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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

H.B. 507\*  
134<sup>th</sup> General Assembly

## Bill Analysis

[Click here for H.B. 507's Fiscal Note](#)

**Version:** As Reported by Senate Agriculture and Natural Resources

**Primary Sponsor:** Rep. Koehler

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### SUMMARY

#### Internet sales exemption from auction laws

- Exempts from auctioneer and auction firm licensure requirements a person who, in any calendar year, sells not more than \$10,000 of personal property via an auction mediation company (for example, eBay) if:
  - The company provides fraud protection to the buyer; and
  - The property is the person's own personal property, or the property is the personal property of another (sold without compensation).

#### Local preemption for pesticide use

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

#### Evaluations of registered EHSs and EHSs in training

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

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\* This analysis was prepared before the report of the Senate Agriculture and Natural Resources Committee appeared in the Senate Journal. Note that the legislative history may be incomplete.

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

### **Food safety changes**

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

### **State agency oil and gas resources**

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

### **Green energy**

- Defines “green energy” as energy generated by using an energy resource that meets certain emissions and sustainability requirements, including energy generated by using natural gas.
- Provides that, except for compressed natural gas that has been produced from biologically derived methane gas, energy generated by using natural gas is not eligible to receive renewable energy credits.

## Towing authorizations

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

## Poultry chicks

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

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## **DETAILED ANALYSIS**

### **Internet sales exemption from auction laws**

Current law, recently enacted by H.B. 321 of the 134<sup>th</sup> General Assembly, generally requires a person to be licensed as an auctioneer or auction firm under the auctioneer’s law when auctioning property on the internet. The bill exempts from this licensure requirement a person who, in any calendar year, sells up to \$10,000 of personal property via an auction mediation company (e.g., eBay) if both of the following apply:

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

An auction firm is a person that wishes to manage a personal property auction.<sup>1</sup>

### **Local preemption for pesticide use**

The bill prohibits a political subdivision from regulating or banning the packaging, registration, labeling, sale, storage, distribution, use, or application of a pesticide registered with the state on private property, including private property that is open to the public (see, **COMMENT**). A political subdivision is a county, township, or municipal corporation and any other body corporate and politic that is responsible for government activities in a geographic area smaller than that of the state.<sup>2</sup>

### **Evaluations of registered EHSs and EHSs in training**

#### **Background**

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

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<sup>1</sup> R.C. 4707.01, not in the bill and 4707.02.

<sup>2</sup> R.C. 921.26(C)(2).

A retail food establishment is a place where food is stored, processed, prepared, manufactured, or otherwise held or handled for retail sale (for example, a grocery store). A food service operation is a place, location, site, or separate area where food intended to be served in individual portions is prepared or served for a charge or required donation (for example, a restaurant). Generally, boards of health license these facilities and administer and enforce the food safety regulations that govern them. Registered environmental health specialists (EHS) and environmental health specialists in training (EHS in training) employed by or contracting with boards of health conduct inspections of these facilities. If a board licenses retail food establishments, the Director of Agriculture is responsible for evaluating the board's licensure and inspection program. If a board licenses food service operations, the Director of Health is responsible for evaluating the board's licensure and inspection program.<sup>3</sup>

## Evaluations

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

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

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

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

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<sup>3</sup> R.C. 3717.01, not in the bill; R.C. 3717.11, not in the bill.

<sup>4</sup> R.C. 3717.33 and 3717.52.

<sup>5</sup> R.C. 3717.33(H)(2) and 3717.52(B)(2).

<sup>6</sup> R.C. 3717.11, not in the bill.

4. The individual is allowed to review the Ohio Uniform Food Safety Code during the assessment.<sup>7</sup>

For purposes of any field review portion of the survey, the Directors may require a registered EHS or EHS in training to participate in the field review for training and educational purposes. However, the bill prohibits the Director from using that participation to evaluate whether the registered EHS or EHS in training has sufficient knowledge of the laws governing food safety and of the Ohio Uniform Food Safety Code.<sup>8</sup>

The bill requires the Directors, in consultation with representatives from the Ohio Environmental Health Association and the Association of Ohio Health Commissioners, to review and update the assessment on at least a biennial basis.<sup>9</sup> The Directors must complete the initial development and implementation of the assessment within 180 days after the bill's effective date.<sup>10</sup>

## **Food safety changes**

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

### **Canning and bottling requirements**

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

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

Similar sanitation requirements are established in existing rules adopted by the Director of Agriculture.<sup>11</sup>

### **Cold storage for food**

For purposes of the provisions governing cold storage of food, the bill does all of the following:

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<sup>7</sup> R.C. 3717.33(H)(1) and 3717.52(B)(1).

<sup>8</sup> R.C. 3717.33(H)(3) and 3717.52(B)(3).

<sup>9</sup> R.C. 3717.33(H)(2) and 3717.52(B)(2).

<sup>10</sup> Section 4.

