



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

Aida S. Montano, Sam Benham, Carla Napolitano

Sub. H.B. 463*

131st General Assembly
(As Reported by S. Civil Justice)

Reps. Dever, Becker, Boccieri, Hambley, Perales, Sprague, Terhar, Leland, Anielski, Antonio, Arndt, Baker, Blessing, Brown, Buchy, Burkley, Celebrezze, Conditt, Craig, Dovilla, Duffey, Fedor, Ginter, Green, Grossman, Henne, Lepore-Hagan, Manning, McClain, McColley, M. O'Brien, S. O'Brien, Patterson, Reece, Reineke, Retherford, Ryan, Scherer, Schuring, Sheehy, Slaby, Slesnick, K. Smith, Strahorn, Sweeney, Young

BILL SUMMARY

Real property foreclosures

- Modifies how property taxes are collected out of the sale proceeds when real estate is sold in foreclosure or other court-ordered sale.
- Expressly requires the court to hold an oral hearing in determining whether to proceed in an expedited manner in a foreclosure action.
- Eliminates the requirement that the purchaser pay the recording fee required at a foreclosure sale and instead requires the collection of the sale deposit under existing law.
- Clarifies that excess private selling officer fees may be paid by the buyer of the property.
- Establishes that when both the judgment creditor and the first lienholder seek to redeem the foreclosed property, the first lienholder prevails.
- Modifies the minimum bid requirement for sales initiated by a county prosecutor.

* This analysis was prepared before the report of the Senate Civil Justice Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Requires that if the appraisal requirement is not met, the appraised value of the property should be the most recent appraised value instead of the fair market value.
- Requires that when real property is not sold at the second sale, the minimum bid must be equal to unpaid taxes and court costs.
- Prohibits the use of plywood to secure real property that is deemed vacant and abandoned under continuing law.

Escrow transactions

- Modifies laws relative to disbursements made in escrow transactions connected with residential real estate.

Housing Civil Rights laws

- Makes permissive the awarding of actual damages and attorney's fees in housing discrimination cases before the Civil Rights Commission.
- Permits the Civil Rights Commission as part of the penalty for a housing discrimination case to require remediation in the form of a class, seminar, or any other type approved by the Commission.
- Allows the Civil Rights Commission, to vindicate the public interest, to assess a civil penalty against a person found to have engaged in unlawful housing discrimination, instead of allowing the Civil Rights Commission to award the complainant punitive damages under existing law.
- Allows a person to recover attorney's fees if the Civil Rights Commission finds that the person did not engage in an unlawful discriminatory practice.
- Permits a housing complaint to be amended at any time up to seven days prior to the hearing.
- Makes other technical, nonsubstantive changes.

Changes to Ohio UCC laws on commercial paper and bank deposits and collections

No obligation for double payment

- Generally provides that a note is paid if payment is made by the party obliged to pay to a person formerly entitled to enforce the note only if that party has not received notification that the note has been transferred and payment is to be made to the transferee.



- Specifies that unless a transferee complies with a request to furnish proof that the note has been transferred, a payment to the person formerly entitled to enforce the note discharges the obligation to pay even if the party obliged to pay has received notification of the transfer.
- Generally provides that a transferee or person acquiring rights to the instrument from a transferee is deemed to have notice of any payment under the preceding dot points after the date the note is transferred to the transferee but before the party obliged to pay received notification of the transfer.

Unsigned, telephonically authorized checks

- Defines "remotely created consumer item," for purposes of the following provisions on commercial paper and bank deposits and collections, as an item drawn on a consumer account that is not created by the payor bank and does not bear a handwritten signature purporting to be the drawer's signature.
- Provides that the following persons warrant, with respect to a remotely created consumer item, that the person on whose account the item is drawn authorized the item's issuance in the amount for which it is drawn:
 - A person who transfers an instrument for consideration, to a transferee and a subsequent transferee;
 - A customer or collecting bank that transfers an item for consideration, to the transferee and any subsequent collecting bank;
 - A person obtaining payment or acceptance, to the drawee making the payment or acceptance of an unaccepted draft presented to the drawee.

Defenses and claims in recoupment

- Makes a claim and defense available if, in a "consumer transaction," any law other than the commercial paper law requires an instrument to include a statement that a holder's rights are subject to a claim or defense that the issuer could assert against the original payee and the instrument does not contain such statement.

Electronic records and signatures

- Changes the reference in various provisions of the UCC laws on commercial paper and bank deposits and collections from "writing" or "written" to "record," defined as information that is inscribed on a tangible medium or is stored in an electronic or other medium and is retrievable in perceivable form.

Modernized suretyship and guaranty rules

- Outright repeals current provisions on the discharge of indorsers and accommodation parties and replaces them with specific rules regarding the effect of the following on the discharge of the obligations of a principal obligor or secondary obligor:
 - The release of the obligation of a principal obligor by a person entitled to enforce an instrument and another party to the instrument is a secondary obligor with respect to the principal obligor's obligation.
 - The extension of the time at which payments are due on the instrument granted by a person entitled to enforce the instrument to a principal obligor and another party to the instrument is a secondary obligor with respect to the principal obligor's obligation.
 - Any other modification of a principal obligor's obligation agreed to by a person entitled to enforce the instrument and another party to the instrument is a secondary obligor with respect to the principal obligor's obligation.
- Provides that generally a secondary obligor's obligation is not discharged unless the person entitled to enforce the instrument knows that the person is a secondary obligor or has notice under continuing law that the instrument was signed for accommodation.
- Generally provides that a secondary obligor asserting a discharge has the burden of persuasion both with respect to the occurrence of the acts alleged to harm the secondary obligor and loss or prejudice caused by those acts.
- Provides that a signer of an instrument as an accommodation party is obliged to pay the amount due on the instrument to the person entitled to enforce it in the same circumstances as the accommodated party is obliged without prior resort to the accommodated party by the person entitled to enforce the instrument.

Property tax exemptions

- Extends the maximum term of a Community Reinvestment Area (CRA) tax exemption for remodeled property.
- Changes the basis for determining the tax-exempt value of remodeled structures for property in a CRA.

- Establishes a definite starting point and method for determining the tax-exempt value of contaminated ("brownfield") property.

Coverage of autism services and insurance mandates

- Requires health plan issuers to provide coverage for autism spectrum disorder.
- Prescribes minimum coverage requirements for autism spectrum disorder.
- Allows a health plan issuer to review an autism spectrum disorder treatment plan on an annual basis.
- Allows a health plan issuer to review an autism spectrum disorder treatment plan more than once a year if the additional reviews are agreed to by the overseeing physician.
- Requires the Superintendent of Insurance to conduct an actuarial study on the costs of health care mandates under Ohio law that apply to non-ERISA individual and group health insurance plans.
- States the intent of the General Assembly to implement a two-year moratorium on new health care mandates and to develop potential tax credits that offset additional employer costs associated with health care mandates.

