



OHIO LEGISLATIVE SERVICE COMMISSION

Final Analysis

Amanda George, Kathleen A. Luikart,
and Paul Luzzi

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ACT SUMMARY

Pet store and dog retailer regulations

- Prohibits a pet store representative (an owner, manager, or employee) from negligently transferring a dog to another and prohibits a dog retailer from transferring a dog to a pet store unless the dog was obtained from one of the following sources:
 - An animal rescue for dogs;
 - An animal shelter for dogs;
 - A humane society;
 - With respect to a pet store representative, a dog retailer, provided that, if the dog retailer originally obtained the dog from a breeder, the breeder is a qualified breeder; or
 - A qualified breeder.
- Creates a new class of dog breeder, a "qualified breeder," and establishes requirements that apply to such a breeder.
- Prohibits a pet store representative negligently from transferring a dog to another and prohibits a dog retailer from transferring a dog to a pet store unless the dog and the person purchasing the dog meet specified criteria.

- Prohibits a pet store representative or a dog retailer from recklessly altering or providing false information on a written certification required by the act to be given to a person acquiring a dog that was originally acquired by the pet store or dog retailer from a qualified breeder.
- Requires the Director of Agriculture to adopt rules establishing requirements and procedures governing pet stores, including requirements and procedures governing the licensing of pet stores.
- Establishes procedures by which an applicant may obtain a pet store license.
- Prohibits a pet store representative from negligently transferring a dog to another unless a pet store license has been issued for the pet store by the Director.
- Creates the Pet Store License Fund to be used by the Director to administer the act's provisions governing pet stores.
- Specifies that whoever violates any of the act's prohibitions is guilty of a fourth degree misdemeanor.
- Authorizes the Director to assess a civil penalty against a person who violates any of the act's prohibitions and revises the existing civil penalty structure that applies to high volume dog breeders and dog retailers.
- Specifies that the regulation of pet stores is a matter of general statewide interest, that the act's provisions constitute a comprehensive plan with respect to all aspects of the regulation of pet stores, and that it is the intent of the General Assembly to preempt any local regulations governing dog sales from pet stores.

Revisions to the law governing dog breeders and dog retailers

- Eliminates the requirement that the Controlling Board approve the release of money to the Director of Agriculture from the High Volume Breeder Kennel Control License Fund.
- Revises the reasons for which the Director must deny an application for a dog retailer license or a high volume breeder license.
- Specifies that an applicant for the renewal of a high volume breeder license need not include with the renewal application specified photographic evidence, as was required under prior law.

- Replaces the Director's authority to issue an order requiring a person to cease certain violations with the authority to instead issue a notice requiring the person to cease those violations.
- Removes a law that required a county humane agent to reside in the county or municipal corporation for which the agent was appointed.

Sexual conduct with an animal

- Prohibits a person from knowingly: (1) engaging in, organizing, promoting, aiding, or abetting specified sex-related activities with an animal, or (2) possessing, selling, or purchasing an animal with the intent that it be subjected to those activities.
- Authorizes the seizure and impoundment of an animal that is the subject of a violation, or attempted violation, of either prohibition.
- Authorizes a court sentencing an offender for a violation of either prohibition to order the forfeiture of the animal and require the offender to undergo psychological evaluation or counseling.

Criminal activities associated with animal fighting

- Adds to the types of activities associated with animal fighting that are criminal offenses.
- Alters existing animal fighting prohibitions and increases penalties for several of those prohibitions.

Micro wireless facilities in the public way

- Establishes regulations that can apply to the construction and attachment of micro wireless facilities in a municipal corporation public way.
- Defines "micro wireless facility" as both a distributed antenna system and a small cell facility, and the related "wireless facilities," which the act defines as antennas, accessory equipment, or other wireless devices or equipment used to provide wireless service.
- Authorizes a "micro wireless facility operator" (a public utility or a cable operator that operates a micro wireless facility) to construct and operate the facility in a municipal corporation public way.

- Requires a municipal corporation to permit a micro wireless facility attachment to a wireless support structure owned or operated by the municipal corporation and located in the public way.
- Includes as a public policy of the state (regarding the occupancy or use of a municipal corporation public way) expediting "the installation and operation of micro, and smaller, wireless facilities in order to facilitate the deployment of advanced wireless service throughout the state."

Requests for consent for micro wireless facilities

- Permits an entity to file a single or consolidated request for consent, and requires a municipal corporation to grant or deny its consent, for the entity to do any of the following in a public way:
 - Attach micro wireless facilities to a wireless support structure;
 - Locate two or more wireless service providers' micro wireless facilities on the same wireless support structure;
 - Replace or modify a micro wireless facility on a wireless support structure; and
 - Construct, modify, or replace a wireless support structure associated with a micro wireless facility.
- Prohibits a municipal corporation from requiring any zoning or other approval, consent, permit, certificate, or condition for the attachment, location, replacement, construction, or operation of a micro wireless facility, or from imposing other prohibitions or restraints on micro wireless facility activities.
- Specifies that no consent is required for routine maintenance of wireless facilities or for their replacement with wireless facilities that are substantially similar to the existing wireless facilities or that are the same size or smaller.
- Specifies that a municipal corporation must approve an "eligible facilities request" (a request for a modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station) within 60 days and may not deny such a request.

Consent request fees

- Limits the fee that a municipal corporation may charge for a micro wireless facility consent request to the lesser of \$250 per micro wireless facility or the amount it



charges for a building permit for any other type of commercial development or land use development.

Time period for consent

- Requires a municipal corporation to grant or deny micro wireless facility consent requests within 90 days, unless the period is tolled (paused), and specifies that requests are considered granted if not approved in that period when the entity requesting consent provides notice that the time period has lapsed.

Tolling the time period

- Permits the 90-day period for consent to be tolled only:
 - By mutual agreement between the entity requesting consent and the municipal corporation;
 - In cases where the municipal corporation determines that the application for consent is incomplete; or
 - Where the municipal corporation has an extraordinary number of pending consent requests.
- Establishes provisions governing the process of tolling and the resumption of the consent time period, including provisions governing when tolling is not permitted.

Denials of consent

- Requires denials of consent to occupy or use a municipal corporation public way for micro wireless facilities to be supported by "substantial, competent evidence" and prohibits denials from being unreasonably discriminatory.

Municipal authority

- Permits a municipal corporation to require a work permit for wireless activities that do not require consent.
- Specifies that the act's micro wireless facility provisions do not preclude a municipal corporation from applying its generally applicable health, safety, and welfare regulations when granting consent for a micro wireless facility.

