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# OHIO LEGISLATIVE SERVICE COMMISSION

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H.B. 671  
133<sup>rd</sup> General Assembly

## Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Reps. Abrams and Stephens

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### SUMMARY

- In an emergency caused by an epidemic of a contagious disease, generally prohibits a local board of health from issuing an order to prevent or restrict disease when the Department of Health has issued an order for the same epidemic.
- Allows a board of health to issue an order when the Department of Health has already done so, but only on the approval of the General Assembly's Joint Committee on Agency Rule Review (JCARR).
- Permits a board of health to issue an order to prevent or restrict disease without JCARR's approval if the Department of Health has not issued its own order.
- Provides that any order issued by a board of health under the bill's provisions is effective for not more than 14 days, unless extended by JCARR.
- Specifies that each violation of a board of health order is punishable by a \$100 fine.
- Allows a business that will close as a result of a board of health's order to appeal to a court of common pleas.
- Specifies that certain orders issued by the Department of Health or a board of health do not apply to the General Assembly, state courts, state departments, and state correctional institutions.
- Prohibits a state or local licensing authority from disciplining a licensee for engaging in a profession or occupation or operating a business permitted by the license during a pandemic event.
- Declares an emergency.

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## DETAILED ANALYSIS

### Board of health orders

Current law authorizes a board of health of a city or general health district to make orders or regulations as are necessary to prevent or restrict disease.<sup>1</sup> The bill establishes conditions and limits on this authority, including by requiring that certain orders or regulations be approved by the General Assembly's Joint Committee on Agency Rule Review (JCARR).

### Epidemic of a contagious or infectious disease

The bill's provisions apply only to board of health orders or regulations made to prevent or restrict disease in the case of an emergency caused by an epidemic of a contagious or infectious disease.<sup>2</sup>

### Ohio Department of Health orders

Under the bill, the authority of a board of health to issue an order or regulation depends on whether the Department of Health (ODH) has taken action for the same epidemic. For instance, if ODH has issued an order or rule or established a quarantine or isolation for the same epidemic, the bill generally prohibits a board from making an order or regulation, including one establishing a quarantine or isolation. However, a board of health may issue its own order or regulation, with JCARR's approval.<sup>3</sup> To be approved, an order or regulation must receive a majority vote of JCARR, including the affirmative vote of at least three members of the House of Representatives and at least three members of the Senate. (JCARR's membership consists of five members from each chamber. No more than three members from each chamber may be of the same political party.)<sup>4</sup>

If ODH has not taken action on the same epidemic, a board of health may issue its own order or regulation without JCARR's approval.<sup>5</sup>

### 14-day effective periods and extensions

Any order or regulation issued by a board of health under the bill is effective for no more than 14 days. It may be extended, but only on JCARR's approval, even if the initial order did not require JCARR approval.<sup>6</sup> To be extended, an order or regulation also must receive a majority vote

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<sup>1</sup> R.C. 3709.20 and 3709.21.

<sup>2</sup> R.C. 3709.212(A).

<sup>3</sup> R.C. 3709.212(B).

<sup>4</sup> R.C. 101.35 and 101.36.

<sup>5</sup> R.C. 3709.212(C).

<sup>6</sup> R.C. 3709.212(B)(2) and (C).

of JCARR, including the affirmative vote of at least three members of the House and at least three members of the Senate.<sup>7</sup> The bill allows JCARR to determine the period of the extension.

An order or regulation will be considered to exceed a 14-day effective period in the following circumstances:

- The order or regulation states that it is effective for more than 14 days; or
- The substance of the order or regulation is contained in multiple subsequently issued orders or regulations with a combined effective period that exceeds 14 days.<sup>8</sup>

### **Businesses and appeals**

If an order or regulation issued by a board of health in accordance with the bill will result in the closure of a business, the board must notify the business of that fact. The business may then appeal the order or regulation to the court of common pleas for the county in which the city health district is located, or, in the case of a general health district, in the most populous county of the health district.<sup>9</sup>

The court of common pleas must hear the appeal within 48 hours of its filing. When considering an appeal, the court must weigh both of the following factors:

- Whether there is clear and convincing evidence that the epidemic significantly endangers the public health; and
- Whether the board of health considered more than one means for addressing the epidemic and if the order or regulation was in fact the least restrictive of those means.

Should a business prevail on appeal, the bill requires the court to award attorney's fees to the business and specifies that the board of health must pay those fees.

### **Violations**

Whoever violates a board of health order or regulation issued in an emergency caused by an epidemic to prevent or restrict disease is to be fined not more than \$100. For all other orders or regulations issued by a board of health to prevent or restrict disease, the bill maintains existing law, which provides for violators to be punished by a fine of not more than \$100, imprisonment for not more than 90 days, or both.<sup>10</sup>

### **Application of health orders to other government entities**

The bill provides that a special or standing order or rule made by ODH to prevent the spread of contagious or infectious diseases does not apply to the following: the General

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<sup>7</sup> R.C. 101.36.

<sup>8</sup> R.C. 3709.212(D).

<sup>9</sup> R.C. 3709.212(E).

<sup>10</sup> R.C. 3709.99(A) and (C).

Assembly, state courts, state departments, including their divisions and offices, and state correctional institutions.<sup>11</sup>

Similarly, it provides that an order or regulation made by a board of health in an emergency caused by an epidemic of a contagious or infectious disease to prevent or restrict disease also does not apply to the General Assembly, state courts, state departments, including their divisions and offices, and state correctional institutions.<sup>12</sup>

## Licensing authorities and pandemic events

The bill prohibits a state or local licensing authority from disciplining a licensee for (1) engaging in a profession, occupation, or occupational activity or (2) operating a business or other enterprise permitted by the license during a pandemic event.<sup>13</sup>

The bill specifies that it does not otherwise prohibit a licensing authority from disciplining a licensee for reasons unrelated to engaging in a profession, occupation, or occupational activity or operating a business or other enterprise permitted by the license during a pandemic event.

### Definitions

“**License**” means a valid authorization evidenced by a license, certificate, registration, permit, card, or other authority that is issued or conferred by a licensing authority to a person by which the person has or claims the privilege to do either of the following:

- Engage in a profession, occupation, or occupational activity over which the licensing authority has jurisdiction;
- Operate a business or other enterprise over which the licensing authority has jurisdiction.

“**Pandemic event**” means an emergency caused by a pandemic of a contagious or infectious disease.

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## HISTORY

Action	Date
Introduced	05-26-20

H0671-I-133/ts

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<sup>11</sup> R.C. 3701.13, not in the bill and 3701.145.

<sup>12</sup> R.C. 3709.212(F).

<sup>13</sup> R.C. 9.79.