Child Abuse and Child Neglect Regional Prevention Council members

- Provides that Child Abuse and Child Neglect Prevention Regional Council members are to be reimbursed for expenses incurred in the performance of official duties.
- Prohibits members from participating in Council matters that may pose a conflict of interest.

Local initiative petitions

- Requires a board of elections or the Secretary of State to invalidate a local initiative petition if the board or the Secretary determines that the petition or any portion of it does not fall within the scope of the local government's constitutional authority to enact ordinances or does not satisfy the statutory prerequisites to place the issue on the ballot.
- Changes the deadline to file a county charter petition with the board of county commissioners to 115 days, instead of 110 days, before the day of the general election at which the proposal is to appear on the ballot.



Recall of municipal officials

- Specifies that a municipal recall petition is not valid after 90 days from the date of the first signature.
- Requires a recall election to be held at the next primary or general election occurring more than 90 days from the date the petition is certified as sufficient.

TABLE OF CONTENTS

| | |
|---|----|
| Real property foreclosures | 7 |
| Property taxes paid from property sale proceeds | 7 |
| Expedited proceedings..... | 7 |
| Fees..... | 8 |
| Minimum bid..... | 8 |
| Appraisal | 9 |
| Redemption..... | 9 |
| Plywood | 9 |
| Escrow transactions..... | 9 |
| Ohio Fair Housing Law..... | 10 |
| Amendment of complaint..... | 10 |
| Assessment of civil penalty for housing discrimination | 10 |
| Alternative dispute resolution | 11 |
| Award of attorney's fees if no finding of unlawful discrimination..... | 11 |
| Oath making..... | 11 |
| Office information filings | 12 |
| Relocation of existing exemptions | 12 |
| Changes to Ohio UCC laws on commercial paper and bank deposits and collections..... | 12 |
| No obligation for double payment..... | 12 |
| No discharge of obligation to pay | 13 |
| Unsigned, telephonically authorized checks | 14 |
| Transfer and presentment warranties..... | 14 |
| Defenses and claims in recoupment..... | 14 |
| Electronic records and signatures | 15 |
| Modernized suretyship and guaranty rules | 17 |
| Release of principal obligor's obligation..... | 17 |
| Extension of time for payments by principal obligor..... | 18 |
| Modification of principal obligor's obligation..... | 19 |
| Impairment of collateral securing obligation of principal obligor | 20 |
| No discharge of secondary obligor | 21 |
| Secondary obligor's recourse | 22 |
| Secondary obligor's burden of persuasion..... | 22 |
| Joint and several liability – contribution | 22 |
| Instruments signed for accommodation..... | 23 |
| Property tax exemptions | 23 |
| Community Reinvestment Area..... | 24 |
| Maximum term for remodeled property..... | 24 |
| Calculation of CRA remodeling exempt value..... | 24 |
| Application of CRA changes..... | 24 |
| Brownfield remediation..... | 25 |
| Coverage of autism services and insurance mandates | 26 |



| | |
|---|----|
| Coverage minimums | 26 |
| Review of treatment plan..... | 27 |
| Construction..... | 27 |
| Severability | 28 |
| Exemption from review by the Superintendent of Insurance | 28 |
| Insurance mandates..... | 28 |
| Child Abuse and Child Neglect Regional Prevention Council members | 29 |
| Local initiative petitions | 29 |
| Recall of municipal officials | 30 |

CONTENT AND OPERATION

Real property foreclosures

Property taxes paid from property sale proceeds

The bill modifies the manner in which property taxes are collected when real property is purchased in some kinds of court-ordered sales. Under current law, if such property is purchased by the plaintiff, any property taxes, assessments, penalties, or interest (hereafter "property charges") that attach as a lien before the sale date but that have not yet been determined may not be taken out of the sale proceeds unless the plaintiff approves that deduction.¹ If the plaintiff does not approve, the charges are added to the tax list for the current year and are payable when the current year taxes fall due.²

The bill specifies that it is the judgment creditor of the property, not the plaintiff, who may approve or disapprove of the property charges being taken out of the sale proceeds. (In many cases the plaintiff and the judgment creditor are the same party, but they are not necessarily the same in all cases.)

The bill also clarifies that it is the court, not the officer conducting the sale, that determines whether property charges may be taken out of the sale proceeds (subject to the judgment creditor's approval).

Expedited proceedings

The bill expressly requires the court to hold an oral hearing when deciding a motion to proceed in an expedited manner in a foreclosure action. Existing law requires the court to determine whether the property subject to the action is vacant and

¹ The lien for annual property tax attaches January 1, even though the taxes are not due until the ensuing December 31 or, typically, the ensuing January when extensions are added. The actual amount due for a year may not be finally determined until late in the calendar year.

² R.C. 323.47(B).



abandoned in order to proceed in an expedited manner, but does not expressly require an oral hearing.³

Fees

The bill eliminates the requirement that the purchaser pay the recording fee and associated costs at the foreclosure sale. Instead the bill requires the officer conducting the sale to collect the sale deposit required under existing law. Under continuing law, if the purchaser is the judgment creditor then the purchaser is not required to make a sale deposit, however all other purchasers must pay a specified amount.⁴

The bill clarifies that excess private selling officer fees may be paid by the purchaser of the property. Under continuing law, the judgment creditor or the judgment creditor's portion of the proceeds of the sale are required to cover private selling officer fees that exceed the amount permitted to be taxed as costs in the foreclosure case.⁵

Minimum bid

The bill makes changes regarding how the minimum bid is assessed relating to foreclosures sales initiated by the county prosecutor and foreclosure sales in general. Under the bill, residential foreclosure sales initiated by the county prosecutor pursuant to continuing law require the minimum bid for the sale to be equal to the total amount of the unpaid taxes and court costs. However, if that amount is greater than the appraised value of the property, the court is required to determine the minimum bid, which cannot exceed the appraised value of the property. If the property is sold for less than the unpaid taxes and court costs, then the court is required to order the county auditor to discharge all unpaid taxes and court costs.⁶ Under existing law, there is no set minimum bid for these sales. Similarly, under continuing law, for residential foreclosure sales, generally, when residential real property is not sold after two auctions, the property may be offered without regard to the minimum bid requirement. The bill requires, however, that the minimum bid include the costs, allowances, and real estate taxes.⁷

³ R.C. 2308.02(C).

⁴ R.C. 2327.02(C) and 2329.211.

⁵ R.C. 2329.152(D)(1)(c).

