UPDATED VERSION*

# OHIO LEGISLATIVE SERVICE COMMISSION

**Final Analysis** Sam Benham and other LSC staff

## Sub. S.B. 235

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

**Sens.** Beagle and Coley, Eklund, Patton, Seitz

**Reps.** Sprague, Anielski, Antonio, Driehaus, Grossman, Reineke, Schuring, Sheehy, K. Smith, R. Smith, Strahorn, Sweeney, Young, Rosenberger

**Effective date:** March 28, 2017; contains item vetoes

## ACT SUMMARY

### Taxation

#### Property tax

- Authorizes local governments to approve property tax exemptions for the increase in value of property planned for commercial or industrial development while the property is in the pre-development stage.
- Terminates the exemption once an occupancy permit is issued, the title is transferred, disqualifying zoning regulations are imposed, or any commercial, industrial, or agricultural operations occur there.
- Requires property taxes to be current as a condition for the exemption.
- Imposes a three-year tax penalty on property subject to the exemption if the title is transferred before any improvements are made or if any commercial, industrial, or agricultural operations occur before an occupancy permit is issued.
- Permits a downtown redevelopment district to include property that was previously part of a tax increment financing district.

* This version updates the effective date.

### Tax credits

- Discontinues the historic rehabilitation tax credit for "catalytic projects" after the FY 2016-2017 biennium.

- Requires the Director of Development Services to approve the application of each qualified person who applied for a catalytic project tax credit in the FY 2016-2017 biennium, but was not awarded one.

- Requires the Director to grant a motion picture tax credit for FY 2018 to a company producing a television program during the first six months of 2017.

### Sales and use tax (PARTIALLY VETOED)

- Would have exempted from sales taxation the sale of digitized music from a jukebox, arcade machine, or similar amusement or entertainment device (VETOED).

- Would have modified the sales and use tax exemption for property used in producing oil and natural gas (VETOED).

- Requires a purchaser of employment services that claims exemption from sales or use tax to furnish an exemption certificate to the service provider, i.e., to an employment agency.

### Water pollution control facilities (VETOED)

- Would have specified that the Department of Natural Resources is an agency qualified to approve water pollution control facilities for property tax exemption and sales and use tax exemption (VETOED).

### Small business investment companies

- Exempts small business investment companies from the financial institutions tax both prospectively and retrospectively to the first year that tax was levied (2014).

### Municipal Income Tax Net Operating Loss Committee

- Modifies the information that municipalities must report to the Municipal Income Tax Net Operating Loss Committee, and extends the deadline by which the Committee must complete its work.

## Unemployment compensation

- Raises, for a two-year period, the taxable wage base used for the payment of unemployment contributions from $9,000 to $9,500.

- Eliminates the unemployment contribution rate increase for paying principal on federal advances.

- Freezes, for calendar years 2018 and 2019, the maximum weekly unemployment benefit amounts at the maximum benefit amounts in effect on the act's effective date.

## Climbing facility requirements

- Establishes duties for rock climbers, climbing facility operators, and climbing facility employees while climbing or working in a climbing facility.

- Requires climbing facility operators to obtain liability insurance to cover the facility and file a certificate of insurance with the Department of Commerce.

- Prohibits a climbing facility owner from engaging in facility operations if the insurance policy is cancelled or lapses.

- Creates an express assumption of risk on the part of a climber with respect to an injury sustained while climbing that is a complete defense in a lawsuit brought by a climber against the climbing facility operator for injuries sustained while climbing.

- States the General Assembly's findings with respect to climbing and notes that the act is in the public interest.

## Pawnbroker regulations

- Specifies that a pawnbroker must obtain a separate license for each place of business.

- Increases the amount of liquid assets or surety bonds a licensed pawnbroker is required to maintain.

- Increases the amount of interest and fees a pawnbroker can charge for a loan.

- Eliminates a pawnbroker's authority to charge a fee for a lost pledge statement.

- Eliminates the requirement that a pawnbroker retain pledged goods for 72 hours after the pledge is made and permits a pledgor to redeem a loan any time after the pledge is made.

- Prohibits prepayment of interest and storage charges at the time a pawn loan is originated.

- Reduces the continuing education requirements for pawnbrokers from 12 to 8 hours and repeals other requirements relating to continuing education.

### Grants for major sports events (VETOED)

- Would have provided for ongoing reappropriation of money set aside to fund grants to local governments hosting major sporting events but remaining unspent at the end of a fiscal year (VETOED).

### Animal control

- Applies the law governing animals running at large to all poultry, rather than only to geese.

### Use of municipal water and sewer funds

- Reauthorizes municipal corporations in Stark County to use up to 5% of the money in their water and sewer funds for system extensions under certain circumstances during FYs 2017 and 2018.

### Hospital board meetings

- Authorizes boards of county hospital trustees, boards of hospital commissioners, and boards of governors of municipal hospitals to attend board meetings by means of communications equipment, regardless of the Open Meetings Act's requirement that a board member be present in person.

