowledge, skills, and ability required by the act;

(6) The APRN is physically present at the location where the drug is administered.<sup>5</sup>

### **Standards and procedures for delegation**

The Board must adopt rules establishing standards and procedures for APRN delegation of the authority to administer drugs pursuant to the act. The rules must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119).<sup>6</sup>

### **Pharmacology course**

The act modifies the structure of the course in advanced pharmacology and related topics that an APRN must complete to obtain a certificate to prescribe. It eliminates a provision specifying that the course must have consisted of planned classroom and clinical instruction. In a corresponding change, the act eliminates a provision that allowed certain APRNs to complete a portion of the instruction through an Internet-based course of study. Under law unchanged by the act, the course must consist of at least 45 contact hours and be approved by the Board.<sup>7</sup>

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<sup>4</sup> The rules providing for establishment of the formulary are authorized by R.C. 4723.50.

<sup>5</sup> R.C. 4723.489.

<sup>6</sup> R.C. 4723.07(Q) and 4723.48(C).

<sup>7</sup> R.C. 4723.482 (primary), 4723.06, and 4723.50.



## PHYSICIAN ASSISTANTS

### License

The act changes the name of the certificate under which physician assistants practice to "license" and eliminates the law stipulating that a certificate to practice was to be treated as a license. The State Medical Board may continue to issue certificates to practice for up to 90 days after the act takes effect. Existing certificates to practice and certificates to prescribe are to be honored until January 31, 2016.<sup>8</sup>

### Physician supervisory plan

For a physician assistant who practices outside a health care facility, the act eliminates the requirement that the supervising physician have a Board-approved physician supervisory plan and that the physician assistant practice under that plan. However, supervision agreements are still required. The act adds several provisions to the law governing supervision agreements that previously applied to supervisory plans, such as the circumstances under which a physician assistant must refer a patient to the supervising physician. It eliminates others, including the procedures a physician assistant must follow when writing medical orders.

Under continuing law, each supervision agreement must be submitted to the Board. The act eliminates the \$25 fee for each supervision agreement filed with the Board.<sup>9</sup>

### Supervision agreement

The act retains the requirement that each supervising physician and each physician assistant being supervised enter into a supervision agreement. In addition to containing a statement that the physician agrees to supervise the physician assistant and that the physician assistant agrees to practice under the physician's supervision, each supervision agreement entered into under the act must clearly state that the supervising physician is legally responsible and assumes legal liability for the services provided by the physician assistant.

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<sup>8</sup> R.C. 1.64, 2133.211, 2305.113, 4503.44, 4730.02, 4730.03, 4730.06, 4730.08, 4730.081 (repealed), 4730.10, 4730.101, 4730.12, 4730.13, 4730.14, 4730.25, 4730.251, 4730.27, 4730.28, 4730.31, 4730.32, 4730.33, 4730.49, 4730.51, 4730.53, 4765.01, 5123.47 and Section 3.

<sup>9</sup> R.C. 4730.02, 4730.08, 4730.15 (repealed), 4730.16(D) (repealed), 4730.17 (repealed), 4730.18 (repealed), and 4730.19.



If the physician assistant will practice in a health care facility, the agreement must include terms that require the physician assistant to practice in accordance with the facility's policies.

If the physician assistant will practice outside a health care facility, the agreement must include terms that specify all of the following:

- (1) The responsibilities to be fulfilled by the supervising physician;
- (2) The responsibilities to be fulfilled by the physician assistant when performing services under the supervising physician;
- (3) Any limitations on the responsibilities to be fulfilled by the physician assistant;
- (4) The circumstances under which the physician assistant is required to refer a patient to the supervising physician;
- (5) If the supervising physician chooses to designate physicians to act as alternate supervising physicians, the names, business addresses, and business telephone numbers of the physicians who have agreed to act in that capacity.<sup>10</sup>

Under the act, the Board may review a submitted supervision agreement at any time for compliance with the above requirements and to verify the licensure of the physician and physician assistant.