⁶ R.C. 2329.071(B).

⁷ R.C. 2329.52(B).



Appraisal

The bill changes the way in which real property is valued when the appraisal requirement under continuing law is not met, by requiring the appraised value of the property to equal the most recent appraised value, instead of the fair market value.⁸

Redemption

The bill also specifies that in foreclosure sales of residential properties, if the judgment creditor and the first lienholder each seek to redeem the property according to continuing law, then the court must resolve the conflict in favor of the first lienholder.⁹

Plywood

The bill prohibits the use of plywood to secure real property that is deemed vacant and abandoned under continuing law; however the prohibition does not apply to persons that use or used plywood prior to the effective date of the bill.¹⁰

Escrow transactions

The bill modifies the law relative to disbursements made in residential real estate escrow transactions. Under continuing law, an escrow or closing agent (agent) may not disburse from an escrow account on behalf of another person unless the funds necessary have met specified criteria, which the bill modifies as described below.

| Existing law | The bill |
|---|---|
| Have been deposited in the account and are available for withdrawal and disbursement; or | Additionally requires the funds be available for <i>immediate</i> withdrawal; |
| Have been physically received by the agent prior to disbursement and are intended for deposit no later than the next banking day. | Limits this criterion to an aggregate amount of not more than \$1,000. |
| | Are funds drawn on special or trust bank accounts. |

⁸ R.C. 2329.17(C).

⁹ R.C. 2329.311(B).

¹⁰ R.C. 2308.02, not in the bill, and 2308.031.

Continuing law lists the types of funds permitted for transfers and deposits pursuant to escrow transactions. The bill modifies this list. It adds business checks drawn on special or trust bank account, other business checks, and personal checks and limits transfer and deposits via of those checks and certified checks under existing law to an aggregate limit of \$1,000 (personal checks are currently limited to \$1,000). The bill also limits permitted electronically transferred funds to those electronically transferred funds via real-time gross settlement system provided by the Federal Reserve. The bill eliminates from the list of permissive funds checks drawn on the escrow account of a title insurance company or title insurance agent.¹¹

Ohio Fair Housing Law

The Ohio Fair Housing Law generally prohibits discrimination in renting, selling, or negotiating for the rental or sale of a home. The bill makes changes to the Law relating to the timing for amending a housing complaint, forms of addressing an alleged housing violation, and the penalties assessed for a violation under the Law.

Amendment of complaint

The bill specifies that a complaint related to housing discrimination may be amended up to seven days prior to the hearing.¹²

Assessment of civil penalty for housing discrimination

If the Ohio Civil Rights Commission (OCRC) finds that a person is engaging in unlawful housing discrimination, along with actions required by continuing law to eliminate the discrimination, the bill permits the Commission to require the person to pay actual damages and reasonable attorney's fees, and, to vindicate the public interest, permits the Commission to assess a civil penalty against the person, and may require the person to undergo remediation in the form of a class, seminar, or any other type of remediation approved by the Commission.¹³

Current law requires, instead of permits, the assessment of actual damages and attorney's fees, and permits the assessment of punitive damages for housing discrimination claims. If the Commission finds that a housing discrimination violation has occurred, continuing law also requires the Commission to serve an order on the person requiring the person to (1) cease and desist from the unlawful discriminatory practice, (2) take any further affirmative or other action that will effectuate the purposes

¹¹ R.C. 1349.21.

¹² R.C. 4112.05(C)(1)(b).

¹³ R.C. 4112.05(G)(1)(b).



of the Civil Rights Commission Law, including, hiring, reinstatement, or upgrading of employees with or without back pay, or admission or restoration to union membership, and (3) report to the Commission the manner of compliance.¹⁴

Alternative dispute resolution

The bill adds alternative dispute resolution as an alternative to the informal methods of addressing allegation of discrimination, and specifies that the materials and proceedings related to alternative dispute resolution, like the informal methods, are considered confidential. The bill permits alternative dispute resolution to be entered into at any time, whereas the informal methods are to be attempted prior to a formal hearing.¹⁵

Award of attorney's fees if no finding of unlawful discrimination

Under the bill, if, upon all evidence presented at a hearing on a charge of engaging in an unlawful discriminatory practice, the Commission finds that a person has not engaged in any unlawful discriminatory practice against the complainant or others, the Commission may award to the person reasonable attorney's fees to the extent provided in federal law¹⁶ and accompanying regulations.¹⁷

Oath making

The bill authorizes an oath related to an allegation of discrimination to be made in any form the person making the oath deems binding on the person's conscience, including declarations made under penalty of perjury.¹⁸ In addition, the bill specifies that a signing under oath after an allegation of discrimination that has been filed in accordance with the appropriate deadline will relate back to the original filing date.¹⁹ The bill also adds the following individuals are authorized to administer oaths, take affidavits, and acknowledgments in relation to official duties:

- An administrative law judge of the OCRC;
- A mediator of the OCRC;

¹⁴ R.C. 4112.05(G)(1)(a).

¹⁵ R.C. 4112.05.

¹⁶ 5 United States Code (U.S.C.) 504.

¹⁷ R.C. 4112.05(H).

¹⁸ R.C. 4112.05(B)(1)(a).

¹⁹ R.C. 4112.05(B)(1)(b).



- A field coordinator of the OCRC;
- A supervisor of the OCRC;
- Any person appointed and commissioned as an Ohio notary public.²⁰

Office information filings

The bill requires the OCRC to update filings with the Secretary of State containing the name and residence address of the occupant of certain offices on a quarterly basis, as opposed to requiring these filings to be cancelled and refiled whenever the pertinent information changes.²¹

Relocation of existing exemptions

The bill relocates, but does not substantively change, the existing exemptions to the general prohibition against unlawful housing discrimination.²²

Changes to Ohio UCC laws on commercial paper and bank deposits and collections

This portion of the bill primarily makes changes to the Ohio Uniform Commercial Code (UCC) laws on Commercial Paper (R.C. Chapter 1303.) and Bank Deposits and Collections (R.C. Chapter 1304.) based on the Uniform Law Commission's revision of UCC Articles 3 and 4.

No obligation for double payment

The bill expands current law which provides generally that an instrument is paid to the extent payment is made by or on behalf of a party obliged to pay the instrument and to a person entitled to enforce the instrument.²³ It generally provides that a note is paid to the extent payment is made by or on behalf of a party obliged to pay the note to a person formerly entitled to enforce the note only if at the time of payment such party has not received notification that the note has been transferred and payment is to be made to the transferee. A notification is adequate only if it is "signed" (defined below) by the transferor or transferee; it reasonably identifies the transferred note; and it provides an address at which payments subsequently are to be made. Upon request, a transferee must furnish reasonable proof that the note has been transferred. Unless the

²⁰ R.C. 4112.09.