Restrictions on municipal authority

- Specifies that no municipal corporation may institute a moratorium on the filing, acceptance of filings, consideration, or approval of requests for consent for micro wireless facilities activities.
- Specifies that no municipal corporation may have or exercise any jurisdiction, authority, or control over the design, engineering, construction, installation, or operation of any micro wireless facility located in an interior structure not owned or controlled by the municipal corporation.
- Prohibits a municipal corporation from entering into an exclusive arrangement with any entity for the right to attach to the municipal corporation's wireless support structures.
- Establishes several other restrictions on municipal corporations with respect to the provision of any micro wireless facility, including, for example, preventing the requestor from locating the micro wireless facility or wireless support structure in a residential area or within a specific distance from a residence or other structure.
- Specifies that requests for consent are considered a permitted use and are exempt from local zoning review.
- Sets total annual charges and fees of a municipal corporation for a micro wireless facilities attachment to be the lesser of \$200 per attachment or the actual, direct, and reasonable costs related to the use of the wireless support structure by the micro wireless facility operator.
- Requires the fees, charges, terms, and conditions regarding micro wireless facilities and the application and permit approval process to be nondiscriminatory.

Employment law and political subdivisions

- Prohibits a political subdivision from establishing a minimum wage that is different from the wage rate required under Ohio's Minimum Fair Wage Standards Law and the Minimum Wage Amendment to Ohio's Constitution.
- Grants private employers exclusive authority to establish policies, either on the employer's own or through agreements with employees, concerning hours and location of work, scheduling, and fringe benefits, unless otherwise expressly provided for in state or federal law.

- Maintains the authority provided to a political subdivision by case law, the Revised Code, or the Ohio Constitution to adopt a resolution or ordinance to limit the hours an employer may operate.
- Expresses the intent of the General Assembly to exclusively regulate hours of labor and fringe benefits arising from an employer-employee relationship as a matter of statewide concern.

Appropriation

- Makes an appropriation.¹

Severability clause

- Specifies that if any provision of the act is found to be invalid, the invalidity does not affect any other provisions of the act because each item of law in the act is independent and severable.

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¹ For details of the act's fiscal provisions, see the LSC Fiscal Note & Local Impact Statement, As Enacted, available at <https://www.legislature.ohio.gov/download?key=6286&format=pdf>.



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CONTENT AND OPERATION

Pet store and dog retailer regulations

The act establishes multiple prohibitions that govern the sale of dogs by pet stores and dog retailers. Below is a series of tables that set forth each prohibition, followed by information necessary to understand each table.

Source of a dog sold from a pet store or from a dog retailer

The following table depicts two prohibitions governing where a pet store or dog retailer may obtain a dog prior to sale:

| The act prohibits a/an... | Mental state | Action |
|---|------------------|--|
| Owner, manager, or employee of a pet store (pet store representative) | from negligently | displaying, offering for sale, delivering, bartering, auctioning, brokering, giving away, transferring, or selling a live dog from a pet store to a person unless the dog was obtained from one of the following sources: --An animal rescue for dogs; --An animal shelter for dogs; |



| The act prohibits a/an... | Mental state | Action |
|---------------------------|------------------|---|
| | | --A humane society; --A dog retailer,* provided that, if the dog retailer originally obtained the dog from a breeder, the breeder is a qualified breeder; or --A qualified breeder (see " Qualified breeder ," below). ² |
| Dog retailer* | from negligently | selling, delivering, bartering, auctioning, brokering, giving away, transferring, or selling a live dog to a pet store in Ohio unless the dog was obtained from one of the following sources: --An animal rescue for dogs; --An animal shelter for dogs; --A humane society; or --A qualified breeder. ³ |

**A dog retailer is a person who buys, sells, or offers to sell dogs at wholesale for resale to another or who sells or gives one or more dogs to a pet store annually. A dog retailer does not include an animal rescue for dogs, an animal shelter for dogs, a humane society, a medical kennel for dogs, a research kennel for dogs, a pet store, or a veterinarian.⁴*

Pet store

Under the act, a pet store is an individual retail store to which both of the following apply:

(1) The store sells dogs to the public; and

(2) With regard to the sale of a dog from the store, the sales person, the buyer of a dog, and the dog for sale are physically present during the sales transaction so that the buyer may personally observe the dog and help ensure its health prior to taking custody.

² R.C. 956.20(A).

³ R.C. 956.051(A).

⁴ R.C. 956.01.



A pet store does not include an animal rescue for dogs, an animal shelter for dogs, a humane society, a medical kennel for dogs, or a research kennel for dogs. Under prior law, a pet store was a retail store that sold dogs to the public.⁵

Qualified breeder and high volume breeder

The act creates a new class of dog breeders, called "qualified breeders," who are permitted to provide dogs to a pet store or a dog retailer. Under the act, there are two different types of qualified breeders:

(1) A breeder that keeps, houses, and maintains female adult dogs, but that does not meet the threshold of producing or selling as many dogs as a "high volume breeder," which, under continuing law, is an establishment that keeps, houses, and maintains adult breeding dogs that produce at least nine litters of puppies in a calendar year and, in return for a fee or other consideration, sells 60 or more adult dogs or puppies per calendar year. These small breeders do not have to be either licensed or adhere to any state requirements; or

(2) A high volume breeder located in or out of Ohio that meets all of the following requirements:

--The breeder is licensed by the U.S. Department of Agriculture (USDA) and a state agency if the state where the breeder is located requires licensure;

--The breeder has not been issued a report of a direct noncompliance violation by the USDA under the federal Animal Welfare Act for a period of three years prior to offering for sale, delivering, bartering, auctioning, brokering, giving away, transferring, or selling a dog;

--The breeder has not had three or more noncompliance violations documented in any report issued by the USDA under the federal Animal Welfare Act for a period of 12 months prior to offering for sale, delivering, bartering, auctioning, brokering, giving away, transferring, or selling a dog; and

--The breeder has been issued a dog retailer license under Ohio law.⁶

Dogs not fit to be sold and persons not qualified to purchase a dog

The act prohibits a pet store representative or dog retailer from selling certain types of dogs or selling dogs to an unqualified person, as described in the table below:

⁵ R.C. 956.01.

⁶ R.C. 956.19(B).



| The act prohibits a... | Mental state | Action |
|--|------------------|---|
| Pet store representative or a dog retailer | from negligently | <p>selling, delivering, bartering, auctioning, brokering, giving away, or transferring any of the following to a person (in the case of a pet store representative) or to a pet store (in the case of a dog retailer):</p> <ul style="list-style-type: none"> --A dog that is less than eight weeks old; --A dog without a certificate of veterinarian inspection signed by an accredited veterinarian;* --A dog that does not have a permanent implanted identification microchip that is approved for use by the Director of Agriculture; or --A dog to a person who is younger than 18 years of age as verified by valid photo identification.⁷ |

*The act expands the definition of **veterinarian** to include a veterinarian licensed by another state, in addition to a veterinarian licensed in Ohio as in continuing law. An **accredited veterinarian** is a veterinarian accredited by the USDA.⁸

Sale of dog acquired from a qualified breeder or dog retailer

The act also prohibits a pet store representative or a dog retailer from selling a dog unless specific information and a written certification are made available before purchase. The specific prohibitions are described in the table below:

| The act prohibits a... | Mental state | Action |
|--------------------------|------------------|--|
| Pet store representative | from negligently | <p>selling, delivering, bartering, auctioning, brokering, giving away, or transferring a dog acquired from a qualified breeder or a dog retailer unless all of the following information regarding the dog is available to the general public at the pet store:</p> <ul style="list-style-type: none"> --The name of the breeder that bred the dog; --The address, if available, of the breeder that bred the dog; --The USDA license number of the breeder that bred the dog, if the breeder is licensed by the USDA; --The dog's birth date, if known; and |

⁷ R.C. 956.20(B) and 956.051(B).