The agreement goes into effect at the end of the fifth business day after the Board receives it, unless before then, the Board notifies the supervising physician that the supervision agreement fails to comply with the law. Under the act, supervision agreements are effective for two years and may be renewed.

If a supervision agreement fails to comply with the law, the physician may revise the agreement and resubmit it to the Board. The resubmitted agreement is subject to the same potential review process.

The act also permits a supervising physician to amend an active supervision agreement to add one or more physician assistants. Like initial or renewed agreements, an amendment must be submitted to the Board. An amendment does not alter the agreement's expiration date.

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<sup>10</sup> R.C. 4730.19.

The act requires that a supervision agreement be kept in the records maintained by the supervising physician. The act permits the Board to impose a civil penalty of not more than \$1,000 if it finds that a physician assistant has practiced in a manner that does not conform to the terms of the supervision agreement, or that a supervising physician has supervised a physician assistant in a manner that does not conform to the terms of the supervision agreement. A finding must be made through an adjudication conducted in accordance with the Administrative Procedure Act (R.C. Chapter 119.). The Board may impose the civil penalty in addition to or in lieu of any other disciplinary action that the Board is authorized to take.<sup>11</sup>

## **Prescriptive authority**

The act modifies the steps a physician assistant must take to obtain authority to prescribe drugs. Under prior law, a physician assistant who held a certificate to practice and met other requirements was granted a provisional certificate to prescribe and, after completing a provisional period, a certificate to prescribe. This authorized the physician assistant to exercise "physician-delegated prescriptive authority."

The act eliminates the certificate to prescribe and the provisional certificate. Under the act, a physician assistant who holds a valid prescriber number issued by the Board is authorized to prescribe and personally furnish drugs and therapeutic devices in the exercise of physician-delegated prescriptive authority. The act does not indicate how a prescriber number is obtained from the Board.

The act specifies that a physician assistant's first 500 hours of physician-delegated prescriptive authority must be under the on-site supervision of a physician. The act excuses a physician assistant from the on-site supervision requirement if, prior to applying for a license to practice in Ohio, the physician assistant had prescriptive authority in another jurisdiction and practiced with that authority for at least 1,000 hours.

A physician assistant's supervising physician must keep a record of the physician assistant's completion of the supervised hours or the issuance of prescriptive authority by another jurisdiction. The record must be made available for inspection by the board.<sup>12</sup>

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<sup>11</sup> R.C. 4730.19.

<sup>12</sup> R.C. 4729.01, 4730.11, 4730.19, 4730.38, 4730.39, 4730.40, 4730.41, 4730.42, 4730.43, 4730.44 (repealed and re-enacted), 4730.45 (repealed), 4730.46 (repealed), 4730.47 (repealed), 4730.48 (repealed), 4730.49, 4730.50 (repealed), 4730.51, 4730.52 (repealed), and 4730.53.

## Education or experience requirements

The act provides that a physician assistant who holds a license issued by the Board may exercise physician-delegated prescriptive authority if the physician assistant (1) holds a master's or higher degree, (2) held a valid certificate to prescribe on the act's effective date, or (3) had prescriptive authority while practicing in another jurisdiction or in the military.

The act permits the Board to grant authority to exercise physician-delegated prescriptive authority to a physician assistant who obtained a license without first having a master's or higher degree and is not otherwise authorized to exercise physician-delegated authority if the physician assistant later obtains such a degree. The physician assistant must provide evidence satisfactory to the Board of having obtained a master's or higher degree from a program accredited by the Accreditation Review Commission on Education for the Physician Assistant or a predecessor or successor organization recognized by the Board, or a program accredited by a regional or a specialized and professional accrediting agency recognized by the Council for Higher Education Accreditation, if the degree is in a course of study with clinical relevance to the practice of physician assistants.<sup>13</sup>

## Other jurisdictions

The act permits the Board to issue a license to a person who holds a current license from another jurisdiction and has been in active practice in any jurisdiction throughout the immediately preceding three-year period. It also permits the Board to issue a license to an applicant who has at least three years' experience practicing as a physician assistant while in active duty in the U.S. Public Health Service Commissioned Corps, as long as the applicant holds a degree from a program accredited by the Accreditation Review Commission on Education for the Physician Assistant. Previously, this provision applied only to applicants whose experience was with the U.S. armed forces.