²¹ R.C. 4112.09.

²² R.C. 4112.024(A), (B), (C), (D), (E), and (G).

²³ R.C. 1303.67(A).

transferee complies with the request, a payment to the person formerly entitled to enforce the note is effective for purposes of a discharge even if the party obliged to pay the note has received such notification. To the extent of a payment under current law and the bill, the obligation of the party obliged to pay the instrument is discharged even though payment is made with knowledge of a claim to the instrument by another person under applicable law.²⁴

Generally, a transferee, or any party that has acquired rights in the instrument from a transferee, including such party with rights as a holder in due course, is deemed to have notice of any payment under the bill described above after the date the note is transferred to the transferee but before the party obliged to pay the note received notification of the transfer.²⁵

The bill defines "signed," with respect to a record that is not a writing, as including the attachment to or logical association with the record of an electronic symbol, sound, or process with the present intent to adopt or accept the record.²⁶

No discharge of obligation to pay

The bill expands current law by providing that the following circumstances in which the obligation of a party to pay the instrument is not discharged apply to a payment made under the bill:²⁷

- A claim to the instrument under applicable law is enforceable against the party receiving payment and either payment is made with knowledge by the payor that payment is prohibited by court injunction or similar process; or if the instrument is other than a cashier's, teller's, or certified check, the party making payment accepted from the person with a claim to the instrument indemnity against loss from refusal to pay the person entitled to enforce the instrument.
- The person making payment knows that the instrument is stolen and pays a person it knows is in wrongful possession of it.

²⁴ R.C. 1303.67(B) and (C).

²⁵ R.C. 1303.67(D).

²⁶ R.C. 1303.67(F).

²⁷ R.C. 1303.67(E).

Unsigned, telephonically authorized checks

The bill defines a new term, "remotely created consumer item," for purposes of modifying specified provisions of the UCC laws on commercial paper and bank deposits and collections as described below. "Remotely created consumer item" is an item drawn on a "consumer account," which is not created by the payor bank and does not bear a handwritten signature purporting to be the drawer's signature. "Consumer account" means an account established by an individual primarily for personal, family, or household purposes.²⁸

Transfer and presentment warranties

The bill expands the current warranties that the following persons warrant, to include, with respect to any remotely created consumer item that the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn:

- A person who transfers an instrument for consideration, to a transferee and to a subsequent transferee if the transfer is by indorsement, or a customer or collecting bank that transfers an item for consideration, to the transferee and any subsequent collecting bank.²⁹
- If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, the person obtaining payment or acceptance, at the time of presentment, and a previous transferor of the draft, at the time of transfer, to the drawee making payment or acceptance in good faith.³⁰

Defenses and claims in recoupment

The bill expands current law which specifies the defenses and claims of the obligor to which the right to enforce the obligation of a party to pay an instrument is subject.³¹ It provides that in a "consumer transaction," a transaction in which an individual incurs an obligation primarily for personal, family, or household purposes, if any law other than the commercial paper law requires an instrument to include a statement that the rights of a holder or transferee are subject to a claim or defense that

²⁸ R.C. 1303.01(A)(2) and (17) and 1304.01(C)(11).

²⁹ R.C. 1303.56(A)(6) and 1304.17(A)(6).

³⁰ R.C. 1303.57(A)(4) and 1304.18(A)(4).

³¹ R.C. 1303.35.



the issuer could assert against the original payee, and the instrument does not include such a statement, all of the following apply:³²

- The instrument has the same effect as if it included such a statement.
- The issuer may assert against the holder or transferee all claims and defenses that would have been available if the instrument included such a statement.
- The extent to which claims may be asserted against the holder or transferee is determined as if the instrument included such a statement.

The bill and continuing law are subject to any law, other than the commercial paper law, that establishes a different rule for consumer transactions.³³

Electronic records and signatures

The general definitions for purposes of the UCC define "record" as information that is inscribed on a tangible medium or is stored in an electronic or other medium and is retrievable in perceivable form.³⁴ The bill changes the reference in the following provisions in the UCC laws on commercial paper and bank deposits and collections from "writing" or "written" to "record":

- A promise or order generally is unconditional unless it states that it is governed by another record or the rights or obligations regarding the promise or order are stated in another record. A reference to another record does not of itself make the promise or order conditional.³⁵
- A promise or order is not made conditional by reference to another record for a statement of rights regarding collateral, prepayment, or acceleration or because payment is limited to a particular fund or source.³⁶

³² R.C. 1303.01(A)(3) and 1303.35(E).

³³ R.C. 1303.35(F).

³⁴ R.C. 1301.201(B)(31), which is not in the bill.

³⁵ R.C. 1303.05(A)(2) and (3).

³⁶ R.C. 1303.05(B).



- In an action for breach of an obligation for which a third person is answerable, the defendant may give the third person notice of the litigation in a record.³⁷
- "Declaration of loss," for purposes of the provisions on lost, destroyed, or stolen cashier's, teller's, or certified checks, means a statement, made in a record to the effect that all of the circumstances specified in continuing law are true.³⁸
- A person entitled to enforce an instrument may discharge the obligation of a party to pay the instrument by renouncing rights against the party by a signed record. See definition of "signed" above under "**No obligation for double payment.**"³⁹
- Unless otherwise instructed, a collecting bank may present an item not payable by or at a bank by sending to the party to accept or pay a record providing notice that the bank holds the item for acceptance or payment.⁴⁰
- If a payor bank settles for a demand item other than a documentary draft presented otherwise than for immediate payment over the counter before midnight of the banking day of receipt, the payor bank may revoke and recover the settlement if before it has made final payment and before its midnight deadline it does any of the following: returns the item (current law); returns an image of the item if agreed to by the party to which the return is made; or sends a record providing notice of dishonor or nonpayment if the item is unavailable for return.⁴¹
- A stop payment order is effective for six months, but it lapses after 14 days if the original order was oral and not confirmed in a record within that period. A stop payment order may be renewed for additional six-month periods by a record given to the bank during a period in which the stop payment order is effective.⁴²

³⁷ R.C. 1303.18.

³⁸ R.C. 1303.401(A)(3).

³⁹ R.C. 1303.69(A)(2) and (C).

⁴⁰ R.C. 1304.22(A).

⁴¹ R.C. 1304.27(A).

⁴² R.C. 1304.32(B).