- Requires the boards to adopt rules designating the equipment authorized for use during board meetings, establishing procedures for its use, and ensuring verification of the identity of board members attending meetings via communications equipment.

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## CONTENT AND OPERATION

### Property tax exemption for land in the pre-development stage

The act authorizes a municipal corporation, township, or county to approve a property tax exemption for increases in the value of a parcel of land while it is in the pre-development stage, but for no longer than six years. The exemption applies to (1) a parcel that has not yet been, but will be, developed for commercial or industrial use and (2) a parcel containing existing commercial or industrial property that is no longer in use, but for which redevelopment is planned. A parcel does not qualify if it will be used, in whole or part, for residential purposes.

Under continuing law, every parcel is valued for taxation according to its fair market value as of January 1, the tax lien date. The fair market value of an uncompleted improvement situated on a parcel is calculated on the basis, as of the tax lien date, of either its value or its estimated completed value multiplied by the percentage

completed.[1] All parcels, including the act's qualifying parcels, would continue to be valued in this manner, but the act permits any increase in value from a specified year to be exempted for up to six years, as described below.

### Application process

To receive the exemption, a qualifying parcel's owner must apply to the political subdivision in which the parcel is located – the municipal corporation if the parcel is located in a municipal corporation or the township or county if it is located in unincorporated territory. But if the parcel is already subject to a tax increment financing (TIF) exemption, the owner must apply to the municipal corporation, township, or county that authorized the TIF exemption. Additionally, a township may not exempt a parcel already exempted by a county, and vice versa.

As part of the exemption application, the parcel owner must certify that zoning regulations do not prohibit the construction or redevelopment of a commercial or industrial building on the parcel and must include a statement from the county treasurer certifying that the parcel is not subject to a lien for delinquent property taxes or special assessments.

If the application is complete and the local government intends to grant the exemption, the local government must notify the school district and joint vocational school district in which the parcel is located of its intent to do so. A township or county must additionally notify the county or township, respectively, in which the parcel is located of its intent to exempt the parcel. Following these notifications, the local government may adopt an ordinance or resolution exempting the increase in the value of the qualifying parcel for six years. Granting the exemption is entirely at the discretion of the local government but, once granted, the exemption continues for the six-year period unless a disqualifying event occurs sooner (see below). To effect the exemption, the owner still must file with the Tax Commissioner the same application required for most property tax exemptions.[2]

Local governments may approve exemptions for any tax year after 2016.[3]

### Disqualifying event

The exemption begins in the tax year in which the local government approves the exemption or the next tax year. The exemption continues for six tax years or until

[1] R.C. 323.11; Ohio Administrative Code 5703-25-06(G).

[2] R.C. 5709.52(B), (C), and (E).

[3] Section 5 of the act.

the tax year in which one of the following disqualifying events occurs within that six-year period:

(1) The owner receives a certificate of occupancy for the property;

(2) Commercial, agricultural, or industrial activities occur on the property;

(3) The owner transfers title of the property to another person;

(4) The property is zoned or re-zoned such that the construction of a commercial or industrial building is no longer allowed.

If a qualifying parcel is subdivided during the term of the exemption, the exemption continues to apply to the subdivided parcels that are constituted entirely of the original parcel for the remaining period of the original exemption or until one of the above disqualifying events occurs with respect to the parcel before the end of the period.[4]

### Recoupment charge

The act imposes a tax penalty if the qualifying parcel's owner sells the parcel without making improvements to it while the property is exempted or if commercial, agricultural, or industrial operations begin on the parcel before an occupancy permit is issued. The charge equals the amount of taxes that would have, but were not, levied against the parcel because of the exemption during the three years before one of those events occur. The charge is enforced and collected as property tax and paid proportionally to local taxing units.[5]

## Downtown redevelopment districts: previously exempted parcels

The act permits a downtown redevelopment district (DRD) to include property that was previously part of a TIF district. DRDs are an economic development tool similar to TIFs that can be used by a municipal corporation to encourage the rehabilitation of historic buildings and economic development in commercial and mixed-use areas. A percentage of the increased value of parcels located within the DRD is exempted from property taxation and the owners of those parcels make service payments in lieu of taxes. The revenue derived from the service payments must be used by the municipal corporation for the economic development purposes described in the municipality's development plan for the DRD.

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[4] R.C. 5709.52(C) and (D).

[5] R.C. 5709.52(F).

Prior law prohibited a DRD from including any parcel that had ever been exempted from taxation as part of a TIF or DRD. The act allows for the inclusion of previously tax-exempt parcels so long as they are not tax-exempt on the effective date of the DRD ordinance.[6]

## Historic building rehabilitation tax credit for "catalytic projects"

The act discontinues the "catalytic project" historic rehabilitation tax credit after FY 2017. It also requires the Director of Development Services to approve such a credit for each qualified person who applied for the tax credit in the FY 2016-2017 biennium but was not awarded one.