⁸ R.C. 959.01.



| The act prohibits a... | Mental state | Action |
|------------------------|------------------|--|
| | | <p>--The breed of the dog.⁹</p> <p>selling, delivering, bartering, auctioning, brokering, giving away, or transferring a dog acquired from a qualified breeder or a dog retailer, unless the pet store representative provides to the person acquiring the dog, at a time prior to the transaction for the acquisition of the dog, a written certification that includes the following information:</p> <p>--The name of the breeder that bred the dog;</p> <p>--The address, if available, of the breeder that bred the dog;</p> <p>--The USDA license number of the breeder that bred the dog, if the breeder is licensed by the USDA, and a copy of the most current USDA inspection report for the breeder;</p> <p>--The dog's birth date, if known;</p> <p>--The date that the pet store took possession of the dog;</p> <p>--The breed, gender, color, and any identifying marks of the dog;</p> <p>--A document signed by an accredited veterinarian that describes any known disease, illness, or congenital or hereditary condition that adversely affects the health of the dog at the time of examination; and</p> <p>--A document signed by the pet store representative certifying that all information required to be provided to the person acquiring the dog is accurate.</p> <p>A pet store must keep a copy of the certification for at least two years from the date of the acquisition. The pet store representative must make the copy of the certification available for inspection or duplication by the Department of Agriculture.¹⁰</p> |
| Dog retailer | from negligently | selling, delivering, bartering, auctioning, brokering, giving away, or transferring a dog acquired from a qualified breeder to a pet store unless it provides the written certification described above. ¹¹ |

⁹ R.C. 956.20(B)(6).

¹⁰ R.C. 956.20(B)(5).

¹¹ R.C. 956.051(B).



| The act prohibits a... | Mental state | Action |
|--|-----------------|---|
| Pet store representative or a dog retailer | from recklessly | altering or providing false information on a written certification described above. ¹² |

Application of act's provisions regarding pet stores and dog retailers

The act specifies that the prohibitions regarding dog sales by pet stores and dog retailers do not apply to any dog that is being sold, delivered, bartered, auctioned, given away, brokered, or transferred from the premises where the dog was bred and reared.¹³

Pet store license

The act prohibits a pet store representative from negligently displaying, offering for sale, delivering, bartering, auctioning, brokering, giving away, transferring, or selling any live dog unless a pet store license has been issued for the pet store by the Director of Agriculture.¹⁴ The Director may issue a pet store license to a pet store owner or operator when the owner or operator does all of the following:

- (1) Applies for a license in accordance with the act's provisions and rules adopted under it;
- (2) Affirms in writing that the owner or operator will maintain compliance with the act's requirements; and
- (3) Submits a \$500 fee along with the application for the pet store license.¹⁵ The fee must be deposited into the Pet Store License Fund, which is created by the act (see below).¹⁶

The Director may deny, suspend, or revoke a pet store license for a violation of the act's prohibitions regarding pet store dog sales. However, the denial, suspension, or

¹² R.C. 956.051(C) and 956.20(C).

¹³ R.C. 956.051(D) and 956.20(D).

¹⁴ R.C. 956.21(E).

¹⁵ R.C. 956.21(A).

¹⁶ R.C. 956.21(D).



revocation of a license is not effective until the licensee is given a written notice of the violation, a reasonable amount of time to correct the violation, if possible, and an opportunity for a hearing. The Director also may refuse to issue a pet store license if the applicant has violated the act's prohibitions regarding pet store dog sales during the 36-month period prior to submitting an application for the license.¹⁷

A pet store license is valid for one year from the date of issuance and must be renewed annually.¹⁸

Rules

The act requires the Director of Agriculture to adopt rules under the Administrative Procedure Act establishing all of the following:

(1) Requirements and procedures governing pet stores, including requirements and procedures governing the initial licensing of pet stores and the renewal of pet store licenses;

(2) The application form for a pet store license and the information that is required to be submitted in the application; and

(3) Requirements governing permanent implanted identification microchips for dogs to be sold at a pet store and by a dog retailer.¹⁹

The act also authorizes the Director to adopt rules establishing disease testing protocols and vaccination requirements for dogs to be sold at a pet store.²⁰

Criminal and civil penalties

A pet store representative or a dog retailer who violates any of the act's provisions regarding pet stores or dog retailers, including licensing requirements, is guilty of a fourth degree misdemeanor.²¹

In addition, the act establishes civil penalties and procedures by which the Director of Agriculture may assess the penalties against a person who violates any of the act's prohibitions regarding the sale of a dog from a pet store. It also revises the

¹⁷ R.C. 956.21(B).

¹⁸ R.C. 956.21(C).

¹⁹ R.C. 956.03(A)(11) to (13).

²⁰ R.C. 956.03(B).

²¹ R.C. 956.99.



penalties and the procedures for assessing them against a person who violates the law governing dog retailers and high volume breeders so that the penalties and procedures that apply to pet stores, dog retailers, and high volume breeders are generally identical, with the following two exceptions:

(1) The proceeds of civil penalties are deposited into different funds depending on if the violation concerns pet stores or dog retailers or breeders.

(2) With respect to dog retailers and high volume breeders, the act retains a provision of law that specifies that each day that a violation occurs constitutes a separate violation. No such provision applies to violations concerning pet store sales.

Under the act, a person who commits a violation is liable for a civil penalty as follows:²²

| Number of violations | Civil penalty |
|-------------------------------|------------------|
| First violation | \$500 or less |
| Second violation | \$2,500 or less |
| Third or subsequent violation | \$10,000 or less |

Any person assessed a civil penalty must pay the amount prescribed to the Department of Agriculture. The Department must remit all money collected from civil penalties to the Treasurer of State for deposit in the Pet Store License Fund (see below) for violations involving a pet store.²³ For violations involving a dog retailer or high volume breeder, the Department must remit all money collected from civil penalties to the Treasurer of State for deposit in the existing High Volume Breeder Kennel Control License Fund.²⁴ A civil penalty for both pet store and dog retailer violations may be assessed by the Director only if all of the following occur:

(1) The person has received a notice and been notified of the violation by certified mail or personal service;

(2) After the time period for correcting the violation specified in the notice has elapsed, the Director or the Director's authorized representative has inspected the premises where the violation has occurred and determined that the violation has not been corrected, and the Director has issued a notice of an adjudication hearing;

²² R.C. 956.13(A) and (C) and 956.22(A) and (C).