Modernized suretyship and guaranty rules

The bill outright repeals the current provisions on the discharge of indorsers and accommodation parties and replaces them with the following provisions relating to guarantors and secondarily liable parties as signatories to negotiable instruments. For purposes of the new provisions, it defines "principal obligor" as the "accommodated party" or any other party to the instrument against whom a secondary obligor has recourse. "Secondary obligor" means: an "indorser" or an "accommodation party" (defined in current law below as retained by the bill); a drawer having the same obligation of an indorser, if a draft is accepted and the acceptor is not a bank, to pay the draft if it is dishonored by the acceptor; or any other party to the instrument that has recourse against another party to the instrument pursuant to continuing law which entitles a party having joint and several liability who pays the instrument to receive from any party having the same joint and several liability contribution in accordance with applicable law.⁴³ "Indorser" means a person who makes a signature, other than that of a signer as maker, drawer, or acceptor, on an instrument to negotiate the instrument, to restrict payment of the instrument, or to incur the indorser's liability on the instrument.⁴⁴ "Accommodated party" means a party to an instrument for the benefit of which the instrument is issued for value. "Accommodation party" means a party to an instrument other than the accommodated party.⁴⁵

Release of principal obligor's obligation

Under the bill, if a person entitled to enforce an instrument releases the obligation of a principal obligor in whole or in part, and another party to the instrument is a secondary obligor with respect to the principal obligor's obligation, the following rules apply:⁴⁶

- The principal obligor's obligations to the secondary obligor regarding any previous payment by the secondary obligor are not affected. Unless the terms of the release preserve the secondary obligor's recourse, the principal obligor is discharged, to the extent of the release, from any other duties to the secondary obligor under the commercial paper law.
- Unless the terms of the release provide that the person entitled to enforce the instrument retains such right against the secondary obligor, the

⁴³ R.C. 1303.01(A)(13) and (18).

⁴⁴ R.C. 1303.24, which is not in the bill.

⁴⁵ R.C. 1303.01(B)(2) and 1303.59(G).

⁴⁶ R.C. 1303.70(A).



secondary obligor is discharged to the same extent as the principal obligor from any unperformed part of its obligation on the instrument. If the instrument is a check and the secondary obligor's obligation is based on an indorsement of the check, the secondary obligor is discharged without regard to the language or circumstances of the discharge or other release.

- If the secondary obligor is not discharged under the preceding dot point, the secondary obligor is discharged to the extent of the value of the consideration for the release, and to the extent that the release would otherwise cause the secondary obligor a loss.

Current law provides that the discharge of a party's obligation to pay an instrument by surrender of the instrument to the party, destruction, mutilation, or cancellation of the instrument, cancellation of the party's signature, the addition of words to the instrument indicating discharge, or any other intentional voluntary act, or by renouncing rights against the party by a signed writing, does not discharge the obligation of an "indorser" or "accommodation party" (defined above) having a right of recourse against the discharged party.⁴⁷

Extension of time for payments by principal obligor

If a person entitled to enforce an instrument grants a principal obligor an extension of the time at which one or more payments are due on the instrument and another party to the instrument is a secondary obligor with respect to the obligation of that principal obligor, the following rules apply:⁴⁸

- The principal obligor's obligations to the secondary obligor with respect to any previous payment by the secondary obligor are not affected. Unless the terms of the extension preserve the secondary obligor's recourse, the extension extends the time for performance of any other duties owed to the secondary obligor by the principal obligor under the commercial paper law.
- The secondary obligor is discharged to the extent that the extension would otherwise cause the secondary obligor a loss.
- To the extent that the secondary obligor is not discharged under the preceding dot point, the secondary obligor may perform its obligations to

⁴⁷ Existing R.C. 1303.70(A) and (B), which are repealed by the bill, R.C. 1303.69, and R.C. 1303.54(D), which is not in the bill.

⁴⁸ R.C. 1303.70(B).

a person entitled to enforce the instrument as if the time for payment had not been extended or, unless the terms of the extension provide that the person entitled to enforce the instrument retains the right to enforce it against the secondary obligor as if the time for payment had not been extended, treat the time for performance of its obligations as having been extended correspondingly.

Under current law, if a person entitled to enforce an instrument agrees to an extension of the due date of the obligation of a party to pay the instrument, the extension discharges an indorser or accommodation party having a right of recourse against the party whose obligation is extended to the extent the indorser or accommodation party proves that the extension caused loss to the indorser or accommodation party with respect to the right of recourse.⁴⁹

Modification of principal obligor's obligation

If a person entitled to enforce an instrument agrees to a modification of the principal obligor's obligation other than a complete or partial release or an extension of the due date and another party to the instrument is a secondary obligor with respect to the principal obligor's obligation, the following rules apply:⁵⁰

- The principal obligor's obligations to the secondary obligor with respect to any previous payment by the secondary obligor are not affected. The modification modifies any other duties owed to the secondary obligor by the principal obligor under the commercial paper law.
- The secondary obligor is discharged from any unperformed portion of its obligation to the extent that the modification would otherwise cause the secondary obligor a loss.
- To the extent that the secondary obligor is not discharged under the preceding dot point, the secondary obligor may satisfy its obligation on the instrument as if the modification had not occurred, or treat its obligation as having been modified correspondingly.

Current law provides that if a person entitled to enforce an instrument agrees to a material modification of a party's obligation other than an extension of the due date, the modification discharges the obligation of an indorser or accommodation party having a right of recourse against the person whose obligation is modified to the extent

⁴⁹ Existing R.C. 1303.70(C), which is repealed by the bill.

⁵⁰ R.C. 1303.70(C).

the modification causes loss to the indorser or accommodation party with respect to the right of recourse. The loss suffered by the indorser or accommodation party is equal to the amount of the right of recourse unless the person enforcing the instrument proves that no loss was caused by the modification or that the loss was an amount less than the amount of the right of recourse.⁵¹

Impairment of collateral securing obligation of principal obligor

If a principal obligor's obligation is secured by an interest in collateral, another party to the instrument is a secondary obligor with respect to that obligation, and a person entitled to enforce the instrument impairs the value of such interest, the obligation of the secondary obligor is discharged to the extent of the impairment. The value of an interest in collateral is impaired to the extent the value is reduced to less than the amount of the recourse of the secondary obligor, or the reduction in value of the interest increases the amount by which the amount of the recourse exceeds the value of the interest.⁵² This provision retains current law, except that the provision refers to "the obligation of a principal obligor" instead of "the obligation of a party to pay the instrument" and to "the obligation of the secondary obligor" instead of "the obligation of an indorser or accommodation party" under current law.⁵³

The bill retains current law specifying the following circumstances of impairing the value of an interest in collateral:⁵⁴

- The failure to obtain or maintain perfection or recordation of the interest in collateral;
- The release of collateral without substitution of collateral of equal value or equivalent reduction of the underlying obligation;
- The failure to perform a duty to preserve the value of collateral owed under the secured transactions law or other law to a debtor or other person secondarily liable;
- The failure to comply with applicable law in disposing of or otherwise enforcing the interest in collateral.

