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H.B. 286
134th General Assembly

Bill Analysis

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Version: As Passed by the House

Primary Sponsor: Rep. Seitz

Dennis M. Papp, Attorney

SUMMARY

Appeals of administrative orders

- Modifies the current Administrative Procedure Act by generally providing that a party adversely affected by an order of an agency may appeal from the order to the court of common pleas of the county in which the place of business of the party is located or the county in which the party is a resident.
- Eliminates the existing provision that requires that an appeal from an order issued by any of the following agencies be made to the Franklin County Court of Common Pleas:
 - Liquor Control Commission;
 - Ohio Casino Control Commission;
 - State Medical Board;
 - State Chiropractic Board;
 - Board of Nursing;
 - Bureau of Workers' Compensation regarding participation in the health partnership program.
- Removes the current provision that generally requires that any party adversely affected by an order of an agency issued pursuant to any other adjudication may appeal, with certain exceptions, to the Franklin County Court of Common Pleas.
- Modifies specific statutes governing adjudication orders of specified agencies to replace current provisions regarding appeals of the orders to the Franklin County Court of Common Pleas, the Environmental Division of the Franklin County Municipal Court, or the court of the county in which an appointing authority resides, with the bill's venue provision described in the first dot point.

No claim preclusion in zoning appeals

- Provides that a final judgment on the merits by a court pursuant to its power of review of administrative orders on claims brought under the law regarding county rural zoning or the renewal of slums and blighted areas in a county, the Township Zoning Law, or the law regarding municipal zoning, regional and county planning commissions, or interstate regional planning commissions does not preclude later claims for damages.
- States that the General Assembly intends that the above provisions in the respective laws be construed to override the federal Sixth Circuit Court of Appeals decision in the case of *Lavon Moore v. Hiram Twp.*, 988 F.3d 353 (6th Cir. 2021.)

Challenge of administrative order responding to state of emergency

- Modifies current law by providing that an action challenging an order of an administrative department or head, state agency, or state elected officer issued in response to a state of emergency must be brought in the Court of Claims instead of the court in the county of the person's residence or business.

DETAILED ANALYSIS

Appeal of administrative agency order

Current law

The current Administrative Procedure Act (R.C. Chapter 119, the APA) generally provides that a “party” (see below) adversely affected by any order of an “agency” (see below) issued pursuant to an adjudication denying an applicant admission to an examination, denying the issuance or renewal of a license or registration of a licensee, revoking or suspending a license, or allowing the payment of a forfeiture rather than suspending operations of a liquor permit holder by order of the Liquor Control Commission, may appeal from the order of the agency to the court of common pleas of the county in which the place of business of the licensee is located or the county in which the licensee is a resident.¹

As used in the APA:²

1. “Agency” means, except as otherwise specified, any official, board, or commission having authority to promulgate rules or make adjudications in the Civil Service Commission, the Division of Liquor Control, the Department of Taxation, the Industrial Commission, the Bureau of Workers’ Compensation, the functions of any administrative or executive officer, department, division, bureau, board, or commission of the government of the state specifically made subject to the APA, and the licensing

¹ R.C. 119.12(A)(1).

² R.C. 119.01, not in the bill.

functions of any administrative or executive officer, department, division, bureau, board, or commission of the government of the state having the authority or responsibility of issuing, suspending, revoking, or canceling licenses. The Act does not apply to certain specified government entities or certain specified types of conduct of government entities (e.g., the Public Utilities Commission; the Controlling Board; or certain actions of the Superintendent of Financial Institutions and the Superintendent of Insurance; etc.). “Agency” also means any official or work unit having authority to promulgate rules or make adjudications in the Department of Job and Family Services, but only with respect to both of the following: (1) the adoption, amendment, or rescission of rules required under R.C. 5101.09 to be adopted in accordance with the APA, and (2) the issuance, suspension, revocation, or cancellation of licenses.

2. “Party” means the person whose interests are the subject of an adjudication by an agency.