### Prior law

Under prior law, the Development Services Agency was permitted to issue one historic building rehabilitation tax credit certificate per fiscal biennium to the owner of a "catalytic project." The certificate allows a credit of up to $25 million for the owner's qualified rehabilitation expenditures, instead of the $5 million cap that applies to other projects, although the owner is limited to claiming only $5 million of the total certificate amount per year.

To qualify as a catalytic project, the rehabilitation of the historic building must foster economic development within 2,500 feet of the building. The project must also meet all of continuing law's other requirements for the historic building rehabilitation tax credit.[7]

### Changes to the catalytic project credit

The act discontinues catalytic project tax credit awards after the 2016-2017 biennium.[8]

The act also requires the Director of Development Services to approve the application of each qualified person who applied for a catalytic project tax credit certificate in the 2016-2017 biennium but was not awarded one. To this end, the act waives the one-project limit for that biennium.

The Director must award the credits by April 27, 2017 (30 days after the act's effective date). The credit equals the least of (a) 25% of the applicant's qualified rehabilitation expenditures, (b) one-half of the amount of credits that could have been,

[6] R.C. 5709.45(B).

[7] R.C. 149.311(A)(10), (D)(5) and (6), and (H).

[8] R.C. 149.311(D)(6).

but were not, claimed with respect to projects that were approved during the FY 2008 application period but were not completed, or (c) $25 million. The credits are subject to the $60 million cap on the total amount of historic building rehabilitation tax credits that may be awarded per year.[9]

## Motion picture tax credit

The act requires the Director of Development Services to grant a motion picture tax credit to a company that produces a television program in Ohio during the first six months of the 2017 calendar year. Continuing law authorizes a motion picture company that produces at least part of a motion picture in Ohio and incurs at least $300,000 in Ohio-sourced expenditures to apply to the Director for a refundable credit against the commercial activity tax, financial institutions tax, or personal income tax. Generally, credits are issued at the Director's discretion. The total amount of credits that may be issued by the Director is limited to $40 million per fiscal year.[10]

The credit to be granted under the act is not discretionary and will count towards the annual credit cap for FY 2018, even though it will be based on production expenditures incurred during FY 2017. The amount of the credit is limited to $12 million and may not be claimed by the motion picture company before July 1, 2017.[11]

## Sales tax exemption for amusement devices (VETOED)

Existing law imposes state and local sales tax on "specified digital products," i.e., music, multimedia, and digital books, that are transferred to the purchaser electronically. The Governor vetoed a provision that would have exempted from sales tax specified digital products purchased and delivered electronically via an amusement or entertainment device that accepts direct payments.[12] An example of such a machine is a jukebox that accepts cash or credit card payments to play digital music or an arcade machine that accepts such payments to play a digital arcade game.

## Sales tax exemption for oil and gas production property (VETOED)

The Governor vetoed a provision that would have modified the existing sales and use tax exemption for property used directly in producing oil and natural gas. Existing law exempts sales of tangible personal property used "directly" in the production of crude oil or natural gas. The act would have specified that this includes

[9] Section 3 of the act.

[10] R.C. 122.85, not in the act.

[11] Section 8 of the act.

[12] R.C. 5739.02(B)(55) and Section 7 of the act.

production operations as defined for purposes of the oil and gas regulation law (R.C. Chapter 1509.).[13] The term broadly refers to "all operations and activities and all related equipment, facilities, and other structures that may be used in or associated with the exploration and production of oil, gas, or other mineral resources" that are regulated by the Department of Natural Resources, including "operations and activities associated with site preparation, site construction, access road construction, well drilling, well completion, well stimulation, well site activities, reclamation, and plugging."

The act stated that this modification was intended to be "remedial" and applied both prospectively, and retrospectively to June 30, 2010.[14] A detailed description of the vetoed provision is available on pages 10 and 11 of LSC's analysis of S.B. 235, As Reported by H. Finance. This analysis is available online at https://www.legislature.ohio.gov/download?key=6177&format=pdf.

## Sales tax on employment services

The act requires a purchaser of employment services, i.e., a client, to furnish an exemption certificate to the service provider, i.e., an employment agency, if the client claims the transaction is exempt from sales and use tax. An exemption certificate specifying the reason the transaction is exempt from the tax relieves the employment agency from liability for collecting and remitting tax on the sale. If an audit later reveals that the sale should have been subject to the tax, any assessment must be made against the client and not the employment agency. Continuing law requires exemption certificates for tax-exempt transactions involving many other goods and services.[15] The act's requirement applies to sales of employment services after December 31, 2016.[16]

Employment services – transactions in which an employment agency furnishes personnel to perform work under the supervision or control of a client – have been subject to sales and use tax since 1993.[17] However, certain kinds of employment related services are exempted from sales and use taxes, including those between members of an affiliated group, medical and health care services, contracting and subcontracting services, the permanent assignment of an employee under a contract of at least one

[13] R.C. 5739.02(B)(42)(a).

[14] Section 4 of the act.

[15] R.C. 5739.03(B).

[16] Section 11 of the act.