²³ R.C. 956.22(D).

²⁴ R.C. 956.13(D).



(3) The Director affords the person an opportunity for an adjudication hearing to challenge the Director's determination that the person is not in compliance with the relevant law, the imposition of the civil penalty, or both. A person may waive the opportunity for an adjudication hearing.²⁵

If the opportunity for an adjudication hearing is waived or if, after an adjudication hearing, the Director determines that a violation has occurred or is occurring, the Director may assess a civil penalty. The civil penalty may be appealed in accordance with Ohio's Administrative Procedure Law, except that the civil penalty may be appealed only to the Environmental Division of the Franklin County Municipal Court.²⁶

Under prior law, if a person operated as a high volume breeder without first obtaining a license or if a person acted as, or performed the functions of, a dog retailer without a dog retailer license, that person was assessed a civil penalty of \$100 for the first offense and \$500 for each subsequent offense.²⁷ A person who had violated any other provision of the law governing dog retailers and breeders was assessed a civil penalty of \$100.²⁸

Pet Store License Fund

As indicated above, the act creates the Pet Store License Fund that consists of all of the following:

- (1) All money collected by the Director from pet store license fees;
- (2) All money collected by the Director from civil penalties assessed under the act's provisions; and
- (3) Money appropriated to the Fund.

The Director must use the money in the Fund to administer the act's provisions governing the sale of dogs from pet stores.²⁹

²⁵ R.C. 956.13(A) and 956.22(A).

²⁶ R.C. 956.13(B) and 956.22(B).

²⁷ R.C. 956.13(C)(1) and O.A.C. 901:1-6-10.

²⁸ R.C. 956.13(C)(2).

²⁹ R.C. 956.181.



Preemption

The act specifies that the regulation of pet stores is a matter of general statewide interest that requires statewide regulation and that the act constitutes a comprehensive plan with respect to all aspects of the regulation of pet stores. Accordingly, the act specifies that it is the intent of the General Assembly to preempt any local ordinance, resolution, or other law adopted to regulate the sale, delivery, barter, auction, broker, or transfer of a dog to a person from a pet store.³⁰

Release of money from High Volume Breeder Kennel Control License Fund

The act eliminates the requirement that the Controlling Board approve the release of money to the Director of Agriculture from the High Volume Breeder Kennel Control License Fund. The act also eliminates the cap on the amount of money that the Director may request the Controlling Board to release from the Fund in any biennium. Under prior law, the cap was \$2.5 million. Under continuing law, the Director must use money in the Fund to administer the laws governing dog retailers and dog breeders.³¹

Other changes governing high volume breeders and dog retailers

Denial of dog retailer and high volume breeder licenses

The act revises the reasons for which the Director of Agriculture must deny an application for a dog retailer license or a high volume breeder license. It does so by removing the requirement that the Director deny such a license to an applicant who, in the past 20 years, has been convicted of or pleaded guilty to certain animal cruelty or domestic violence violations under federal law or the laws of another state. The act retains provisions of law that require the Director to deny an application for a dog retailer license or a high volume breeder license to an applicant that, in the past 20 years, has been convicted of or pleaded guilty to specified State of Ohio or equivalent municipal animal cruelty or domestic violence violations.³²

Photographic evidence for a high volume breeder license renewal

The act eliminates the requirement that a person applying for the renewal of a high volume breeder license submit photographic evidence along with the application

³⁰ R.C. 956.23.

³¹ R.C. 956.18.

³² R.C. 956.15(A).



that documents the facilities where the dogs will be kept, housed, and maintained by the applicant.³³

Notification of violations

The act authorizes the Director of Agriculture to issue a notice to a person violating the act's provision governing pet stores or violating continuing law governing high volume dog breeders and dog retailers to cease the violation or take corrective actions regarding the violation.³⁴ Prior law required the Director to issue an order rather than a notice. The act also makes conforming changes.³⁵

Required residency of humane agents

The act repeals a law that required a county humane agent to reside in the county or municipal corporation for which the agent was appointed.³⁶

Sexual conduct with an animal

The act prohibits a person from knowingly (1) engaging in sexual conduct with an animal, (2) possessing, selling, or purchasing an animal with the intent that it be subjected to sexual conduct, or (3) organizing, promoting, aiding, or abetting in the conduct of an act involving any sexual conduct with an animal.³⁷

As used in the act, sexual conduct is either of the following committed for the purpose of sexual gratification:

(1) Any act done between a person and animal that involves contact of the penis of one and the vulva of the other, the penis of one and the penis of the other, the penis of one and the anus of the other, the mouth of one and the penis of the other, the mouth of one and the anus of the other, the vulva of one and the vulva of the other, the mouth of one and the vulva of the other, any other contact between a reproductive organ of one and a reproductive organ of the other, or any other insertion of a reproductive organ of one into an orifice of the other; or

³³ R.C. 956.04(D).

³⁴ R.C. 956.12.

³⁵ R.C. 956.13(A) and 956.14.

³⁶ R.C. 1717.06.

³⁷ R.C. 959.21(B) and (C).



(2) Without a *bona fide* veterinary or animal husbandry purpose to do so, the insertion, however slight, of any part of a person's body or any instrument, apparatus, or other object into the vaginal, anal, or reproductive opening of an animal. An animal is defined as a nonhuman mammal, bird, reptile, or amphibian, either dead or alive.³⁸

Seizure and impoundment, and possible outcomes

Authorization

An officer may seize and cause to be impounded at an impounding agency an animal that the officer has probable cause to believe is the subject of a violation of the act's provisions regarding sexual conduct with an animal or an attempt to commit a violation (an "offense"). The officers authorized to enforce the prohibitions are law enforcement officers, agents of a county humane society, or other persons appointed to act as an animal control officer for a municipal corporation or township in accordance with Ohio law, an ordinance, or a resolution.³⁹

Procedures subsequent to seizure and impoundment

The act specifies that all procedures and requirements established under continuing law for the seizure, impoundment, and disposition of seized companion animals apply to an animal seized and impounded for a violation of the sexual conduct prohibition. Some of the existing procedures include providing written notice of the seizure and impoundment to the animal's owner or keeper; humane destruction of the animal if a licensed veterinarian determines it necessary because the animal is suffering; a court hearing to determine whether the officer impounding the animal had probable cause to seize it; and a determination of whether the animal will be returned to the person.⁴⁰

Penalties

A violation of any of the act's prohibitions regarding sexual conduct with an animal is a second degree misdemeanor. In addition, the court may order the offender to forfeit the animal and may provide for its disposition, including its sale. If an animal is forfeited and sold, the proceeds from the sale first must be applied to the expenses for

³⁸ R.C. 959.21(A).