⁵¹ Existing R.C. 1303.70(D), which is repealed by the bill.

⁵² R.C. 1303.70(D).

⁵³ Existing R.C. 1303.70(E) and (G), which are repealed by the bill.

⁵⁴ R.C. 1303.70(D).



The bill eliminates the current provision that if a party's obligation is secured by an interest in collateral not provided by an accommodation party and a person entitled to enforce the instrument impairs the value of that interest, the obligation of any party who is jointly and severally liable with respect to the secured obligation is discharged to the extent the impairment causes the party asserting discharge to pay more than that party would have been obliged to pay, taking into account rights of contribution, if impairment had not occurred. If the party asserting discharge is an accommodation party not entitled to discharge under the above provision, the party is deemed to have a right to contribution based on joint and several liability rather than a right to reimbursement. The burden of proving impairment is on the party asserting discharge.⁵⁵

No discharge of secondary obligor

Under the bill, a secondary obligor is not discharged under any of the above circumstances, except for the circumstances described in the first two dot points under "**Release of principal obligor's obligation**," above unless the person entitled to enforce the instrument knows that the person is a secondary obligor or has notice under continuing law that the instrument was signed for accommodation.⁵⁶

Under current law, an accommodation party is not discharged under the current provisions described above, except the provisions under "**Release of principal obligor's obligation**" and regarding the obligation of any party who is jointly and severally liable with respect to the secured obligation, unless the person entitled to enforce the instrument knows of the accommodation or has notice that the instrument was signed for accommodation.⁵⁷

The bill essentially retains the current provision that a secondary obligor (instead of "a party" under current law) is not discharged if the secondary obligor consents to the event or conduct that is the basis of the discharge, or the instrument or a separate agreement of the party provides for a waiver of discharge specifically or by general language indicating that parties waive defenses based on suretyship or impairment of collateral. The bill additionally provides that unless the circumstances indicate otherwise, consent by the principal obligor to an act that would lead to a discharge constitutes consent to that act by the secondary obligor if the secondary obligor controls

⁵⁵ Existing R.C. 1303.70(F), which is repealed by the bill.

⁵⁶ R.C. 1303.70(E).

⁵⁷ Existing R.C. 1303.70(H), which is repealed by the bill.

the principal obligor or deals with the person entitled to enforce the instrument on behalf of the principal obligor.⁵⁸

Secondary obligor's recourse

The bill provides that a release or extension preserves a secondary obligor's recourse if its terms provide both that the person entitled to enforce the instrument retains the right to enforce it against the secondary obligor and the recourse of the secondary obligor continues as if the release or extension had not been granted.⁵⁹

Secondary obligor's burden of persuasion

Generally, a secondary obligor asserting a discharge has the burden of persuasion both with respect to the occurrence of the acts alleged to harm the secondary obligor and loss or prejudice caused by those acts.⁶⁰ However, if the secondary obligor demonstrates prejudice caused by an impairment of its recourse, and the circumstances indicate that the amount of loss is not reasonably susceptible of calculation or requires proof of facts that are not ascertainable, it is presumed that the act impairing recourse caused a loss or impairment equal to the liability of the secondary obligor on the instrument. In that case, the burden of persuasion as to any lesser amount of the loss is on the person entitled to enforce the instrument.⁶¹

Current law provides that the burden of proving impairment of the value of collateral is on the party asserting discharge.⁶²

Joint and several liability – contribution

Continuing law provides that, generally, a party having joint and several liability who pays the instrument is entitled to receive from any party having the same joint and several liability contribution in accordance with applicable law.⁶³ The bill eliminates the current provision that the discharge of one party having joint and several liability by a person entitled to enforce the instrument does not affect the above right of a party

⁵⁸ R.C. 1303.70(F).

⁵⁹ R.C. 1303.70(G).

⁶⁰ R.C. 1303.70(H).

⁶¹ R.C. 1303.70(I).

⁶² Existing R.C. 1303.70 (E) and (F), which are repealed by the bill.

⁶³ R.C. 1303.14(B).

having the same joint and several liability to receive contribution from the party discharged.⁶⁴

Instruments signed for accommodation

The bill provides that if a party's signature to an instrument is accompanied by words indicating that the party guarantees payment or the signer signs the instrument as an accommodation party in some other manner that does not unambiguously indicate an intention to guarantee collection rather than payment, the signer is obliged to pay the amount due on the instrument to a person entitled to enforce it in the same circumstances as the accommodated party would be obliged, without prior resort to the accommodated party by the person entitled to enforce the instrument.⁶⁵

Continuing law provides that an accommodation party who pays an instrument is entitled to reimbursement from the accommodated party and may enforce the instrument against the accommodated party. The bill specifies that in proper circumstances, an accommodation party may obtain relief that requires the accommodated party to perform its obligations on the instrument.⁶⁶

The bill retains the current definitions of "accommodated party" and "accommodation party" (see above under "**Modernized suretyship and guaranty rules**") and clarifies that the definitions apply in the law on commercial paper rather than only in the provision pertaining to instruments signed for accommodation.⁶⁷

Property tax exemptions

The bill makes four changes relative to certain partial property tax exemptions and procedures. Specifically, the bill extends the maximum term of a Community Reinvestment Area (CRA) property tax exemption for remodeled property and changes or clarifies how exempt value is calculated for purposes of the CRA remodeling exemption and the separate brownfield exemption. Additionally, the bill explicitly authorizes complaints to be filed with a county auditor challenging the assessed value of partially exempt property.

⁶⁴ R.C. 1303.14(C).

⁶⁵ R.C. 1303.59(E).

⁶⁶ R.C. 1303.59(F).

⁶⁷ R.C. 1303.59(G).



Community Reinvestment Area

Maximum term for remodeled property

Ohio's CRA law authorizes counties and municipalities to designate certain areas to encourage new construction or remodeling of existing structures. New construction is tax-exempt for up to 15 years. A remodeled one- or two-family dwelling is tax-exempt for up to ten years if the cost of remodeling exceeds \$2,500. Other remodeled structures are tax-exempt up to 12 years if the cost of remodeling exceeds \$5,000. Historically or architecturally significant remodeled structures may be exempt for an additional ten years.

The bill extends the maximum CRA exemption term for remodeled property to 15 years for all structures — the same term available to new construction. However, the bill continues to require that, in order to qualify for CRA tax exemption, the cost of remodeling must exceed \$2,500 in the case of one- or two-family dwellings and \$5,000 in the case of all other structures.⁶⁸

Calculation of CRA remodeling exempt value

The bill changes the basis for determining the maximum tax-exempt value of remodeled structures. Currently, the tax-exempt value equals "the amount by which the remodeling increased the assessed value of the structure," implying a cause and effect relationship between the remodeling and the increased value.