A license issued on the basis of licensure by another jurisdiction or experience in the armed forces or the Public Health Service does not authorize the license holder to exercise physician-delegated prescriptive authority unless the license holder has a master's or higher degree or had prescriptive authority in the previous practice.<sup>14</sup>

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<sup>13</sup> R.C. 4730.11.

<sup>14</sup> R.C. 4730.11.





## Services within supervising physician's expertise

Under the act, a physician assistant may perform any services authorized by the supervising physician that are part of the physician's normal course of practice and expertise. "Service" is defined as "a medical activity that requires training in the diagnosis, treatment, or prevention of disease."<sup>15</sup>

If the supervising physician gives authorization and the services are within the physician's normal course of practice and expertise, the act permits a physician assistant to do any of the following:

- (1) Order diagnostic, therapeutic, and other medical services;
- (2) Prescribe physical therapy or refer a patient to physical therapy;
- (3) Order occupational therapy or refer a patient to an occupational therapist;
- (4) Identify and comply with a do-not-resuscitate order;
- (5) Determine and pronounce death;
- (6) Assist in surgery;
- (7) If the physician assistant has been granted physician-delegated prescriptive authority, order, prescribe, personally furnish, and administer drugs and medical devices;
- (8) Perform any other services that are part of the supervising physician's normal course of practice and expertise.

With respect to practicing in a health care facility, the act retains a provision specifying that the services a physician assistant may provide under the facility's policies are limited to the services the facility authorizes the physician assistant to provide for the facility. It specifies that a facility may not authorize a physician assistant to perform a service that is prohibited under the laws governing physician assistants. It also permits a physician who is supervising a physician assistant within a health care facility to impose limitations on the assistant's practice that are in addition to any limitations imposed by the facility.<sup>16</sup>

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<sup>15</sup> R.C. 4730.01 and 4730.20.

<sup>16</sup> R.C. 4730.09 (repealed) and 4730.20.



## Special services

The act eliminates provisions that required Board approval of "special services" for a physician assistant to be authorized to perform those services.<sup>17</sup> "Special services" were health care services not listed in the Revised Code or designated by the Board as services a physician assistant was authorized to perform.

## Supervision

The act eliminates a provision that specified that a supervising physician could authorize a physician assistant to practice in any setting within which the supervising physician routinely practiced. The act provides instead that a physician assistant may practice in any setting within which the supervising physician has supervision, control, and direction of the physician assistant.<sup>18</sup>

The act eliminates another provision that required a supervising physician who was not physically present at the location where a physician assistant was practicing to be in a location that under normal conditions would have been not more than 60 minutes travel time from the physician assistant's location. The act provides that the supervising physician must be a distance from the location where the physician is practicing that "reasonably allows the physician to assure proper care of patients."<sup>19</sup>

The act increases to three (from two) the number of physician assistants who may be supervised at any one time by a supervising physician.<sup>20</sup>

The act eliminates provisions of law that did the following:

(1) Prohibited a supervising physician from authorizing a physician assistant to perform a service unless the service was authorized under the physician supervisory plan approved for that physician or the policies of the health care facility in which the physician and physician assistant were practicing;

(2) Required the supervising physician to regularly review the condition of the patients treated by a physician assistant;

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<sup>17</sup> R.C. 4730.01, 4730.06, 4730.09 (repealed), 4730.15, and 4730.16.

<sup>18</sup> R.C. 4730.21(A).

<sup>19</sup> R.C. 4730.21(A)(1)(b).