³⁹ R.C. 959.21(D).

⁴⁰ R.C. 959.21(D).



the animal's care from the time it was taken from the former owner's custody. The balance of the sale proceeds, if any, must be paid to the former owner.⁴¹

Also, if the court has reason to believe that the offender suffers from a mental or emotional disorder that contributed to the violation, the court may impose as a community control sanction or as a condition of probation a requirement that the offender undergo psychological evaluation or counseling. The court must order the offender to pay the costs of the evaluation or counseling.⁴²

Animal fighting

The act revises the prohibitions associated with cockfighting, bearbaiting, or pitting an animal against another (animal fighting activities). Continuing law, revised in part by the act, prohibits a person from knowingly doing any of the following:

(1) Engaging in an animal fighting activity;

(2) Being employed at an animal fighting activity; or

(3) Aiding and abetting (see below) by purchasing a ticket of admission, being present at, or witnessing animal fighting activities.

Under prior law, a violation of (1), (2), or (3) was a fourth degree misdemeanor. The act retains (1)⁴³ and the associated penalty. The act increases the penalty for a violation of (2)⁴⁴ from a fourth degree misdemeanor to a felony with a fine of up to \$10,000.⁴⁵ With regard to (3) above, the act retains the prohibition against witnessing animal fighting activities as an aiding and abetting offense,⁴⁶ but alters the other elements of the prohibition by doing all of the following:

- Specifying that no person may pay money or give anything else of value in exchange for admission to or being present at the event;⁴⁷

⁴¹ R.C. 959.99(D).

⁴² R.C. 959.99(E)(6).

⁴³ R.C. 959.15(A)(1).

⁴⁴ R.C. 959.15(B)(1).

⁴⁵ R.C. 959.99(I).

⁴⁶ R.C. 959.15(C).

⁴⁷ R.C. 959.15(B)(2)(b).



- Specifying that paying money or giving anything else of value in exchange for admission to or being present at the event is a principal offense and no longer an aiding and abetting offense (see below); and
- Increasing the penalty for a violation of all elements of (3) from a fourth degree misdemeanor to a felony with a fine of up to \$10,000.⁴⁸

Continuing law, revised in part by the act, also prohibits a person from recklessly⁴⁹ doing either of the following:

(1) Receiving money for the admission of another to a place kept for animal fighting activities; or

(2) Using, training, or possessing any animal for seizing, detaining, or mistreating a domestic animal.

The act retains (2) above and its associated penalty (a fourth degree misdemeanor), but heightens the culpable mental state from recklessly to knowingly.⁵⁰ The act alters (1) above by doing all of the following:

- Adding that no person may receive anything else of value in exchange for the admission of another person to the event or for another person to be present at the event;
- Heightening the culpable mental state from recklessly to knowingly; and
- Increasing the penalty for the violation from a fourth degree misdemeanor to a felony with a fine of up to \$10,000.⁵¹

The act also creates new prohibitions. Under the act, a person is prohibited from knowingly doing any of the following:

- Wagering money or anything else of value on the results of the event;⁵²

⁴⁸ R.C. 959.99(I).

⁴⁹ R.C. 2901.21(C)(1), not in the act.

⁵⁰ R.C. 959.15(A)(2).

⁵¹ R.C. 959.15(B)(2)(c).

⁵² R.C. 959.15(B)(2)(a).

- Using, possessing, or permitting to be present at the event any device or substance intended to enhance an animal's ability to fight or to inflict injury on another animal;⁵³
- Permitting or causing a minor to be present at the event if any person present at or involved with the event is engaging in any prohibited animal fighting activities.⁵⁴

Violation of these new prohibitions is a felony with a fine of up to \$10,000.⁵⁵

Under continuing law, a person who aids or abets a crime is guilty of complicity and must be prosecuted as if the person is the principal offender. It is an affirmative defense to a charge of complicity that, prior to the commission of or attempt to commit the offense, the actor terminated the actor's complicity, under circumstances manifesting a complete and voluntary renunciation of the actor's criminal purpose.⁵⁶

Micro wireless facilities in the public way

The act establishes a regulatory scheme that may be applied to the construction and attachment of micro wireless facilities in the public way of a municipal corporation. The act inserts this scheme into continuing law governing the occupation and use of municipal corporation public ways. The act specifically provides that "no person shall occupy or use a public way without first obtaining, under [ongoing municipal corporation public way law, video service authorization law or the provisions of the act regarding micro wireless facilities] any requisite consent of the municipal corporation."⁵⁷

Overview of use of public way

Continuing law prohibits a "person" (any natural person, corporation, or partnership, and any governmental entity⁵⁸) from occupying or using a public way without first obtaining any consent required by the municipal corporation that owns or

⁵³ R.C. 959.15(B)(2)(d).

⁵⁴ R.C. 959.15(B)(2)(e).

⁵⁵ R.C. 959.99(I).

⁵⁶ R.C. 2923.03, not in the act.

⁵⁷ R.C. 4939.03(C)(1).

⁵⁸ R.C. 4939.01(J).



controls the public way.⁵⁹ A "public way" means any municipally owned or controlled public street, road, highway, freeway, lane, path, alley, court, sidewalk, boulevard, parkway, drive, and other land dedicated or designated for a compatible public use. It includes their surface, and the space within, through, on, across, above, or below them.⁶⁰ To "occupy or use" the public way is to place a tangible thing in a public way for any purpose such as constructing, repairing, or operating lines, poles, pipes, conduits, ducts, equipment or other structures, appurtenances, or facilities necessary for the delivery of public utility services or cable operator services.⁶¹

A municipal corporation must grant or deny a request for its consent within 60 days after the filing of a completed request but must not unreasonably withhold or deny its consent. If a municipal corporation denies its consent, it must provide, to the person submitting the request, its written reasons for denial and information the person may request to obtain consent.⁶²

Definitions

The act defines, within ongoing municipal corporation public way law, new terms (listed in the table below) that are associated with micro wireless facilities and their construction and attachment.

| Term | Definition |
|-----------------------|--|
| "Accessory equipment" | Any equipment used in conjunction with a wireless facility or wireless support structure, including utility or transmission equipment, power storage, generation or control equipment, cables, wiring, and equipment cabinets. ⁶³ |
| "Antenna" | Communications equipment that transmits or receives radio frequency signals in the provision of wireless service, including associated accessory equipment. ⁶⁴ |

⁵⁹ R.C. 4939.03(C)(1).

⁶⁰ R.C. 4939.01(L).

⁶¹ R.C. 4939.01(I).

⁶² R.C. 4939.03(C)(2) to (4).

⁶³ R.C. 4939.01(A).

