



Ohio Legislative Service Commission

Final Analysis

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Reps. Pelanda, Hill, Buchy, Patmon, Anielski, Antonio, Brown, Grossman, Hackett, Hall, Hambley, Hayes, T. Johnson, Kraus, LaTourette, McClain, Patterson, Scherer, R. Smith, Sprague, Rosenberger

Sens. Hite, Brown, Coley, Eklund, Hughes, Lehner, Patton, Peterson, Sawyer, Seitz, Tavares, Thomas, Widener

Effective date: March 23, 2016

ACT SUMMARY

Farmland Preservation Advisory Board

- Requires one member of the Farmland Preservation Advisory Board to represent an Ohio university, rather than the Ohio State University as in former law.

Renewal of pesticide applicator licenses

- Changes the deadline for when a commercial pesticide applicator licensee must be re-examined from one year to 180 days after the license expires, and applies the deadline requirement for re-examination to private pesticide applicator licensees.

Animal diseases

- Adds to the Director of Agriculture's jurisdiction under the Animal Diseases Law "diseases of concern," meaning any diseases that the Director determines may have an adverse impact on the animal or poultry industry or to the public health, excluding diseases reportable to the U.S. Department of Agriculture.
- Accordingly, with regard to diseases of concern, establishes or applies requirements and provisions concerning rule-making, investigations, quarantines, destruction of animals, disposal of dead animals, and enforcement.

Livestock dealers

- Prohibits a person who has been convicted of or pleaded guilty to a violation of the Livestock Dealers Law or rules from acting as an owner, supervisor, employee, contractor, volunteer, or agent of a person licensed under that Law, unless specifically authorized to do so by the Director.

Weights and measures

- Requires the Director to verify advertised prices, price representations, and point-of-sale systems to determine their accuracy, and to adopt rules governing the accuracy of advertised prices and point-of-sale systems.
- Revises the type of commercially used weighing and measuring device for which a person must have a permit to operate issued by the Director or the Director's designee.
- Authorizes only specified persons to install, repair, service, or place into service a commercially used weighing and measuring device.
- Requires a service person who is employed by a commercially used weighing and measuring device servicing agency to register with the Director.
- Requires the Director to maintain traceability of the state standards of weights and measures to those of the International System of Units, rather than those of the National Institute of Standards and Technology as in prior law.
- Specifies that weights and measures that are traceable to federal prototype standards or approved by the National Institute of Standards and Technology must be the state *reference* standards of weights and measures, rather than the state *primary* standards as in former law.

Auctioneers

- Narrows the exemption from licensure under the Auctioneers Law of sales conducted via the Internet so that the exemption applies only if the sales are not conducted in conjunction with a live auction.

Agricultural pollution abatement

- Revises recently enacted law transferring responsibility for agricultural pollution abatement to the Department of Agriculture by:



--Retaining the requirement that a program for coordination of such abatement recommended by the Ohio Soil and Water Conservation Commission be based on water quality standards, but eliminating the requirement that it also be based on air quality standards; and

--Eliminating the requirement that the Director of Agriculture coordinate the efforts of state and local governmental agencies to meet the minimum state air and water quality standards relating to agricultural pollutants.

- Authorizes the Director of Environmental Protection to "coordinate" with the Division of Soil and Water Conservation and soil and water conservation districts for the abatement of agricultural pollution, rather than requiring the Director to "utilize" those entities "in encouraging landowner abatement of agricultural pollution."

CONTENT AND OPERATION

Farmland Preservation Advisory Board

The act alters the membership of the Farmland Preservation Advisory Board by requiring one member to be a representative of an Ohio university, rather than of the Ohio State University.¹ The member who is serving on the Board representing OSU on the act's effective date must continue to serve until the term for which the member was appointed expires. At the end of that term, a member must be appointed in accordance with the act.²

Renewal of pesticide applicator licenses

The act revises the deadlines related to the renewal of commercial pesticide applicator and private pesticide applicator licenses. Under law revised in part by the act, if a commercial pesticide applicator licensee does not renew the applicator's license within one year of the expiration date, the licensee must take another licensure examination. If the licensee renews the license within one year of the expiration date, the licensee need not be re-examined unless the Director of Agriculture determines that a new examination is necessary to ensure that the licensee continues to meet the requirements of changing technology and to ensure continuing competence and ability

¹ R.C. 901.23(A)(3).