<sup>20</sup> R.C. 4730.21(B).



(3) Required a physician assistant who wrote a medical order to clearly identify the physician under whose supervision the physician assistant was authorized to write the order;

(4) Made records of the quality assurance activities of the physician and physician assistant available to any health care professional working with the supervising physician and the physician assistant.<sup>21</sup>

## **Liability**

Under continuing law, a physician assistant's supervising physician assumes legal liability for the services provided by the physician assistant. The act adds a requirement that a supervision agreement clearly state that the supervising physician is legally responsible and assumes legal liability for services provided by the physician assistant. It also expressly provides that the physician assistant acts as the agent of the supervising physician when performing authorized services.<sup>22</sup>

## **Criminal penalties**

Prior law prohibited a supervising physician from authorizing a physician assistant to perform services that were inconsistent with a supervisory plan or the policies of the health care facility in which the physician and physician assistant practice. It also prohibited a physician assistant from practicing in a manner that was inconsistent with the supervisory plan or health care facility policies. Violation of either prohibition was a misdemeanor of the first degree on a first offense and a felony of the fourth degree on any subsequent offense.

The act eliminates the provision that prohibited a physician assistant from practicing in a manner that was inconsistent with the supervisory plan or health care facility policies.<sup>23</sup> It prohibits a supervising physician from authorizing a physician assistant to perform services that are inconsistent with the supervision agreement under which the physician assistant is being supervised, including, if applicable, the policies of a health care facility. A supervising physician who violates this prohibition could be found guilty of a first degree misdemeanor on a first offense or fourth degree felony on a subsequent offense.

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<sup>21</sup> R.C. 4730.21.

<sup>22</sup> R.C. 4730.19(A) and 4730.22.

<sup>23</sup> R.C. 4730.02 and 4730.99, not in the act.



## Direction, delegation, and orders

The act permits a physician assistant acting pursuant to a supervision agreement to delegate to any person the administration of drugs and the performance of tasks to implement a patient's plan of care.<sup>24</sup> However, law unchanged by the act provides that the physician assistant law is not to be construed as authorizing a physician assistant independently to order or direct the execution of procedures or techniques by a registered nurse or licensed practical nurse except to the extent the physician assistant is authorized to do so by the supervising physician and, if applicable, the policies of the health care facility in which the physician assistant is practicing.<sup>25</sup>

When a physician assistant delegates a task or administration of a drug, the act requires the physician assistant to be physically present at the location where the task is performed or the drug administered.

Before delegating a task or the administration of a drug, the act requires a physician assistant to determine that the task or drug is appropriate for the patient and that the person to whom the delegation is to be made may safely perform the task or administer the drug. A physician assistant may delegate the administration of a drug only if all of the following additional conditions are met:

- (1) The physician assistant has physician–delegated prescriptive authority;
- (2) The drug is included in the formulary established under current law;
- (3) The drug is not a controlled substance;

(4) The drug will not be administered intravenously; (the drug may be administered via any other route, which could be orally, topically, or into a patient's bone marrow);

(5) The drug will not be administered in a hospital inpatient care unit, a hospital emergency department, a freestanding emergency department, or an ambulatory surgical facility.<sup>26</sup>

The act grants authority to a person not otherwise authorized to do so to administer a drug or perform a specific task in accordance with the physician assistant's delegation.<sup>27</sup>

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<sup>24</sup> R.C. 4730.203(A).

<sup>25</sup> R.C. 4730.03(D).

<sup>26</sup> R.C. 4730.203.