Under the bill, the tax-exempt value would instead be determined on the basis of the structure's increased value after remodeling activities begin. This change effectively exempts all increases in the structure's value from the tax year when the remodeling begins for the term of the exemption, regardless of whether the increase is a result of the remodeling.⁶⁹

Application of CRA changes

The bill's CRA changes apply to pending exemption applications and those filed after the bill's effective date.⁷⁰

⁶⁸ R.C. 3735.67(D)(1).

⁶⁹ R.C. 3735.67 and 3735.671.

⁷⁰ Section 3(A).



Brownfield remediation

Continuing law grants partial property tax exemption for sites contaminated with hazardous substances or petroleum that undergo certain measures to address the contamination. The measures are undertaken privately by what is known as a "voluntary action." Voluntary actions may include one or more of the following: (1) assessing the property to determine the source of contamination or its level relative to applicable environmental standards, (2) limiting how the property is used to uses allowed for the level of contamination present, and (3) "remediation" of the property to bring it to a state that it meets standards applicable to its intended use (e.g., industrial, commercial, or residential).

If a voluntary action is undertaken successfully, the property owner is released from civil liability that would entail the owner having to take further actions to address the contamination. The release from liability is evidenced by a "covenant not to sue." Once the covenant is issued by Ohio EPA, the Tax Commissioner issues a tax exemption order for the property.

Currently, the tax exemption applies to the increase in the value of the land itself, and the increase in the value of any buildings or other improvements that are on the land when the Tax Commissioner issues the tax exemption order. The exemption lasts for ten years beginning with the year the order is issued. However, current law does not clearly state the beginning point for measuring the increased value that is to be tax-exempt. Nor does current law clearly prescribe how to determine the increase in value that qualifies for exemption for any tax year within the ten-year exemption period.

The bill addresses both of these ambiguities. First, the bill specifies the beginning point for measuring the increase in value: the exemption applies to any increase in value from the beginning of the year in which environmental remedial activities begin. Second, the bill specifies how to determine the increase in value that qualifies for the exemption: the increase is to be measured between the year remedial activities began and each of the ten years during which the property is exempted, which effectively exempts any increase in value occurring after remediation begins.⁷¹ Both of these changes apply to exemption orders issued on or after the bill's effective date.⁷²

To illustrate how the exemption operates with the bill's changes, suppose remedial activities begin in 2016 on land that is valued at \$1 million for tax year 2016, and buildings on the land are valued at \$2 million for that year. A covenant not to sue and the tax exemption order are issued in 2018. Suppose further that, for tax year 2018,

⁷¹ R.C. 5709.87.

⁷² Section 3(B).



the land is valued at \$1.5 million and the buildings are valued at \$3 million. The land's tax-exempt value for 2018 therefore equals \$500,000 and the buildings' tax-exempt value is \$1 million. The exemption would last for ten years, from 2018 through 2027. Any value of that land or those buildings in excess of the property's 2016 value would be exempt from taxation for each tax year during that period.

Coverage of autism services and insurance mandates

The bill requires that any health insurance plan issued by a health plan issuer provide coverage for the screening, diagnosis, and treatment of autism spectrum disorder. "Autism spectrum disorder" means any of the pervasive developmental disorders or autism spectrum disorder as defined by the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association available at the time an individual is first evaluated for suspected developmental delay.

The bill applies to health insuring corporations, sickness and accident insurers, and multiple employer welfare arrangements. The bill prohibits a health plan issuer from terminating an individual's coverage, or from refusing to deliver, execute, issue, amend, adjust, or renew coverage to an individual solely because the individual is diagnosed with or has received treatment for an autism spectrum disorder. The bill does not apply to nongrandfathered plans in the individual and small group markets, Medicare supplement, accident-only, specified disease, hospital indemnity, disability income, long-term care, or other limited benefit hospital insurance policies.⁷³

Under the bill, the health insurance plan must stipulate that coverage be contingent upon both of the following:

- The covered individual receiving prior authorization for the services in question;
- The services in question being prescribed or ordered by either a developmental pediatrician or a psychologist trained in autism.⁷⁴

Coverage minimums

The bill imposes the following coverage minimums:

⁷³ R.C. 1739.05, 1751.84(A), and 3923.84(A).

⁷⁴ R.C. 1739.05, 1751.84(C)(2), and 3923.84(C)(2).



- For speech and language therapy or occupational therapy for a covered individual under the age of 14 that is performed by a licensed therapist, 20 visits per year for each service;
- For clinical therapeutic intervention for a covered individual under the age of 14 that is provided by or under the supervision of a professional who is licensed, certified, or registered by an appropriate Ohio agency to perform such services in accordance with a health treatment plan, 20 hours per week;
- For mental or behavioral health outpatient services for a covered individual under the age of 14 that are performed by a licensed psychologist, psychiatrist, or physician providing consultation, assessment, development, or oversight of treatment plans, 30 visits per year.⁷⁵

The bill prohibits autism spectrum disorder coverage from being subject to dollar limits, deductibles, or coinsurance provisions that are less favorable than those that apply to substantially all the medical and surgical benefits under the health insurance plan. Also, the bill's provisions are not to be construed as limiting coverage that is otherwise available under the health insurance plan.⁷⁶

Review of treatment plan

The bill allows a health plan issuer to review a covered individual's treatment plan with regard to outpatient services on an annual basis. The health plan issuer may conduct such a review on a more frequent basis if the covered individual's physician agrees that more frequent reviews are necessary. If an agreement for more frequent reviews occurs, the agreement applies only to the specific covered individual for whom it was created and not to all individuals being treated for autism spectrum disorder by a physician or psychologist. The bill requires a health plan issuer to cover the cost of obtaining any review or treatment plan.⁷⁷

Construction

The bill specifies that its autism coverage provisions are not to be construed as affecting any obligation to provide services to an enrollee under an individualized

⁷⁵ R.C. 1739.05, 1751.84(B), and 3923.84(B).

⁷⁶ R.C. 1739.05, 1751.84(A) and (C)(1), and 3923.84(A) and (C)(1).

