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SUMMARY

Companion animal cruelty prohibitions and penalties

- Revises the law and penalties associated with companion animal cruelty.
- Classifies knowingly causing serious physical harm to a companion animal as an offense of violence.
- Subjects both nonregistered and registered animal rescues to the same penalties for certain animal abuse acts.

Use of gas chamber to destroy animals

- Prohibits an animal shelter from recklessly destroying a domestic animal by the use of a carbon monoxide gas chamber, carbon dioxide gas chamber, or any other nonanesthetic inhalant.

Adulterated pet food

- Prohibits pet food from containing remains from an animal that was euthanized by the use of any drug injected intravenously or through another, nonvascular route.
- Prohibits pet food from containing any dog or cat remains.

Cuyahoga County cigarette and vapor products taxes

- Authorizes Cuyahoga County to modify the tax base of its existing cigarette tax and to levy a new tax on nicotine vapor products.

DETAILED ANALYSIS

Companion animal cruelty prohibitions and penalties

The act revises Ohio's companion animal abuse laws. A companion animal is a cat or dog, regardless of where the cat or dog is kept, and any other animal kept inside a residential dwelling. The specific revisions are as follows:

- Lowers the mental state, from knowingly to recklessly, for the offense of depriving a companion animal of necessary sustenance or confining the companion animal without supplying it during the confinement with sufficient quantities of good, wholesome food and water (deprivation or confining prohibition), which applies to companion animal custodians and caretakers.¹
- Accordingly, lowers the penalty for violating the reckless deprivation or confining prohibition from a 5th degree felony to a 1st degree misdemeanor for a first offense (retains the 5th degree felony on each subsequent offense).²
- Categorizes the prohibition against knowingly causing serious physical harm to a companion animal, which is a 5th degree felony in continuing law, as an offense of violence.³ Serious physical harm is physical harm that does one of the following:
 - Carries an unnecessary or unjustifiable substantial risk of death;
 - Involves either partial or total permanent incapacity; or
 - Involves acute pain of a duration that results in substantial suffering or that involves any degree of prolonged or intractable pain.⁴

By specifying that knowingly causing serious physical harm to a companion animal is an offense of violence, a judge is not required to sentence an offender to a community control sanction, but instead must impose a prison term on a first offense. In addition, this violation would not be expungable in the same manner as nonviolent 4th and 5th degree felonies and misdemeanors.⁵

¹ R.C. 959.131(A)(12)(d) and (E). These actions were defined as "serious physical harm" under prior law. The act removes these types of actions from the offense of causing serious physical harm to a companion animal, which is a 5th degree felony.

² R.C. 959.99(E)(1).

³ R.C. 2901.01; *see* R.C. 959.131(C).

⁴ R.C. 959.131(A)(12).

⁵ R.C. 959.131(A)(12) and 959.131(E); R.C. 2929.13(B), not in the act.

Animal rescues

The act also subjects both nonregistered and registered animal rescues to the same penalties for certain animal abuse acts. Generally, under prior law, the penalties for animal abuse acts that applied to a nonregistered animal rescue were less stringent. The reason for this is that an owner, manager, or employee (employee) of a nonregistered animal rescue who committed an animal abuse act had to be charged under the general animal abuse statutes. However, an employee of a registered animal rescue who committed the same act had to be charged under the statutes that specifically apply to registered animal rescues. Those statutes have a heightened penalty.

For example, an employee of a registered animal rescue who knowingly deprives the companion animal of necessary sustenance is subject to a 5th degree felony for the first offense (both in prior law and under the act). However, under prior law, if an employee of a nonregistered animal rescue committed the same act, the employee was subject to a 1st degree misdemeanor on the first offense. The act closes this loophole by applying the heightened penalties to nonregistered animal rescues.⁶

Animal shelter use of gas chamber to destroy animals

The act prohibits an animal shelter (i.e., county humane society, dog pound, or local animal shelter operated by a local governmental entity) from recklessly destroying a domestic animal by the use of a carbon monoxide gas chamber, carbon dioxide gas chamber, or any other nonanesthetic inhalant. A violation of this prohibition is a 4th degree misdemeanor (up to 30 days in jail and a fine of up to \$250). However, an animal shelter may destroy a domestic animal by the use of these methods if the State Veterinary Medical Licensing Board, in consultation with the State Board of Pharmacy, declares that there is a shortage of approved lethal injection substances.