⁶⁴ R.C. 4939.01(B).



| Term | Definition |
|------------------------------------|---|
| "Distributed antenna system" | A network or facility that distributes radio frequency signals to provide wireless service, that meets the height and size characteristics of a small cell facility and conforms to the size limitations for such a facility as specified in the act, and that consists of (1) remote antenna nodes deployed throughout a desired coverage area, (2) a high-capacity signal transport medium connected to a central hub site, and (3) equipment located at the hub site to process or control the radio frequency signals through the antennas. ⁶⁵ |
| "Eligible facilities request" | As defined in federal law, any request for modification of an existing wireless tower or base station that involves (1) collocation of new transmission equipment, (2) removal of transmission equipment, or (3) replacement of transmission equipment. Collocation is the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes. ⁶⁶ |
| "Micro wireless facility" | Both a distributed antenna system and a small cell facility, and the related wireless facilities. ⁶⁷ |
| "Micro wireless facility operator" | A public utility or cable operator that operates a micro wireless facility. ⁶⁸ |
| "Municipal electric utility" | A municipal corporation that owns or operates facilities to generate, transmit, or distribute electricity. ⁶⁹ |

⁶⁵ R.C. 4939.01(D).

⁶⁶ R.C. 4939.01(E); 47 U.S.C. 1455(a)(2) and 47 C.F.R. 1.40001(a)(2), neither federal provision is in the act.

⁶⁷ R.C. 4939.01(F).

⁶⁸ R.C. 4939.01(G).

⁶⁹ R.C. 4939.01(H).



| Term | Definition |
|------------------------------|--|
| "Small cell facility" | A wireless facility that meets the following requirements: (1) each antenna is located inside an enclosure of not more than six cubic feet in volume or, in the case of an antenna with exposed elements, could fit (antenna and all exposed elements) within an enclosure of that size; and all other wireless equipment associated with the facility is cumulatively not more than 28 cubic feet in volume, not including electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services, and (2) if the wireless facility were placed on a wireless support structure, the increased height would not be more than 10 feet or the overall resulting height would not be more than 50 feet. ⁷⁰ |
| "Utility pole" | A structure that is designed for, or used for the purpose of, carrying lines, cables, or wires for electric or telecommunications service. ⁷¹ |
| "Wireless facility" | An antenna, accessory equipment, or other wireless device or equipment used to provide wireless service. ⁷² |
| "Wireless service" | Any services using licensed or unlicensed wireless spectrum, whether at a fixed location or mobile, provided using wireless facilities. ⁷³ |
| "Wireless support structure" | A pole, such as a monopole, either guyed or self-supporting, light pole, traffic signal, sign pole, or utility pole capable of supporting wireless facilities, but for purposes of |

⁷⁰ R.C. 4939.01(N).

⁷¹ R.C. 4939.01(O).

⁷² R.C. 4939.01(P).

⁷³ R.C. 4939.01(Q).



| Term | Definition |
|------|--|
| | requesting consent for micro wireless facility activity, "wireless support structure" excludes a utility pole or other facility that is owned or operated by a municipal electric utility. ⁷⁴ |

State policy

The act adds to the list of state public policies regarding the access or use of a public way. Under the act, it is a public policy of Ohio to "expedite the installation and operation of micro, and smaller, wireless facilities in order to facilitate the deployment of advanced wireless service" throughout Ohio.⁷⁵ The act does not define "smaller wireless facility" or "micro, and smaller, wireless facility."

Micro wireless facility placement

The act authorizes a micro wireless facility operator to construct and operate the facility in a public way.⁷⁶ The act also requires a municipal corporation to permit, for the purpose of providing wireless service, an attachment by a micro wireless facility operator to a wireless support structure owned or operated by the municipal corporation and located in the public way.⁷⁷

Requests for consent

The act permits an entity to file a completed request for consent, and requires a municipal corporation to grant or deny its consent, for the entity to do any of the following in a public way:

- Attach micro wireless facilities to a wireless support structure;
- Locate two or more wireless service providers' micro wireless facilities on the same wireless support structure;
- Replace or modify a micro wireless facility on a wireless support structure; and

⁷⁴ R.C. 4939.01(R).

⁷⁵ R.C. 4939.02(A)(8).

⁷⁶ R.C. 4939.032.

⁷⁷ R.C. 4939.0325(A).

- Construct, modify, or replace a wireless support structure associated with a micro wireless facility.⁷⁸

If an entity is seeking to construct, modify, or replace more than one micro wireless facility within the jurisdiction of a single municipal corporation, the entity may file, at its discretion, a consolidated request and receive a single permit for the construction, modification, or replacement of the micro wireless facilities or associated wireless support structures.⁷⁹

The act specifies that the municipal corporation may not require any zoning or other approval, consent, permit, certificate, or condition for the attachment, location, replacement, construction, or operation of a micro wireless facility, except as provided in the municipal corporation public way law as well as any franchise, pole attachment, or other agreements between the municipal corporation and a cable operator or public utility. In addition, the municipal corporation may not impose other prohibitions or restraints on these activities.⁸⁰

Consent request fees

The act permits a municipal corporation to charge for a request for consent for micro wireless facility activities. Any such fee may not exceed the lesser of \$250 per micro wireless facility or the amount charged by the municipal corporation for a building permit for any other type of commercial development or land use development.⁸¹ If an entity consolidates its requests for consent for more than one micro wireless facility, the fees may be cumulative.⁸²

Time period for consent

If an entity files a request for consent regarding a micro wireless facility, the municipal corporation must grant or deny its consent within 90 days after the filing.⁸³ If a municipal corporation fails to approve a request for consent (or for a relevant construction permit) within the required time period, the request is considered granted when the requesting entity provides notice to the municipal corporation that the time

⁷⁸ R.C. 4939.031(A).

⁷⁹ R.C. 4939.0313(A).

⁸⁰ R.C. 4939.031(B).

⁸¹ R.C. 4939.0319.

⁸² R.C. 4939.0313(B).

⁸³ R.C. 4939.031(A).

period for taking action on the request has lapsed. This provision does not apply if the time period is tolled.⁸⁴

Tolling the consent time period

Under the act, the 90-day period may be tolled (paused) only under certain circumstances. It may be tolled by mutual agreement between the entity requesting consent and the municipal corporation or in cases where the municipal corporation determines that the application for consent is incomplete. The time period may also be tolled by the municipal corporation in the event it has an extraordinary number of wireless facilities contained in pending requests. In this case, the municipal corporation may toll the 90-day period for a reasonable amount of days not exceeding an additional 90 days.⁸⁵

Tolling procedure

To toll the time period for incompleteness, the municipal corporation, within 30 days after it receives the request, must provide written notice to the entity requesting consent that clearly and specifically delineates all missing documents or information. The missing documents or information must be reasonably related to determining whether the request meets the requirements of applicable federal and state law.⁸⁶

Resuming the time period

The time period for consent resumes when the entity responds to the notice of incompleteness by making a supplemental submission. If the supplemental submission is inadequate, the municipal corporation must notify the entity within ten days after receiving the submission that the submission did not provide the information identified in the original notice of incompleteness delineating missing documents or information.⁸⁷

Tolling after second or subsequent submissions

The act permits the time period to be tolled again in the case of second or subsequent notices due to mutual agreement between the entity and the municipal corporation, to incompleteness, or to a municipal corporation's extraordinary number of pending wireless facilities requests. But, the act specifies that the second or subsequent

⁸⁴ R.C. 4939.037.