## **Direction of licensed practical nurses**

The act modifies the definition of "the practice of nursing as a licensed practical nurse," as used in the laws governing nurses, by specifying that it includes providing nursing care under the direction of a physician assistant. The previous definition included providing nursing care only under the direction of a physician (including a podiatrist), dentist, optometrist, or registered nurse.<sup>28</sup>

The act makes a conforming revision by permitting an LPN to perform limited intravenous (IV) therapy procedures on an adult patient under the direction of a physician assistant, if the nurse is authorized by the Board of Nursing to administer IV therapy to an adult and the physician assistant is present and readily available at the facility where the procedure is performed. The physician assistant is not required to be present if the procedure is performed in a long-term care facility or an intermediate care facility for individuals with intellectual disabilities and a registered nurse is present on the premises or accessible by telecommunication. The act also permits a qualified LPN to perform specified IV therapy procedures on any patient under the direction of a physician assistant if the physician assistant is present or accessible by telecommunication.<sup>29</sup>

## **Supervision of respiratory care services providers**

The act permits a respiratory care services provider to practice under the supervision of a physician assistant and pursuant to a prescription or other order issued by a physician assistant if the physician assistant's physician-delegated prescriptive authority allows the physician assistant to prescribe or order respiratory care services. Under the act, when practicing under the supervision of or pursuant to an order issued by a physician assistant, a respiratory care services provider is permitted to administer only those prescription drugs that the physician assistant is authorized to prescribe pursuant to the physician assistant's physician-delegated prescriptive authority.<sup>30</sup>

## **Loss of certification or clinical privileges**

Under continuing law, physician assistants must maintain certification by the National Commission on Certification of Physician Assistants or a successor organization recognized by the Board. The act requires a physician assistant to notify

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<sup>27</sup> R.C. 4730.203(D).

<sup>28</sup> R.C. 4723.01.

<sup>29</sup> R.C. 4723.18 and 4723.181.

<sup>30</sup> R.C. 4761.17.



the State Medical Board if certification is suspended or revoked. The notice must be given within 14 days of the physician assistant's receipt of notice from the Commission. The act also requires a physician assistant who fails to renew certification to notify the Board within 14 days of the certification's expiration. It adds expiration, lapse, suspension, or revocation of national certification as grounds for discipline of a physician assistant by the Board.<sup>31</sup>

The act also adds as grounds for discipline the revocation, suspension, restriction, reduction, or termination of clinical privileges by the U.S. Department of Defense or the Department of Veterans Affairs and the termination or suspension of a certificate of registration to prescribe drugs by the U.S. Drug Enforcement Administration.<sup>32</sup>

### **License fees**

The act increases physician assistant license fees as follows:

--Increases to \$500 (from \$200) the fee for an initial license;

--Increases to \$200 (from \$100) the fee for a license renewal.<sup>33</sup>

## **ANATOMIC PATHOLOGY SERVICES**

### **Billing for services on dermatology specimens**

Continuing law prohibits a physician from charging, billing, or otherwise soliciting payment, directly or indirectly, for anatomic pathology services unless (1) the services are personally rendered by the physician, (2) the services are rendered under the physician's on-site supervision, or (3) an exception applies. A physician who violates the prohibition is subject to disciplinary action by the State Medical Board.<sup>34</sup>

The act eliminates an exception that applied with respect to dermatology specimens. Under the eliminated exception, a physician was permitted to bill for having an anatomic pathology service performed on a dermatology specimen if the billing physician disclosed (1) the name and address of the clinical laboratory or physician who performed the service and (2) the amount the billing physician was charged by or paid

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<sup>31</sup> R.C. 4730.11(A)(3), 4730.111, and 4730.25(B)(27).

<sup>32</sup> R.C. 4730.25(B)(28).

<sup>33</sup> R.C. 4730.10(B) and 4730.14.

<sup>34</sup> R.C. 4731.72(C) and (E).



to the laboratory or physician who performed the service. The act does not modify the other existing exception.<sup>35</sup>

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## HISTORY

ACTION	DATE
Introduced	03-03-15
Reported, S. Health & Human Services	04-22-15
Passed Senate (33-0)	05-06-15
Reported, H. Health & Aging	06-10-15
Passed House (94-0)	06-25-15

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<sup>35</sup> R.C. 4731.72(D).