Continuing law prohibits (and imposes a 4th degree misdemeanor for) destroying a domestic animal by the use of:

- A high altitude decompression chamber; or
- Any method other than a method that immediately and painlessly renders the domestic animal initially unconscious and subsequently dead.

This prohibition and the prohibition established by the act do not apply to or prohibit the slaughtering of livestock under the law governing livestock slaughter or the taking of any wild animal when taken in accordance with the law governing hunting and fishing. As added by the act, these prohibitions also do not apply to any of the following:

1. The destruction of an animal under the animal disease law;

⁶ R.C. 959.131(A)(7) and (8); also see R.C. 959.131(F) and (G).

2. The lawful practice of veterinary medicine by a person who has been issued a license, temporary permit, or registration certificate under Ohio law; and
3. An animal used in scientific research conducted by a research facility in accordance with the federal Animal Welfare Act and related regulations.⁷

Adulterated commercial feed and pet food

Background

Continuing law prohibits a person from adulterating commercial feed or distributing adulterated commercial feed.⁸ Commercial feed is all materials, except unmixed whole seeds or physically altered entire unmixed seeds, that are not adulterated and that are distributed for use as feed or for mixing in feed for animals.⁹

Commercial feed is adulterated if any of the following occur:

1. It bears or contains any poisonous or deleterious substance that may render it injurious to animal or human health;
2. It bears or contains any added poisonous, deleterious, or nonnutritive substance that is unsafe according to federal law;
3. It is, or it bears or contains any food additive that is unsafe according to federal law;
4. It is a raw agricultural commodity and bears or contains a pesticide chemical that is unsafe according to federal law;
5. It bears or contains any color additive that is unsafe according to federal law;
6. It is, or bears or contains any new animal drug that is unsafe according to federal law;
7. A valuable component is omitted or abstracted from it in whole or in part or a less valuable component is substituted for a valuable component;
8. Its composition or quality falls below or differs from what it is purported or represented to possess by its labeling;
9. It contains a drug and the methods used in or the facilities or controls used for its manufacture, processing, or packaging do not conform to current good manufacturing practices as determined by the Director of Agriculture in rules to assure that the drug meets the law's requirements of the laws governing livestock feeds for safety and has the identity and strength and meets the quality and purity characteristics that it purports or is represented to possess.

⁷ R.C. 959.06 and 959.99(C); R.C. 2929.24, and 2929.29, not in the act.

⁸ R.C. 923.51(A).

⁹ R.C. 923.41(B).

10. It contains viable weed seeds in amounts exceeding limits for weed seeds established by the Director by rule.¹⁰

Any person who adulterates commercial feed or distributes it is guilty of a 4th degree misdemeanor on a first offense, and a 3rd degree misdemeanor on each subsequent offense.¹¹

Adulterated pet food

Pet food is a specific type of commercial feed that previously was not defined in the Ohio Revised Code. It was, however, defined in Ohio Administrative Code rules as any commercial feed prepared and distributed for consumption by domestic animals normally maintained in or near a household.¹² The act codifies this term¹³ and specifies that pet food, in addition to being adulterated in one of the ten ways specified in continuing law (see above), is adulterated if either of the following applies:

1. It contains any animal remains from an animal that has been euthanized by the use of any drug injected intravenously or through another nonvascular route; or
2. It contains any dog or cat remains, regardless of how the dog or cat died or was killed.¹⁴

A person who adulterates or distributes adulterated pet food is guilty of a 4th degree misdemeanor on a first offense and a 3rd degree misdemeanor on each subsequent offense.¹⁵

Cuyahoga County cigarette and vapor products taxes

The act authorizes Cuyahoga County to modify the tax base of its existing cigarette tax and to levy a new tax on nicotine vapor products.