[17] Ohio Department of Taxation, "ST 1993-08 – Employment Service," available at: http://www.tax.ohio.gov/sales_and_use/information_releases/st199308.aspx.

year, and transactions in which the purchaser is another employment agency that will immediately assign the personnel to a third party client.[18]

## Tax treatment of water pollution control property (VETOED)

The act would have specified that the Department of Natural Resources is an agency qualified to approve water pollution control facilities for the purpose of exemptions from property tax and sales and use tax for such facilities and the property incorporated into them.[19] Continuing law provides that the Ohio Environmental Protection Agency is qualified to make such approvals, as is "any other governmental agency having authority to approve installation of" such facilities. As would have been the case with the act's sales tax exemption for oil and gas production operations property, the act would have stated that this change is "remedial" and applies retrospectively to June 30, 2010.

## Taxation of small business investment companies

The act exempts small business investment companies (SBICs) from the financial institutions tax (FIT).[20] The exemption applies both prospectively, and retrospectively back to January 1, 2014, when the FIT was introduced.[21]

The FIT is a tax on banks and other kinds of financial institutions. Tax liability is determined based on the portion of an institution's equity capital attributable to its Ohio business, as measured by the relative amount of its gross receipts that arise from Ohio operations. The tax rate is tiered according to an institution's Ohio equity capital: the rate is 0.8% on the first $200 million, 0.4% on the next $1.1 billion, and 0.25% for equity capital in excess of $1.3 billion. The minimum tax is $1,000. All revenue from the tax is credited to the General Revenue Fund.[22]

### Small business investment companies

A small business investment company is a privately owned and managed investment fund licensed under federal law. An SBIC uses its own capital and, in most cases, securities guaranteed by the U.S. Small Business Administration to lend to and

[18] R.C. 5739.01(JJ).

[19] R.C. 5709.20.

[20] R.C. 5726.01.

[21] Section 6 of the act.

[22] R.C. Chapter 5726.

make equity investments in qualifying small businesses.[23] Up to two-thirds or three-fourths of their capital may be from the SBA-guaranteed securities, depending on prior fund management experience. Their investments generally are restricted to small businesses – i.e., those having maximum net worth of $19.5 million and net income of $6.5 million – and one-fourth of each SBIC's investments must be in even smaller businesses having maximum net worth of $6 million and net income of $2 million. SBICs are usually structured as limited partnerships with the investment manager serving as the general partner.

### Residual tax status of SBICs

Any financial institution that is subject to the FIT is exempted from the commercial activity tax (CAT), which is a general tax on the gross receipts of all businesses that are not expressly exempted. One implication of being exempted from the FIT is, technically, to become subject to the CAT.[24] However, SBICs are structured in such a way that most of their income is investment income that is distributed to partners and which generally is not subject to the CAT. They would have some income as management fees but, to be taxable under the CAT, the fees would have to be at least $150,000.[25]

## Municipal Income Tax Net Operating Loss Committee

The act modifies the information that municipal corporations must report to the Municipal Income Tax Net Operating Loss Committee, and extends the various deadlines by which the Committee must complete its work. The Committee was created in 2015 by H.B. 5 of the 130th General Assembly to evaluate and quantify the potential financial impact of requiring municipal corporations to allow net operating losses (NOLs) to be carried forward for five years, as required in H.B. 5.[26]

### Municipal reporting requirements

Under prior law, every municipal corporation that levied an income tax in 2011, 2012, or 2013 was required to report revenue information to the Committee. The act only requires reporting from municipal corporations that did not allow an NOL carryforward before H.B. 5 took effect.[27]

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[23] 15 U.S.C. 661 *et. seq*.

[24] R.C. 5751.01(E)(3).

[25] R.C. 5751.01(E)(1).

[26] Section 4 of Sub. H.B. 5 of the 130th General Assembly.

[27] R.C. 718.60(C)(1).

Under the act, each such municipal corporation must report the difference between (1) the municipal corporation's actual revenue in 2018 and 2019 and (2) the amount of revenue the municipal corporation would have received in 2018 and 2019 if it did not have an NOL carryforward. Prior law required a similar calculation, but for the years 2012 through 2018, involving the compilation of historical collections and the projection of future collections.

At a May 2016 meeting, the Committee adopted a microsimulation model for municipal corporations to use when making the calculations required in H.B. 5. The act requires that municipal corporations also use this model to do the updated calculations.

The act extends the deadline by which municipal corporations must report their calculations, from December 31, 2016,[28] to August 31, 2021.[29]

### Committee report

Correspondingly, the act extends the deadline by which the Committee must report its findings, from May 1, 2017, to May 1, 2022. The Committee will cease to exist after that date. Because the report deadline and the Committee's life are extended, the act converts into permanent, codified law the H.B. 5 uncodified law that created the Committee and provided for its operation.