<sup>11</sup> R.C. 913.04 and 913.28; R.C. 913.27, repealed.

1. Redefines “food” to conform with the definition in the Pure Food and Drug Law, which defines it as articles used for food or drink for humans or animals, chewing gum, and articles used for components of any such articles;
2. Eliminates provisions pertaining to labeling and storage of food stored in cold-storage warehouses (warehouses), including:
  - a. A requirement that a warehouse file with the Director of Agriculture a quarterly itemized report setting forth the kind and quantities of food products held in the warehouse;
  - b. A requirement that food deposited in a warehouse bear stamps that indicate the dates of deposit and removal of the food;
  - c. A prohibition against selling a container of cold-storage food at wholesale unless the container has a placard on it printed with the words “wholesome cold-storage food”;
  - d. A prohibition against selling food from an open container of cold-storage food, including at retail, unless the container includes the placard specified above;
  - e. A prohibition against selling whole or partial carcasses of beef, pork, and other meats; fresh fish; eggs; or butter if any of those foods have been kept for more than one year in a warehouse; and
  - f. A prohibition against returning food to a warehouse if the food has been withdrawn for the purpose of placing it in the market for sale.

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

### **Frozen food storage**

For purposes of the provisions governing frozen food storage, the bill does all of the following:

1. Redefines “food” to conform with the definition in the Pure Food and Drug Law, which defines it as articles used for food or drink for humans or animals, chewing gum, and articles used for components of any such articles;
2. Eliminates provisions pertaining to storage of frozen food at an establishment, including:
  - a. A requirement that the establishment include a locker room, chill room, and sharp freezing facility and that the locker room does not exceed +5° F with a tolerance of 5° F higher;

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<sup>12</sup> R.C. 915.01 and 915.03; R.C. 915.04 to 915.08, repealed.

- b. A prohibition against food that is not for human consumption being stored with food for human consumption, unless inspected by the USDA or the Department of Agriculture; and
- c. A requirement that every operator of an establishment having frozen food lockers keep an accurate record of the rental period for each locker rented, the charge for the rental, and the payments for the rental.

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

### **Grading and labeling of produce**

The bill eliminates specified provisions governing grading and labeling of fresh fruits and vegetables, including all of the following:

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

According to the Department of Agriculture, federal law duplicates the provisions governing grading and labeling of fresh fruits and vegetables. USDA currently grades all fresh fruits and vegetables.<sup>14</sup>

### **Labeling and selling of canned fruit and vegetables**

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

1. Prohibitions against a dealer in preserved or canned food or a packer or manufacturer of preserved or canned food from offering the food for sale unless the container contains certain information, including the grade or quality of the food and the name and address of the dealer, packer, or manufacturer;

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<sup>13</sup> R.C. 915.14 and 915.18; R.C. 915.19 and 915.21, repealed.

<sup>14</sup> R.C. 925.21; R.C. 925.26 to 925.28, repealed; R.C. 925.52, repealed; R.C. 925.56, repealed; R.C. 925.61, repealed.



2. A prohibition against falsely labeling cans or jars containing preserved food;
3. A prohibition against selling cans or jars containing preserved food that are falsely stamped or labeled; and
4. A prohibition against the manufacture or sale of “soaked” goods from products dried before canning without the word “soaked” on the label.

The Department of Agriculture’s existing food safety rules address the labeling provisions specified above.<sup>15</sup>

### **Food processing license suspension**

The bill includes a reference to an “opportunity for a hearing” to a provision of law governing a hearing for a food processing establishment licensee whose license has been suspended due to a threat to public health. This change makes the reference to a hearing in that law consistent with the Administrative Procedure Law.<sup>16</sup>

### **Cider manufacturing**

For purposes of a device used to process apples for use in apple cider, the bill requires the device to be equipped with a means to add a sanitizer to the water used to wash the apples. Current law requires the device to be equipped with a means to chlorinate the water.<sup>17</sup>

### **Vinegar branding**

The bill eliminates all of the following provisions governing vinegar:

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

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

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<sup>15</sup> R.C. 3715.14 to 3715.17, repealed; R.C. 3715.18 to 3715.20, repealed; R.C. 3715.99.

<sup>16</sup> R.C. 3715.041. See also, R.C. Chapter 119.

<sup>17</sup> R.C. 3715.27.

## State agency oil or gas resources

Under current law, state-owned or -controlled oil and gas resources are not automatically subject to lease. Rather, the law establishes a framework by which parcels of state property may be nominated for development with the Oil and Gas Land Management Commission. The Commission was required to adopt rules governing the nomination procedures by January 28, 2022. However, as of this writing, the Commission has not yet adopted the rules. Even though those rules have not been adopted, a state agency may still lease oil and gas resources under the agency's control if it chooses to do so. But, the agency must include specified statutorily required terms in the lease.