Operation of the bill

The bill modifies current law by providing that a party adversely affected by an order of an agency as described above may appeal from the order to the court of common pleas of the county in which the place of business of the *party*, instead of “licensee” is located or the county in which the *party* is a resident.³

The bill eliminates the current provision that requires that an appeal from an order issued by any of the following agencies be made to the Franklin County Court of Common Pleas (Franklin County CCP): (1) Liquor Control Commission, (2) Ohio Casino Control Commission, (3) State Medical Board, (4) State Chiropractic Board, (5) Board of Nursing, and (6) Bureau of Workers’ Compensation regarding participation in the health partnership program administered by the Bureau.⁴

The bill also eliminates the current provision that requires that any party adversely affected by an order of an agency issued pursuant to any other adjudication may appeal to the Franklin County CCP, except that appeals from orders of the Fire Marshal issued under the Fire Marshal and Fire Safety Law may be to the court of common pleas of the county in which the building of the aggrieved person is located and except that appeals under the law dealing with reduction in pay or position, suspension, or removal, from a decision of the State Personnel Board of Review or a municipal or civil service township civil service commission must be taken to the court of common pleas of the county in which the appointing authority is located or, in the case of an appeal by the Department of Rehabilitation and Correction, to the Franklin County CCP.⁵

³ R.C. 119.12(A)(1).

⁴ Current R.C. 119.12(A)(2).

⁵ R.C. 119.12(B).

Current law, not changed by the bill, provides that if any party appealing from an order of an agency is not a resident of, and has no place of business in, Ohio, the party may appeal to the Franklin County CCP.⁶

Appeal from order of specific agencies

The bill's provision above that a party adversely affected by an order of an agency may appeal from the order to the court of common pleas of the county in which the place of business of the party is located or the county in which the party is a resident is expressly made applicable to any of the following appeals:

- In cases of removal or reduction in pay for disciplinary reasons, the appointing authority or the officer or employee in the classified service may appeal from the decision of the State Personnel Board of Review or the municipal civil service commission of the city or city school district.⁷ The bill replaces current law that provides for the appeal to be made to the court of common pleas of the county in which the appointing authority is located, or to the Franklin County CCP.⁸
- In cases in which the Director of Agriculture or a designated representative impounds and seizes a dog from a high volume breeder or dog broker for violation of applicable law or rule, the high volume breeder's owner or operator or the person acting as a dog broker may appeal from such determination at an adjudication hearing.⁹ The bill replaces the existing provision that specifies that the appeal may be made only to the environmental division of the Franklin County Municipal Court.¹⁰
- In cases in which an application for a license as a high volume breeder or dog broker is denied or such license is suspended or revoked upon a determination of the Director of Agriculture at an adjudication hearing, the applicant or licensee may appeal from such determination.¹¹ The bill replaces the existing provision that specifies that the appeal may be made only to the environmental division of the Franklin County Municipal Court.¹²
- In cases in which a proprietor of a public place or place of employment or an individual against whom a finding of a violation of any prohibition under the Smoking Ban Law is made by the Director of the Department of Health or designee, the proprietor or

⁶ R.C. 119.12(A)(3), redesignated as 119.12(A)(2) in the bill.

⁷ R.C. 124.34(B).

⁸ *Id.*

⁹ R.C. 956.11(C).

¹⁰ *Id.*

¹¹ R.C. 956.15(C).

¹² *Id.*

individual may appeal the finding.¹³ The bill replaces current law that provides that the proprietor or individual may appeal the finding to the Franklin County CCP.¹⁴

- In cases in which, after a public hearing, the Superintendent of Insurance issues an order of disapproval of any merger or other acquisition of control of a domestic insurer, the order may be appealed by filing a notice of appeal with the Superintendent and a copy of the notice of appeal with the court that will hear the appeal, within 15 calendar days after the transmittal of the copy of the order.¹⁵ The bill replaces current law that specifies that the order of disapproval may be appealed to the Franklin County CCP.¹⁶
- In cases in which the Superintendent of Insurance issues an order regarding the conversion of a domestic mutual life insurance company to a stock life insurance company, an adversely affected policyholder may appeal the order.¹⁷ The bill replaces current law that provides that a policyholder adversely affected by such order may appeal to the Franklin County CCP.¹⁸
- In cases in which the Superintendent of Insurance issues an order regarding the conversion of a domestic mutual insurance company other than life to a stock insurance corporation other than life, an adversely affected policyholder may appeal the order.¹⁹ The bill replaces current law that provides that a policyholder adversely affected by such order may appeal to the Franklin County CCP.²⁰
- In cases in which an appellant who appeals an order of an agency administering a family services program, who is granted a state hearing, and who disagrees with the state hearing decision and generally makes an administrative appeal to the Department of Job and Family Services (JFS), the appellant may appeal from the JFS administrative appeal decision.²¹ The bill replaces current law that provides that the person may appeal to the court of common pleas of the county in which the person resides, or to the Franklin County CCP if the person does not reside in Ohio.²² The bill's new venue provision described above and current law on an appeal by a nonresident to the Franklin County