² Section 3.



to use pesticides safely and properly. The act reduces the time period in both instances from within one year to within 180 days of the expiration date.³

The act also applies the deadline requirement for re-examination to private pesticide applicator licensees. Additionally, it authorizes a private applicator licensee to renew the license within 180 days after the expiration date without re-examination unless the Director determines that a new examination is necessary to ensure that the holder continues to meet the requirements of changing technology and to ensure continuing competence and ability to use pesticides safely and properly. Former law instead required the Director to determine when re-examination for the renewal of private applicators' licenses was required for those purposes.⁴

Animal diseases

The act includes "diseases of concern" within the scope of the Animal Diseases Law, which under continuing law addresses dangerously contagious and infectious diseases. The act defines a disease of concern as any disease, including any foreign animal disease, or vector, that the Director determines may have an adverse impact on the animal or poultry industry or to the public health in Ohio, but that is not a disease reportable to the U.S. Department of Agriculture.⁵

Accordingly, the act establishes or applies all of the following:

--Authority for the Director to adopt and enforce rules regarding diseases of concern, including rules that designate a disease of concern, establish animal identification and vaccination requirements, and establish procedures for the disposal of animals that died or were destroyed because of a disease of concern;⁶

--Authority for the Director or the Director's authorized representative to have access to any premises, vehicle, or means of conveyance when the Director or representative reasonably suspects an animal has been infected with or exposed to a disease of concern;⁷

³ R.C. 921.12(B) and (D).

⁴ R.C. 921.12(B) and (E).

⁵ R.C. 941.01.

⁶ R.C. 941.03, 941.09(A), and 941.14(C).

⁷ R.C. 941.04(A) and (B).



--A requirement that the Director or the Director's authorized representative seal a vehicle or conveyance under certain conditions regarding infected or exposed animals;⁸

--A requirement that the Director immediately order an investigation into the existence of a disease of concern whenever the Director is notified by any person of the possibility of the existence of a disease of concern;⁹

--Authority for the Director or the Director's authorized representative to issue quarantine orders;¹⁰

--A requirement that a copy of test results or method of detection for a disease of concern conducted by a person authorized by the Department of Agriculture be admitted in court as prima-facie proof of those results;¹¹

--Authority for the Director to order the destruction of any animal found to be infected with or exposed to a disease of concern;¹²

--Authority for the Director to require in a written notice that the owner of a dead animal dispose of the body in a certain manner notwithstanding the Director's rules;¹³ and

--Authority for the Governor to prohibit or regulate by proclamation the importation of animals that could carry a disease of concern into Ohio.¹⁴

The act also includes diseases of concern in the Law's enforcement provisions.¹⁵ Specifically, it includes diseases of concern in both of the following prohibitions:

(1) Except as otherwise provided in the Animal Diseases Law or rules, the prohibition against selling, attempting to sell, keeping with intent to sell, or otherwise transferring to another person an animal that the person knows, or has reason to know,

⁸ R.C. 941.04(C).

⁹ R.C. 941.07(A).

¹⁰ R.C. 941.07(B) to (H).

¹¹ R.C. 941.07(I).

¹² R.C. 941.11(A).

¹³ R.C. 941.14.(D)

¹⁴ R.C. 941.10(B).

¹⁵ R.C. 941.03 to 941.14 and 941.99, not all of which are in the act.

is infected with or exposed to any dangerously contagious or infectious disease or is adulterated with the residue of a poisonous or deleterious substance governed by federal law; and

(2) The prohibition against failing to comply with the Director's order to destroy an animal that is found to be infected with or exposed to a dangerously contagious or infectious disease or adulterated with residues of poisonous or deleterious substances governed by federal law.¹⁶

The act then designates these prohibitions as strict liability offenses.¹⁷ Thus, culpability is not dependent on the mental state or intent of a person who violates one of the prohibitions.

Livestock dealers

The act prohibits a person who has been convicted of or pleaded guilty to a violation of the Livestock Dealers Law or rules from acting as an owner, supervisor, employee, contractor, volunteer, or agent of a person licensed under that Law, unless specifically authorized to do so by the Director. The act then designates that prohibition as a strict liability offense.¹⁸

Weights and measures

Price and point-of-sale verification

The act requires the Director to verify advertised prices, price representations, and point-of-sale systems, as necessary, to determine both the accuracy of prices and computations and the correct use of the equipment and the accuracy of prices printed or recalled from a database if a system utilizes scanning or coding in lieu of manual entry. In order to implement that requirement, the Director must:

(1) Employ recognized procedures such as those designated in the National Institute of Standards and Technology Handbook 130, Uniform Laws and Regulations, "Examination Procedures for Price Verification";

(2) Adopt rules establishing requirements governing the accuracy of advertised prices and point-of-sale systems and establishing requirements and procedures for the enforcement of the requirement; and

¹⁶ R.C. 941.06(C) and 941.11(B)(1).

¹⁷ R.C. 941.06(D) and 941.11(B)(2).

¹⁸ R.C. 943.02(B).