The act also removes a provision that would excuse the Committee from calculating the total revenue effects of H.B. 5's NOL carryforward requirement if fewer than 13 municipal corporations report information.[30]

## Unemployment compensation

### Taxable wage base

Ohio's unemployment compensation system consists of two types of employers: contributory employers, who are mostly private sector employers who pay contributions into the Ohio Unemployment Compensation Fund, and reimbursing employers, who are mostly public sector employers and certain nonprofits who reimburse the Fund when benefits are paid. With respect to contributory employers, to determine the amount of the employer's contribution, the Director of Job and Family Services determines the employer's contribution rate and applies it in the following calendar year to the wages of each of the employer's employees.[31] But contributions are

[28] Section 3 of Sub. H.B. 182 of the 131st General Assembly.

[29] R.C. 718.60(C)(2).

[30] R.C. 718.60(D).

[31] R.C. 4141.25 and Ohio Administrative Code 4141-9-02 and 4141-11-02.

payable on employee wages only up to the "taxable wage base." Wages paid by an employer to a particular employee in excess of the taxable wage base are not subject to contribution.

Beginning January 1, 2018, the act raises the taxable wage base from $9,000 to $9,500 and returns the taxable wage base to $9,000 on January 1, 2020.[32]

### Contribution rate increase to pay principal on federal advances

The act eliminates a prior law contribution rate increase that was imposed for the purpose of paying principal on advances (essentially, loans) from the federal government for the payment of unemployment benefits. The eliminated provision required, if as of the computation date, Ohio had an outstanding balance on federal unemployment advances, all experience-rated contributory employers be subject to a contribution rate increase, as determined by the Director, in an amount up to ½ of 1%, for the purpose of eliminating the principal of the outstanding advance balance.[33]

### Maximum benefit amounts

The act temporarily freezes, for calendar years 2018 and 2019, the maximum weekly benefit amount any individual may receive. During those years, the maximum benefit amount an individual may receive is the amount in effect on the act's effective date, meaning the 2017 maximum will apply in 2018 and 2019, as well.[34]

Under continuing law, weekly benefit amounts are generally 50% of an individual's average weekly wage during the individual's base period, up to a statutory maximum. The statutory maximums are based on the number of allowable dependents claimed, as follows:

- If an individual has no dependents, 50% of the statewide average weekly wage ($443 in 2017).
- If an individual has one or two dependents, 60% of the statewide average weekly wage ($537 in 2017).

[32] R.C. 4141.01(G).

[33] R.C. 4141.25(B)(7), repealed.

[34] R.C. 4141.30.

- If an individual has three or more dependents, 66⅔% of the statewide average weekly wage ($598 in 2017).[35]

Continuing law requires the Director to determine the statewide average weekly wage each year based on the average weekly earnings of all workers in employment subject to Ohio's Unemployment Compensation Law during the preceding 12-month period ending June 30.

## Manufactured climbing wall facilities

The act establishes regulations and safety requirements for individuals operating, working at, and climbing artificial rock climbing walls at a climbing facility. A "climbing facility" is a premises used by the public, not located in an amusement park or carnival or on public land, that is designed and built for the sport of rock climbing, recreational climbing, or competitive climbing, including ascending, descending, and traversing over simulated rock surfaces that use belay systems in their normal operation. A manufactured rock climbing wall in a climbing facility is not an "amusement ride" for the purposes of the Amusement Ride Law.[36]

### Climbing facility operator duties

The act establishes duties that the owner, manager, or person who has operational responsibility for a climbing facility (climbing facility operator) must follow.[37] A climbing facility operator must:

- Maintain liability insurance covering the facility;
- Comply with all manufacturer instructions regarding (1) the manufactured climbing wall and (2) any climbing facility-owned personal protective equipment (clothing, harnesses, or other items designed to protect a climber while rock climbing);[38]
- Post in a conspicuous location rules and warnings for climbers and spectators;
- Conduct an orientation of the facility for all climbers;

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[35] R.C. 4141.30 and Ohio Department of Job and Family Services, *Benefits Chart – 2017*, http://unemployment.ohio.gov/PDF/Benefits_Estimator.pdf.

[36] R.C. 1711.50, 1711.57, and 4715.01(C).

[37] R.C. 4715.01(A).

[38] R.C. 4715.01(E).

- Maintain facility walls, flooring, and equipment in serviceable condition;
- Conduct criminal history inquiries of all adult applicants for employment. The facility owner must require each applicant over age 18 to consent to a criminal records check conducted by the Bureau of Criminal Investigation and Identification.
- Maintain sufficient staffing at the facility;
- Maintain sufficient records for the facility, including (1) all purchases of facility-owned personal protective equipment and (2) all inspections of the manufactured climbing wall and facility-owned personal protective equipment;
- Comply with state and local building, fire, and zoning requirements;
- Conduct inspections of the climbing wall per manufacturer's instructions or every four years, whichever is sooner. The inspections must be conducted by the manufacturer, the manufacturer's representative, or a licensed professional engineer. Evidence of the inspection must be filed with the Department of Commerce.[39]

### Climbing facility employee duties

The act requires climbing facility employees to have adequate knowledge of certain things related to the facility, including:

- The manufactured climbing wall, including any manufacturer requirements;
- Facility-owned personal protective equipment;
- The locations of all safety equipment;
- The facility's emergency procedures.[40]

The employees must perform a daily pre-use visual inspection of the climbing facility.[41]

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[39] R.C. 4175.03.