The bill requires, rather than authorizes, every state agency to lease agency-owned or controlled resources for development until the date on which the nomination procedure rules are adopted by the Commission. The state agency must enter the lease in good faith. The bill specifies the person seeking to lease the resources must submit proof of both of the following to the state agency:

1. Insurance and financial assurance; and
2. Registration with the Division of Oil and Gas Resources Management.<sup>19</sup>

## Green energy

### Definition

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

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

The bill also includes, as “green energy,” energy generated by using natural gas as a resource.<sup>20</sup>

### Renewable energy credits

The bill excludes energy generated by using natural gas as a resource from receiving renewable energy credits under continuing law. The bill makes an exception for compressed natural gas that has been produced from biologically derived methane gas.<sup>21</sup> Under current law,

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

<sup>19</sup> R.C. 155.33(A)(1) and R.C. 155.34, not in the bill. See “Oil and Gas Land Management Commission Announcement of Public Meeting” which may be accessed on the Department of Natural Resources’ website under the “Business & Industry” Tab, under “Commissions and Councils”: [ohiodnr.gov](http://ohiodnr.gov).

<sup>20</sup> R.C. 4928.01(A)(43).

<sup>21</sup> R.C. 4928.645(D).

an electric distribution utility may use renewable energy credits from a seller of compressed natural gas that has been produced from biologically derived methane gas.<sup>22</sup>

## **Towing authorizations**

### **Towing of vehicles under conservancy district jurisdiction**

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

- An abandoned junk motor vehicle;
- A motor vehicle that has come into the conservancy district police department's possession;
- A motor vehicle that has been left on public streets or other public property for more than 48 hours or on private property without the property owner's permission for more than four hours; and
- A vehicle that has been in an accident.<sup>23</sup>

A conservancy district is a political subdivision of the state that is created for certain purposes, generally related to the prevention of floods and the disposal of wastewater. Conservancy districts also may operate various recreational facilities on lands owned by the district.<sup>24</sup>

### **Other conservancy district towing authorizations**

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

- Receive the required notice that must be provided by a towing and storage company to law enforcement when the company tows a motor vehicle from a private tow-away zone;
- Maintain records of motor vehicles towed from private tow-away zones within the department's jurisdiction;
- Receive the required notice that must be provided by repair garages and places of storage prior to obtaining title to a motor vehicle abandoned at the repair garage or place of storage;

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<sup>22</sup> R.C. 4928.645(A)(3).

<sup>23</sup> R.C. 4513.60, 4513.61, 4513.63, and 4513.66.

<sup>24</sup> R.C. Chapter 6101, not in the bill.

- Make a determination that a motor vehicle abandoned at a towing and storage company facility or items in the vehicle are not necessary to criminal investigation prior to the company taking title to the vehicle;
- Undertake the sale or disposition of a motor vehicle towed by order of the police department from private or public property;
- Provide the required notice to a person who willfully leaves an abandoned junk vehicle on private property and to a person who allows a junk motor vehicle to remain on their property.<sup>25</sup>

## Poultry chicks

The bill decreases the minimum required lot size applicable to the sale of poultry chicks. Under current law, poultry chicks under four weeks old may be sold, given away, or otherwise distributed only in lots of at least six chicks. The bill reduces this required lot size to three chicks.<sup>26</sup> Generally, poultry are domesticated fowl, including chickens, turkeys, geese, and ducks, raised for the production of meat or eggs.

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## COMMENT

The bill generally prohibits local authorities, including municipal corporations, from regulating pesticides in Ohio.<sup>27</sup> This provision of the bill may conflict with a municipal corporation's home rule authority under Article XVIII, Section 3 of the Ohio Constitution.

Generally, a municipal corporation may exercise police powers pursuant to the Home Rule provision of the Ohio Constitution, so long as any exercise of those powers does not conflict with a general law. The Ohio Supreme Court has held that a statute constitutes a general law if it: (1) is part of a statewide and comprehensive legislative enactment, (2) applies to all parts of the state alike and operates uniformly throughout the state, (3) sets forth police, sanitary, or similar regulations, rather than purports only to grant or limit the legislative power of a municipal corporation to set forth police, sanitary, or similar regulations, and (4) prescribes a rule of conduct upon citizens generally.<sup>28</sup>

This provision of the bill appears to limit the authority of municipal corporations to establish requirements governing the use of pesticides, rather than prescribe a rule of conduct upon citizens generally.

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<sup>25</sup> R.C. 4505.101, 4505.104, 4513.601, 4513.62, 4513.64, and 4513.65.

<sup>26</sup> R.C. 925.62.

<sup>27</sup> R.C. 921.26.

<sup>28</sup> *Canton v. State*, 95 Ohio St.3d 153; 766 N.E2d 963 (2002); 2002 Ohio Lexis 1283.

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## HISTORY

Action	Date
Introduced	12-08-21
Reported, H. Agriculture & Conservation	03-31-22
Passed House (96-0)	04-06-22
Reported, S. Agriculture & Natural Resources	--

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