(3) Conduct necessary inspections.¹⁹

Under provisions of the Weights and Measures Law establishing penalties for violations of the rules adopted under that Law, a person who violates the rules adopted under the act is guilty of a second degree misdemeanor on a first offense and a first degree misdemeanor on each subsequent offense within seven years after the first offense.²⁰

Commercially used weighing and measuring devices

The act revises the type of weighing and measuring device for which a permit is required by the Director or the Director's designee. Under the act, a person is prohibited from operating in Ohio a commercially used weighing and measuring device that provides the quantity or cost of a final transaction and for which an application fee for a permit to operate such a device is established by the Weights and Measures Law unless the operator of the device obtains a permit to operate from the Director or the Director's designee. Former law instead applied that prohibition to a commercially used weighing and measuring device that provided the final quantity and final cost of a transaction.²¹

In addition, the act prohibits a person from recklessly installing for use, repairing, servicing, or placing into service a commercially used weighing and measuring device unless the installation, repair, service, or placement is performed by one of the following:

- (1) A Department of Agriculture Division of Weights and Measures inspector;
- (2) A service person registered with the Department; or
- (3) A county or municipal weights and measures inspector.²²

A person who violates the prohibition is guilty of a second degree misdemeanor on a first offense and a first degree misdemeanor on each subsequent offense within seven years after the first offense.²³

¹⁹ R.C. 1327.50(T).

²⁰ R.C. 1327.99.

²¹ R.C. 1327.501(A).

²² R.C. 1327.61(D).

²³ R.C. 1327.99.



The act requires a service person who is employed by a commercially used weighing and measuring device servicing agency to register with the Director in accordance with rules adopted by the Director.²⁴ Under the act, a service person is an individual who installs, services, repairs, reconditions, or places into service a commercially used weighing and measuring device for any type of compensation.²⁵ The Director must provide by rule for registration with the Director of service persons who are employed by commercially used weighing and measuring device servicing agencies, rather than provide by rule for voluntary registration of private weighing and measuring device servicing agencies and personnel as in former law.²⁶

Under continuing law, a commercially used weighing and measuring device is a device described in the National Institute of Standards and Technology Handbook 44 or its supplements and revisions and any other weighing and measuring device designated by rules adopted by the Director. A commercially used weighing and measuring device includes specific types of scales and meters.²⁷

Standards

The act requires the Director to maintain traceability of the state standards of weights and measures to those of the International System of Units, rather than those of the National Institute of Standards and Technology as in prior law.²⁸ In addition, the act does both of the following:

(1) Specifies that weights and measures that are traceable to federal prototype standards or approved by the Institute must be the state *reference* standards of weights and measures, rather than the state *primary* standards as in former law; and

(2) Authorizes all working standards, rather than all secondary standards as in former law, of weights and measures to be prescribed by the Director.²⁹

²⁴ R.C. 1327.502.

²⁵ R.C. 1327.46(T).

²⁶ R.C. 1327.50(R).

²⁷ R.C. 1327.46(M).

²⁸ R.C. 1327.50(A).

²⁹ R.C. 1327.46(G) and (H) and 1327.48.



Auctioneers

The act narrows an exemption from licensure under the Auctioneers Law for sales of real or personal property conducted by means of the Internet. Under the act, the sales are exempt only if they are not conducted in conjunction with a live auction.³⁰

The Auctioneers Law, with certain exceptions, prohibits a person from acting as an auction firm, auctioneer, apprentice auctioneer, or special auctioneer within Ohio without a license issued by the Department of Agriculture. Additionally, no auction can be conducted in Ohio except by an auctioneer licensed by the Department.³¹

Agricultural pollution abatement

Under continuing law, one of the duties of the Ohio Soil and Water Conservation Commission is to recommend to the Director of Agriculture a procedure for coordination of a program of agricultural pollution abatement. The act retains the requirement that implementation of such a program be based on water quality standards adopted under the Water Pollution Control Law. However, it eliminates the requirement that the program also be based on air quality standards adopted under the Air Pollution Control Law.

All of the above requirements were contained in, and predated, the recently enacted transfer of agricultural pollution abatement from the Department of Natural Resources to the Department of Agriculture. The act also removes from those transferred provisions the requirement that the Director of Agriculture, through the Division of Soil and Water Conservation in the Department of Agriculture, coordinate the efforts of state and local governmental agencies to meet the minimum state air and water quality standards relating to agricultural pollutants.

Finally, the act authorizes the Director of Environmental Protection to "coordinate" with the Division of Soil and Water Conservation and soil and water conservation districts for the abatement of agricultural pollution. Former law, also included in the transfer, instead required the Director to "utilize" the Division and districts "in encouraging landowner abatement of agricultural pollution."³²

³⁰ R.C. 4707.02(B)(8).

³¹ R.C. 4707.02(A).

³² R.C. 940.02(G).



HISTORY

| ACTION | DATE |
|--|----------|
| Introduced | 03-24-15 |
| Reported, H. Agriculture & Rural Development | 05-19-15 |
| Passed House (93-2) | 05-27-15 |
| Reported, S. Agriculture | 10-21-15 |
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| Re-reported, S. Rules & Reference | 11-17-15 |
| Passed Senate (30-1) | 11-17-15 |
| House concurred in Senate amendments (92-0) | 12-08-15 |

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