⁸⁵ R.C. 4939.035(A).

⁸⁶ R.C. 4939.035(B).

⁸⁷ R.C. 4939.035(C) and (D).



notices may not specify missing documents or information that was not delineated in the original notice of incompleteness.⁸⁸

When time period may not be tolled

The 90-day time period may not be tolled for any notice of incompleteness that requires other information or documentation, including documentation intended to illustrate the need for the request, to justify the business decision for the request, or information described below in "**Restrictions on municipal authority**."⁸⁹

Denial of consent

Under the act, if a municipal corporation denies consent to occupy or use a public way for micro wireless facilities, the denial must be supported by "substantial, competent evidence." The act also prohibits denials from unreasonably discriminating against the entity requesting the consent.⁹⁰

Eligible facilities request

The act specifies that a municipal corporation must approve an eligible facilities request within 60 days and may not deny such a request. Under federal regulations, a state or local government must approve any eligible facilities request.⁹¹

Consent exception

The act provides an exemption from the requirement for consent for two types of activities conducted in the public way. First, no consent is required for routine maintenance of wireless facilities. Second, consent is not required for the replacement of wireless facilities with wireless facilities that are substantially similar to the existing wireless facilities or that are the same size or smaller than the existing wireless facilities.⁹²

Municipal authority

Under the act, a municipal corporation may require a work permit for wireless activities that do not require consent (see "**Consent exception**," above). However, a

⁸⁸ R.C. 4939.035(D).

⁸⁹ R.C. 4939.035(B) and 4939.0315.

⁹⁰ R.C. 4939.03(C)(4).

⁹¹ R.C. 4939.039; 47 C.F.R. 1.40001(c), not in the act.

⁹² R.C. 4939.0311(A).

work permit is subject to any applicable requirements of the municipal corporation public way law.⁹³ The act also specifies that nothing in the micro wireless facility provisions precludes a municipal corporation from applying its generally applicable health, safety, and welfare regulations when granting consent for a micro wireless facility.⁹⁴

Restrictions on municipal authority

Under the act, no municipal corporation may institute a moratorium on the filing, acceptance of filings, consideration, or approval of requests for consent regarding micro wireless facilities, and no municipal corporation is permitted to have or exercise any jurisdiction, authority, or control over the design, engineering, construction, installation, or operation of any micro wireless facility located in an interior structure not owned or controlled by the municipal corporation.⁹⁵ In addition, a municipal corporation is not permitted to enter into an exclusive arrangement with any entity for the right to attach to the municipal corporation's wireless support structures.⁹⁶

The act also prohibits a municipal corporation from doing any of the following with respect to the provision of any micro wireless facility:

- Requiring the requestor to submit information about, or evaluate a requestor's business decisions with respect to, the requestor's service, customer demand, or quality of service to or from a particular area or site;
- Requiring the requestor to submit information about the need for the micro wireless facility or the associated wireless support structure, including additional wireless coverage, capacity, or increased speeds;
- Requiring the requestor to justify the need for the new micro wireless facility or associated wireless support structure, or to submit business information, including strategy documents, propagation maps, or telecommunications traffic studies;
- Evaluating the request based on the availability of other potential locations for the placement of the micro wireless facility or associated wireless support structure, including the options to submit a request for

⁹³ R.C. 4939.0311(B).

⁹⁴ R.C. 4939.038.

⁹⁵ R.C. 4939.0317 and 4939.0321.

⁹⁶ R.C. 4939.0327.

consent to modify an existing micro wireless facility or associated wireless support structure, except that the act permits a municipal corporation to propose an alternate location within 50 feet of the proposed location, which the requestor must use if it has the right to use the alternate structure on reasonable terms and conditions and the alternate location does not impose technical limits or additional costs;

- Requiring the removal of existing wireless support structures or wireless facilities, wherever located, as a condition for approval of the request, except that a municipal corporation may adopt reasonable rules that are intended to ensure the public health, safety, and welfare with respect to the removal of an abandoned wireless support structure or abandoned wireless facilities;
- Imposing restrictions with respect to objects in navigable airspace that are stricter than or in conflict with any restrictions imposed by the Federal Aviation Administration;
- Imposing requirements for bonds, escrow deposits, letters of credit, or any other type of financial surety to ensure removal of abandoned or unused wireless facilities, unless the municipal corporation imposes similar requirements on other permits for occupancy of the public way;
- Unreasonably discriminating among providers of functionally equivalent services;
- Imposing unreasonable requirements regarding the maintenance or appearance of the micro wireless facility or associated wireless support structure and accessory equipment, including the types of materials to be used and the screening or landscaping of wireless facilities;
- Requiring that the requestor purchase, lease, or use facilities, networks, or services owned or operated, in whole or in part, by the municipal corporation, or owned or operated, in whole or in part, by any entity in which the municipal corporation has an economic governance interest;
- Conditioning the grant of consent on the requestor's agreement to permit other wireless facilities to be placed at, attached to, or located on the associated wireless support structure;
- Limiting the duration of any permit that is granted, except that a municipal corporation may require that construction commence within two years;



- Imposing setback or fall-zone requirements for the associated wireless support structure that are different from requirements imposed on other types of structures in the public way;
- Imposing environmental testing, sampling, or monitoring requirements that exceed federal law or that are not imposed on other types of construction or elements of the construction;
- Imposing any regulations pertaining to radio frequency emissions or exposure to such emissions that are contrary to or exceed rules of the Federal Communications Commission;
- Imposing separation requirements that require any space to be maintained between wireless facilities or wireless support structures; or
- Preventing the requestor from locating the micro wireless facility or wireless support structure in a residential area or within a specific distance from a residence or other structure.⁹⁷

Exemption from local zoning review

The act specifies that requests for consent are considered a permitted use and are exempt from local zoning review.⁹⁸

Annual fee limit for attachment

The act requires the total annual charges and fees charged for the attachment (and any activities related to the attachment) by the micro wireless facility operator to be the lesser of \$200 per attachment or the actual, direct, and reasonable costs related to the use of the wireless support structure by the operator. If there is any controversy concerning the appropriateness of the charge or fee, the municipal corporation has the burden of proving that the charge or fee is reasonably related to its costs.⁹⁹

Under continuing law, a "public way fee" already may be levied to recover the costs incurred by a municipal corporation and that are associated with the occupancy or

⁹⁷ R.C. 4939.0315.