¹³ R.C. 3794.09(C).

¹⁴ *Id.*

¹⁵ R.C. 3901.321(F)(2)(e).

¹⁶ *Id.*

¹⁷ R.C. 3913.13 and by reference to R.C. 3913.11(F), which is not in the bill.

¹⁸ *Id.*

¹⁹ R.C. 3913.23 and by reference to R.C. 3913.21(F), which is not in the bill.

²⁰ *Id.*

²¹ R.C. 5101.35(B), (C), and (E).

²² R.C. 5101.35(E)(1).

CCP would apply, and the eliminated provision regarding a nonresident would be duplicative.

- In cases in which an adversely affected party may appeal from the Medicaid Department's adjudication order regarding: (1) refusal to enter into a provider agreement with a Medicaid provider, (2) refusal to revalidate a Medicaid provider's provider agreement, (3) suspension or termination of a Medicaid provider's provider agreement, or (4) taking any action based upon a final fiscal audit of a Medicaid provider.²³ The bill replaces current law that provides that any party who is adversely affected by the issuance of any such adjudication order may appeal to the Franklin County CCP.²⁴

Effectivity provision

The bill provides that R.C. 956.15 as presented in the act (administrative appeal of a denial of an application for a license as a high volume breeder or dog broker or suspension or revocation of such license upon a determination of the Director of Agriculture) takes effect on the later of October 9, 2021, or the bill's effective date. (October 9, 2021, is the effective date of an earlier amendment to that section by H.B. 263 of the 133rd General Assembly.)²⁵

No claim preclusion in zoning appeals

The bill provides that a final judgment on the merits issued by a court of competent jurisdiction pursuant to its power of review of orders of administrative officers and agencies on claims brought under the law regarding county rural zoning or the renewal of slums and blighted areas in a county, the Township Zoning Law, or the law regarding municipal zoning, regional and county planning commissions, or interstate regional planning commissions does not preclude later claims for damages, including claims brought under 42 U.S.C. 1983, even if the common law doctrine of *res judicata* would otherwise bar the claim.²⁶

The bill states that the General Assembly intends that the above provisions in the respective laws be construed to override the federal Sixth Circuit Court of Appeals' decision in the case of *Lavon Moore v. Hiram Twp.*, 988 F.3d 353 (6th Cir. 2021).²⁷

Challenge of administrative order responding to state of emergency

In a provision of current law that specifies that, notwithstanding any other provision of the Revised Code, a person who challenges an order or rule adopted by an administrative

²³ R.C. 5164.38(C) and (D).

²⁴ R.C. 5164.38(D).

²⁵ Section 3.

²⁶ R.C. 303.57, 519.26, and 713.16.

²⁷ *Id.*

department, administrative department head, state agency, or statewide elected officer that is issued or adopted in response to a state of emergency, in an action for damages, declaratory judgment, injunctive relief, or other appropriate relief may do so in an appropriate court located in the county where the person’s residence or business is located, the bill instead specifies that the person may challenge the order or rule in the Court of Claims, instead of in the “appropriate court in the county where the person’s residence or business is located.”²⁸ To conform to this change, the bill also removes the exception to the Court of Claims’ jurisdiction of those types of actions.²⁹

HISTORY

Action	Date
Introduced	05-04-21
Reported, H. Civil Justice	06-23-21
Reported, H. Rules & Reference	03-29-22
Passed by House (60-31)	03-30-22

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²⁸ R.C. 107.43(D)(1).

²⁹ R.C. 2743.03(A)(1).