Under the authority of continuing law, the county levies a tax on the sale, distribution, or use of cigarettes. The county's tax consists of two different levies: a tax of 30¢ per pack to support arts and cultural facilities and a tax of 4.5¢ per pack to fund the operation of a sports facility.¹⁶ Cuyahoga County is currently the only county authorized to levy a cigarette tax.

The county's cigarette tax is in addition to the state's existing taxes on cigarettes, other tobacco products, and vapor products. Currently, the state levies a \$1.60 per pack cigarette tax, a tax equal to 17% of the wholesale price of other tobacco products, and a nicotine vapor

¹⁰ R.C. 923.48.

¹¹ R.C. 923.99, not in the act.

¹² Ohio Administrative Code 901:5-7-01.

¹³ R.C. 923.41(V) and (W).

¹⁴ R.C. 923.48(B)(2) and (3).

¹⁵ R.C. 923.51(B); R.C. 923.99, not in the act.

¹⁶ R.C. 5743.021; R.C. 5743.026, not in the act.

products tax equal to 1¢ per 0.1 milliliters (ml) of liquid product or 0.01 grams of nonliquid product.¹⁷

Conversion of cigarette tax

The act allows Cuyahoga County to convert its existing 30¢ per pack cigarette tax for arts and cultural facilities to a tax based on wholesale price. The new tax rate may equal up to 9% of the wholesale price of a pack of cigarettes. The county's 4.5¢ per pack tax for a sports facility remains unchanged.

The county's 30¢ tax is scheduled to expire in 2027. However, under the act, the county is not required to wait until the current tax expires before proposing a replacement wholesale price-based tax. Similar to the existing tax, voter approval is required, and the county may levy the tax for up to 10 years. If the county proposes a replacement levy before the current levy expires, but voters do not approve the replacement, the county may continue levying its current tax until its original expiration date.

If approved, a wholesale price-based tax would be collected in the same manner as the existing per-pack tax, which is paid primarily by wholesalers through the purchase of tax stamps that are affixed to packs of cigarettes. The cost of the tax could still be passed down to consumers.¹⁸

Vapor products tax

The act also allows Cuyahoga County to levy a tax on nicotine vapor products to fund its arts and cultural district. Unlike the volume-based state tax on such products, the county's tax would be based on the products' wholesale price, at a rate of up to 9%.

The tax would be collected in the same manner as the state's existing tax on vapor products, which is paid primarily by distributors. Similar to the county's cigarette tax, the Department of Taxation would receive 2% of the new tax's revenue, after any refunds are paid, in exchange for administering the tax. The county could use the remaining 98% to support its arts and cultural district.

The act allows the county to combine a replacement cigarette tax and a new vapor products tax into a single ballot question. As with the cigarette tax, the county may levy the vapor products tax for up to 10 years.¹⁹

Retailer floor taxes

If Cuyahoga County either replaces its cigarette tax or levies a new vapor product tax, as described above, the act requires each retailer to remit the new tax on cigarettes and vapor

¹⁷ R.C. 5743.02 and 5743.51, not in the act.

¹⁸ R.C. 5743.01, 5743.021, 5743.03, 5743.05, and 5743.33.

¹⁹ R.C. 3381.17, 5743.01, 5743.511, 5743.52, 5743.54, 5743.55, 5743.56, 5743.57, 5743.59, 5743.60, 5743.62, 5743.621, 5743.63, 5743.631, and 5743.64.

products in the retailer’s inventory.²⁰ This “floor tax” is remitted only once and is designed to discourage retailers from increasing their inventory of untaxed products before the replaced or new tax takes effect. A similar floor tax was required for Cuyahoga County’s existing cigarette levies.

HISTORY

Action	Date
Introduced	04-15-21
Reported, S. Agriculture and Natural Resources	06-01-22
Passed Senate (32-0)	06-01-22
Reported, H. Agriculture and Conservation	12-13-22
Passed House (77-9)	12-14-22
Senate concurred in House amendments (29-1)	12-14-22

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²⁰ R.C. 5743.025 and 5743.521.