⁹⁸ R.C. 4939.033.

⁹⁹ R.C. 4939.0325(B).

use of a public way. However, unlike the fee under the act, there is no monetary limit for this fee. The act does not address how the two fees relate to each other.¹⁰⁰

Nondiscrimination provision

Under the act, the charges, fees, terms, and conditions for micro wireless facility attachments must be nondiscriminatory as to all attaching operators regardless of the types of services provided by the micro wireless facility operator. The processes and time for approval of applications and permits for the attachments also must be nondiscriminatory.¹⁰¹

Micro wireless facility placements on public-utility-owned poles

The act does not affect the need for an entity seeking to place a micro wireless facility on a public-utility-owned utility pole to obtain from the public utility any necessary authority to place the facility.¹⁰² Continuing law unchanged by the act provides for telephone or electric light companies that are public utilities and incumbent local exchange carriers to permit a person or entity to attach wires, cable, facilities, or apparatus to its poles upon reasonable terms and conditions and the payment of reasonable charges.¹⁰³

Existing agreements

The act and continuing law regarding occupation or use of municipal corporation public ways do not apply to a micro wireless facility operator agreement, for the balance of its term, if (1) the agreement was authorized by ordinance or otherwise and was entered into by a municipal corporation and the micro wireless facility operator before the effective date of the act, (2) the agreement authorizes the occupation or use of public ways, and (3) the micro wireless facility operator agrees with the applicable public way fees, or nonmonetary compensation, if any. The act also specifies that, with respect to micro wireless facility operators and their facilities, the provision that gives municipal ordinances governing public ways enacted prior to September 29, 1999 primacy over the act and continuing law, does not apply. The act, as a result, makes micro wireless facility operators and their facilities fully subject to the

¹⁰⁰ R.C. 4939.01(M); R.C. 4939.05, not in the act.

¹⁰¹ R.C. 4939.0325(C).

¹⁰² R.C. 4939.0325(D).

¹⁰³ R.C. 4905.71, not in the act.



requirements of the act and continuing law regarding the occupation and use of municipal corporation public ways.¹⁰⁴

Employment law and political subdivisions

Minimum wage

The act prohibits a political subdivision from establishing a minimum wage that is different from the wage rate required under Ohio's Minimum Fair Wage Standards Law¹⁰⁵ and the Minimum Wage Amendment to Ohio's Constitution (MWA).¹⁰⁶

The basic state minimum wage is currently set pursuant to the MWA. The MWA requires the basic state minimum wage to be increased annually according to the Consumer Price Index or its successor index for all urban wage earners and clerical workers for all items as calculated by the federal government, rounded to the nearest five cents. The basic state minimum wage is \$8.15 per hour for 2017.¹⁰⁷ For employees who are under 16 years of age or who are employed by a business with gross annual receipts of \$299,000 in 2017 the minimum wage is the federal minimum wage, which is \$7.25 per hour.¹⁰⁸

Private employer authority to regulate employment matters

Under the act, the following matters are exclusively the result of a private employer's policy or an agreement, contract, or collective bargaining agreement between a private employer and the employer's employees, unless those matters are expressly provided in state or federal law:

- The number of hours and time when an employee is required to work or be on call for work;
- The location where an employee is required to work;
- The amount of notification an employee receives of work schedule assignments or changes to assignments, including any addition or

¹⁰⁴ R.C. 4939.08.

¹⁰⁵ R.C. Chapter 4111.

¹⁰⁶ R.C. 4111.02.

¹⁰⁷ Ohio Department of Commerce Division of Industrial Compliance, State of Ohio 2017 Minimum Wage, www.com.ohio.gov/documents/dico_2017MinimumWageposter.pdf.

¹⁰⁸ Ohio Const., Art. II, Sec. 34a. and R.C. 4111.02.



reduction of hours, cancellation of a shift, or change in the date or time of a shift;

- Minimizing fluctuations in the number of hours an employee is scheduled to work on a daily, weekly, or monthly basis;
- Additional payment for reporting time when work is or becomes unavailable, for being on call for work, or for working a split shift;
- Whether an employer will provide advance notice of an employee's initial work or shift schedule, notice of new schedules, or notice of changed schedules, including whether an employer will provide employees with predictive schedules;
- Whether an employer will provide additional hours of work to the employer's current employees before employing additional workers;
- Whether an employer will provide employees with fringe benefits and the type and amount of those benefits.

An employer is not required to adopt a policy concerning any of the matters listed above. For purposes of the act, a "fringe benefit" means any benefit for which the employer would incur an expense, including health, welfare, or retirement benefits, whether paid for entirely by the employee or on the basis of a joint employer-employee contribution. "Fringe benefit" also includes leaves of absence or vacation, separation, sick, or holiday pay. Additionally, the act requires a court to give due consideration and great weight to the U.S. Department of Labor's and the federal courts' interpretations of "reporting time," "on call," and "split shift" under the Fair Labor Standards Act (the federal minimum wage, overtime, and child labor law) and the regulations adopted pursuant to it.¹⁰⁹

Political subdivisions

The act does not affect the authority provided by case law, the Revised Code, or the Home Rule Amendment of the Ohio Constitution for a political subdivision to adopt a resolution or ordinance to limit the hours an employer operates.¹¹⁰

¹⁰⁹ R.C. 4113.85, by reference to 29 United States Code 201 *et seq.*

¹¹⁰ R.C. 4113.85(D), by reference to Ohio Const., Art. XVIII, Sec. 3.



General Assembly's intent

The act expresses the intent of the General Assembly to exclusively regulate the hours of labor and fringe benefits arising from an employer-employee relationship, pursuant to the General Assembly's exclusive authority under Section 34 of Article II of the Ohio Constitution, to fix and regulate the hours of labor and provide for the comfort, health, safety, and general welfare of employees. Under the act, the General Assembly finds that regulating an employment relationship as it pertains to hours of labor and fringe benefits is a matter of statewide concern that requires uniform statewide regulation.¹¹¹

Severability clause

The act specifies that if any provision of the act is found to be invalid, the invalidity does not affect any other provisions of the act because each item of law in the act is independent and severable.¹¹²

HISTORY

| ACTION | DATE |
|--|----------|
| Introduced | 05-17-16 |
| Reported, S. Finance | 05-25-16 |
| Passed Senate (21-11) | 05-25-16 |
| Reported, H. Finance | 12-07-16 |
| Passed House (55-42) | 12-07-16 |
| Senate concurred in House amendments (21-10) | 12-07-16 |

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¹¹¹ Section 5, by reference to Ohio Const., Art. II, Sec. 34.

¹¹² Section 6.