[40] R.C. 4175.04(A).

[41] R.C. 4175.04(B).

The act prohibits any climbing facility employee from working at the facility while under the influence of drugs or alcohol.[42]

The act also imposes duties on floor supervisors. While on duty, floor supervisors must:

- Be in a position to observe the facility;
- Monitor activity in the facility;
- Assist climbers in following their duties;
- Issue warnings, reprimands, or penalties for climbers who violate the climber duties established by the act (see "**Climber duties**," below).

The act prohibits a person from acting as a floor supervisor unless the person has received appropriate training to meet the above duties.[43]

### Climber duties

Under the act, each climber assumes the risks of climbing, of which a reasonably prudent person is aware. The act requires each climber to:

- Read all warnings and obey all rules of the climbing facility;
- Obey all warnings and instructions of facility staff;
- Read and follow the manufacturer's instructions for the personal protective equipment used by the climber;
- Prior to each use, inspect any personal protective equipment used by the climber, and replace the equipment as necessary;
- Refrain from acting in a manner that may cause injury to self or others;
- Exercise good judgment and act in a responsible manner while climbing.

The act prohibits a climber from climbing while under the influence of drugs or alcohol.[44]

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[42] R.C. 4175.04(E).

[43] R.C. 4175.04(C) and (D).

[44] R.C. 4175.05.

### Climber assumption of risks

Under the act, climbers have knowledge of and expressly assume the risks and legal responsibility for any losses that result from climbing. Losses can result from:

- Falls and crashes into the climbing wall or other obstacles;
- Risks associated with crossing or climbing up or down;
- Equipment failure;
- The climber's physical strength and abilities;
- Fatigue, chill, or dizziness;
- The actions of other individuals that are not a breach of the facility operator's duties.[45]

#### Assumption of risk as a defense

The express assumption of risk described above is a complete defense against liability in a civil action against a climbing facility operator by a climber for injuries sustained from the assumed risks of climbing. The contributory negligence provisions of Ohio's Civil Law do not apply to these actions. However, contributory negligence does apply if the operator has breached one of the operator's duties described above.[46]

### Insurance coverage

The owner of a climbing facility must file with the Department of Commerce a certificate of insurance demonstrating that each climbing facility owned by the owner has current, valid liability insurance. The insurance must be purchased from an insurer authorized to write that type of insurance in Ohio.

The act establishes minimum coverage amounts for the liability insurance as follows:

- Not less than $500,000 for bodily injury or death of one person in any occurrence;

[45] R.C. 4175.05(A) and 4175.06.

[46] R.C. 4175.07.

- Not less than $1 million because of bodily injury or death of two or more persons in each occurrence.[47]

The insurance policy can include a deductible requirement, provided that any settlement by the insurance company is paid as though the deductible did not apply.[48]

If the climbing facility owner fails to file with the Department a certificate of insurance for new or replacement insurance, the owner must cease all facility operations immediately upon the cancellation or lapse of the previous insurance.[49]

The insurance policy must obligate the insurer to:

(1) Not cancel the policy without 30 days' notice and a complete description of the reason for the cancellation;

(2) Report within 24 hours to the Department if the insurer pays a claim or reserves any amount to pay an anticipated claim that reduces the liability coverage to a limit of less than $1 million because of bodily injury or death to two or more persons in each occurrence.[50]

If the insurance policy is cancelled or lapses for any reason, the climbing facility owner must replace the policy with another policy fully complying with the act's requirements. The new coverage must be obtained by the owner prior to allowing a climber to use the facility.[51]

### General Assembly's intent and findings

The act enumerates the General Assembly's findings with respect to rock climbing and notes that rock climbing is a wholesome and healthy activity that should be encouraged. However, because rock climbing has inherent risks that should be managed, the regulatory scheme established in the act is in the public interest.[52]

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[47] R.C. 4175.08(A) and (B).

[48] R.C. 4175.08(C).

[49] R.C. 4175.08(F).

[50] R.C. 4175.08(D).

[51] R.C. 4175.08(E).

[52] R.C. 4715.02.

## Pawnbroker regulations

### Licensure for multiple business locations

The act requires each person to obtain a separate license for each place of business where the person acts or transacts business as a pawnbroker.[53] This clarifies, rather than changes, the operation of the Pawnbroker Law.

### Liquid asset and bond requirements

The act increases the amount of liquid assets that an applicant for a pawnbroker's license must demonstrate the ability to maintain from $100,000 to $125,000. Additionally, it increases the amount of liquid assets and surety bonds that a licensed pawnbroker must maintain in order to conduct business in Ohio. Under the act, a pawnbroker must (1) maintain liquid assets of at least $75,000, increased from $50,000, or (2) obtain a surety bond meeting certain requirements in the sum of at least $50,000, increased from $25,000.[54]

### Interest and fees

The act also increases the interest rates and fees a licensed pawnbroker can charge. It prohibits a pawnbroker from charging interest more than 6% per month for any loan. Prior law prohibited interest of more than 5%.

Additionally, the act modifies the fees a pawnbroker can charge as follows:

- Increases from $4 to $6 per month the fee for all pledged articles held as security or stored for a loan;
- Increases from $2 to $5 the fee for the cost of notifying the pledgor by mail that the pledged articles may be forfeited to the pawnbroker in accordance with the Pawnbroker's Law.
- Increases from $2 to $10 the fee for providing services for compliance with the federal Brady Handgun Violence Protection Act;
- Eliminates the $2 fee for a lost pledge statement issued by the pawnbroker.[55]

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[53] R.C. 4727.02 and 4727.03(A)(4).

[54] R.C. 4727.03(A)(4) and 4727.20(A).

[55] R.C. 4727.06(A), (B), and (C).

### Prohibited pledgors

The Pawnbroker's Law prohibits a licensed pawnbroker from receiving any pledge or purchasing any articles from:

- A minor;
- Any person who is at the time intoxicated or under the influence of a controlled substance;
- Any person who is known or believed by the pawnbroker to be a thief or receiver of stolen property;
- Any person identified to the licensee by certain local law enforcement officials as a known or suspected thief or receiver of stolen property.

The act retains this list of prohibited pledgors or sellers. For the first two dot points, the act expressly states that receiving a pledge from, or selling an article to, a person described in the first two dot points must be done recklessly. This addition is not a substantive change because, for existing offenses, when language defining an element of an offense that is related to a criminal mental state could fairly be applied neither specifies culpability nor plainly indicates a purpose to impose strict liability, the element of the offense is established only if a person acts recklessly. The act makes receiving a pledge from, or selling an article to, a person described in the final dot point a strict liability offense.[56]

### Holding pledged or purchased items

Under prior law, when a licensed pawnbroker received a pledge, the pawnbroker was required to retain the pledged article for 72 hours. The act eliminates this requirement.[57]

### Notice of forfeiture

If a pledgor fails to pay interest and fees to a pawnbroker on a pawn loan for three months from the date of the loan or the date the last interest payment is due, the act requires a pawnbroker to send a forfeiture notice to the pledgor by "United States postal mail." The notice must indicate that unless the pledgor redeems the pledged property or pays all interest and fees due within 30 days, the property will be forfeited to the pawnbroker. Prior law required the notice to be sent if the pledgor failed to pay

[56] R.C. 4727.10 and R.C. 2901.21(C), the latter section not in the act.

[57] R.C. 4727.12(A).

interest for only two months, and specified only that the notice must be sent by "mail" (it is unclear whether the act has made a substantive change to the latter requirement). Prior law also did not require that the notice include that "fees" must be paid, and instead specified that "storage charges" must be paid.[58]

### Pawn loan redemption

The Pawnbroker Law includes provisions specifying when and how a pledgor can repay a pawn loan balance and redeem pledged property. The act permits a licensee to accept from a pledgor a portion of the outstanding principal loan balance at any time and permits a pledgor to redeem a pawn loan any time after the pledge was made. This repeals the requirement under prior law that a pledgor could only redeem a pawn loan beginning 72 hours after the pledge. The act also adds an exception to continuing law's prohibition that a pledgor may not prepay interest or storage charges except when the pledgor redeems the pledged property: under the act, a pledgor may prepay interest or storage charges for the current month. The act also adds a provision of law prohibiting prepayment of interest and storage charges at the time the loan is originated.[59]

### Reclaiming stolen property

The act changes the terminology relating to returning stolen property that has been purchased or pawned and is held by a pawnbroker. It clarifies that if the local chief of police or sheriff receives a report that property has been stolen and determines the identity of the person claiming to be the true owner and informs the licensed pawnbroker, the pawnbroker may restore the allegedly stolen property to the "claimant" directly. Prior law referred to the person claiming to be the true owner and the claimant as the "true owner."[60]

### Continuing education requirements

The act reduces the continuing education requirements for pawnbrokers by four hours in each two-year licensing period and broadens who may obtain the education to satisfy this requirement. Under the act, for each two-year period beginning June 30, 2017, each licensed pawnbroker must have at least one person employed at each of the licensee's offices or places of business who has completed at least eight hours of continuing education. The continuing education must be completed by the end of each two-year period and must be a course or program approved by the Superintendent of Financial Institutions after consultation with an industry representative selected by the

[58] R.C. 4727.11.

[59] R.C. 4727.06(D).

[60] R.C. 4727.12(C) and (D).

Superintendent. Prior law required each licensed pawnbroker to complete 12 hours of continuing education every two-year period.

The act also repeals the requirements that (1) any licensed pawnbroker with more than three employees had to designate an individual to the Superintendent as a salesperson, (2) each location with three or more employees had to have at least one salesperson, and (3) each salesperson had to complete at least eight hours of continuing education.[61]

### Penalties

The act's provisions will become part of the Ohio Pawnbroker's Law. Under continuing law, a violation of the Pawnbroker's Law (with the exception of a person acting as a pawnbroker without a license) is a third degree misdemeanor, punishable by a fine of up to $500 and up to 60 days in jail. Each subsequent offense is a second degree misdemeanor, punishable by a fine of up to $750 and up to 90 days in jail.[62]

## Major sports events grants (VETOED)

The Governor vetoed an item stating that money appropriated for grants to local governments to help them host major sporting events, but not disbursed by the end of a fiscal year, were to be automatically reappropriated for the same purpose for the ensuing year.[63]

Continuing law authorizes the Director of Development Services to make grants to counties or municipal corporations hosting specified sporting events. The grant amount is based on the increased state sales tax revenue directly attributable to preparation for and presentation of the event, as determined by the Director. Grants are available only if the increased state sales tax revenue is estimated to be greater than $250,000. No individual grant may exceed $500,000, and the total of all grants in any fiscal year may not exceed $1 million. Grant money must be used to pay the grantee's costs in preparing for the sporting event.

## Animal control

The act extends to all poultry the law that prohibits a person from allowing certain animals to run at large. Under prior law, with respect to poultry, the prohibition

[61] R.C. 4727.19.

[62] R.C. 2929.24, 2929.28, and 4727.99, not in the act.

[63] R.C. 122.121(H).

only applied to geese. The prohibition continues to apply to horses, mules, cattle, bison, sheep, goats, swine, llamas, and alpacas.[64]

## Use of municipal water and sewer funds

The act reauthorizes municipal corporations in Stark County to use money in their water and sewer funds for water or sewer system extensions under certain circumstances and for two years. During FYs 2017 and 2018 only, the legislative authority of a Stark County municipal corporation may use up to 5% of the aggregate amount of money deposited in its sewer fund, and up to 5% of the aggregate amount of money deposited in a fund created by it for water-works, to fund the extension of the water or sewerage system, if both of the following apply:

(1) The water or sewerage system is being extended for economic development purposes; and

(2) The areas into which the system is extended are the subject of a cooperative economic development agreement entered into by the municipal corporation.[65] (A cooperative economic development agreement is an agreement between at least one municipal corporation and one township providing for joint services, the provision of services by a municipal corporation in the unincorporated territory of a township, annexation or moratoria thereon, property tax exemptions and payments in lieu of taxes, and other development matters.[66])

With regard to either fund, the legislative authority cannot exceed the 5% limit. Under legislation enacted in 2012, municipal corporations in Stark County were permitted to use water and sewer funds in the same manner and under the same conditions as S.B. 235 provides, but for FYs 2013 and 2014 only.[67]

## Hospital board meetings

The act authorizes members of a board of county hospital trustees, members of a board of hospital commissioners, and members of a board of governors of a municipal hospital to attend board meetings by means of communications equipment authorized by rule of the board, including by video conference or teleconference.[68] Regardless of

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[64] R.C. 951.02 and 951.13.

[65] Section 9 of the act.

[66] R.C. 701.07, not in the act.

[67] Section 707.10 of H.B. 487 of the 129th General Assembly.

[68] R.C. 339.02, 749.07, and 749.18.

the requirement in the Open Meetings Act[69] that a member of a public body be present in person at a meeting open to the public in order to be part of a quorum and to vote, board members who attend a board meeting by means of authorized communications equipment must be (1) considered present in person at the meeting, (2) permitted to vote, and (3) counted for purposes of determining whether a quorum is present at the meeting.[70]

The board must maintain a record of any vote or other action taken at a board meeting conducted by means of authorized communications equipment. The record must identify the members attending the board meeting by such means.

The board must adopt rules designating the communications equipment authorized for use during board meetings. The board also must adopt rules that establish procedures and guidelines for using authorized communications equipment during board meetings and that ensure verification of the identity of any board members attending by means of such equipment.[71]

### Severability clause

The act states that if any of its provisions, or the application of those provisions to any person or circumstance, is held to be invalid, the invalidity does not affect other of its provisions or applications that can be given effect without the invalid provision or application, and to that end invalid provisions are severable.[72] This provision is substantially the same as an existing statute, R.C. 1.50, insofar as that statute applies to the Revised Code sections amended or enacted by the act.

## HISTORY

| ACTION | DATE |
|---|---|
| Introduced | 10-27-15 |
| Reported, S. Ways & Means | 04-27-16 |
| Passed Senate (22-11) | 05-04-16 |
| Reported, H. Finance | 12-08-16 |
| Passed House (82-10) | 12-08-16 |
| Senate concurred in House amendments (29-2) | 12-08-16 |

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[69] R.C. 121.22(C), not in the act.

[70] R.C. 339.02, 339.05(C), 749.07, and 749.18.

[71] R.C. 339.02, 749.07, and 749.18.

[72] Section 19 of the act.