⁷⁷ R.C. 1739.05, 1751.84(D), and 3923.84(D).

family service plan, an individualized education program, or an individualized service plan.⁷⁸

Severability

The bill specifies that if the bill's autism coverage provisions, or their application, are for any reason held to be invalid, the remainder of the provisions and their application are not affected.⁷⁹

Exemption from review by the Superintendent of Insurance

The requirements of the autism coverage portions of the bill may be considered mandated health benefits. Under R.C. 3901.71, no mandated health benefits legislation enacted by the General Assembly may be applied to any policy, contract, plan, or other arrangement providing sickness and accident or other health benefits until the Superintendent of Insurance determines, pursuant to a hearing conducted in accordance with the Administrative Procedure Act, that the provision can be applied fully and equally in all respects to (1) employee benefit plans subject to regulation by the federal Employee Retirement Income Security Act of 1974 (ERISA) and (2) employee benefit plans established or modified by the state or any political subdivision of the state, or by any agency or instrumentality of the state or any political subdivision of the state. The bill includes provisions that exempt its requirements from this restriction.⁸⁰

Insurance mandates

The bill requires the Superintendent of Insurance to conduct an actuarial study on the costs of all health care mandates under Ohio law that apply to individual and group health insurance plans that are not subject to the Employee Retirement Income Security Act of 1974 (ERISA). The Superintendent must deliver this study electronically to the Governor, the Senate President, and the Speaker of the House of Representatives not later than two years after the bill's effective date.⁸¹

The bill states that it is the intent of the General Assembly to implement a two-year moratorium on any new health care mandates impacting individual and group health insurance plans that are not subject to ERISA. Further, it is the intent of the

⁷⁸ R.C. 1739.05, 1751.84(E), and 3923.84(E).

⁷⁹ R.C. 1739.05, 1751.84(G), and 3923.84(G).

⁸⁰ R.C. 1751.84(A) and 3923.84(A).

⁸¹ R.C. 3901.88.



General Assembly to develop potential tax credits that offset additional employer costs associated with health care mandates.⁸²

Child Abuse and Child Neglect Regional Prevention Council members

The bill provides that Child Abuse and Child Neglect Prevention Regional Council members are to be reimbursed for all actual and necessary expenses incurred in the performance of official duties. Under continuing law, members must still serve without compensation.⁸³

The bill prohibits members from participating in Council matters involving their own interests, including funding applications by a member or any public or private entity for which the member serves as a board member or employee.⁸⁴

Local initiative petitions

The bill requires a board of elections, when it receives a municipal initiative petition, to determine whether the petition falls within the scope of a municipality's authority to enact via initiative, including, if applicable, the limitations placed by Article XVIII, Sections 3 and 7 of the Ohio Constitution on the authority of municipal corporations to adopt local police, sanitary, and other similar regulations as are not in conflict with general laws. The petition is invalid if any portion of the petition is not within the initiative power.

In the case of a county charter petition, the bill requires the board to determine whether the petition falls within the scope of a county's authority to enact via initiative, including whether the petition conforms to the requirements set forth in Article X, Section 3 of the Ohio Constitution, including the exercise of only those powers that have vested in, and the performance of all duties imposed upon counties and county officers by law. If the board's finding is challenged, the board must forward the protest to the Secretary of State to make that determination. The petition is invalid if any portion of the petition is not within the initiative power.

While it is not clear precisely how a reviewing court would interpret the bill's language, it appears that the bill would, for example, prevent an initiated city ordinance from appearing on the ballot if the board of elections determined that the proposed ordinance would be unenforceable because of a conflict with state law. Or, the bill might prevent a county charter proposal from appearing on the ballot if the board

⁸² Section 6.

⁸³ R.C. 3109.172(F).

⁸⁴ R.C. 3109.172(J).

determined that the substance of the proposed charter would be unconstitutional (see **COMMENT**).

The bill also requires the board of elections to determine whether a local initiative petition satisfies the statutory prerequisites to place the issue on the ballot. After making its determinations, the board must notify the petitioners and the political subdivision and must promptly transmit a copy of the petition and a notice of the determination to the Secretary of State. If multiple substantially similar initiative petitions are submitted to multiple boards of elections and the boards' determinations differ, the bill requires the Secretary of State to make a single determination that applies to each petition.⁸⁵

The bill also changes the deadline to file a county charter petition with the board of county commissioners to 115 days, instead of 110 days, before the day of the general election at which the proposal is to appear on the ballot.⁸⁶

Recall of municipal officials

The bill makes two changes to the statutory procedure for the recall of an elected municipal official. First, the bill specifies that a recall petition is not valid after 90 days from the date of the first signature. Under current law, no time limit applies to the collection of signatures on a recall petition, although the signer of an election petition must still be registered to vote at the address indicated on the petition at the time the petition is validated.

Second, under the bill, a recall election must be held at the next primary or general election occurring more than 90 days from the date the petition is certified as sufficient. Existing law requires the recall election to be held between 30 and 40 days after the petition is verified.⁸⁷

While continuing law might appear to authorize and prescribe procedures for the recall of officers in any municipality, in reality, the statute applies only to a municipality whose charter specifies that recall elections must be conducted in accordance with the Revised Code.

The Ohio Constitution does not permit the recall of officers, and as a result, the Ohio Supreme Court has ruled that statutes providing for recall are unenforceable. However, the Court has held that a municipality may adopt a charter that provides for

⁸⁵ R.C. 307.95, 3501.11, 3501.38, and 3501.39.

⁸⁶ R.C. 307.94.

⁸⁷ R.C. 705.92.



recall elections, and the charter may require those elections to be conducted according to the Revised Code's procedures.⁸⁸ As a result, the bill changes the recall procedure only in a municipality whose charter specifies that recall elections must be held according to state law.

COMMENT

The bill's provisions concerning local initiative petitions might be vulnerable to a challenge under the Ohio Constitution on two grounds: (1) that the bill infringes on the people's right of initiative, and (2) that the bill violates the separation of powers doctrine.

First, a reviewing court might find that the bill places an unconstitutional burden on the people's right of initiative. Under the Constitution, laws may be passed to facilitate the operation of the initiative petition process, but not to limit or restrict that process or the power of the initiative.⁸⁹ In the past, the Ohio Supreme Court has overturned procedural requirements for initiatives that were beyond the scope of the restrictions in the Constitution.⁹⁰

While the Secretary of State or a board of elections has the authority to determine whether a petition meets the procedural requirements to appear on the ballot, it is not clear whether the Constitution would allow the Secretary of State or a board of elections to reject a petition on the basis that it proposes a law that, if adopted, would be unconstitutional. A reviewing court might rule that the constitutional right of initiative includes the right to initiate a potentially unconstitutional statute. If the statute became law and was challenged on constitutional grounds, the courts would have the authority to prevent its enforcement.⁹¹

A reviewing court also might rule that the bill violates the separation of powers doctrine of the Ohio Constitution by giving the Secretary of State or a board of elections the authority to decide the constitutionality of a proposed statute. The Constitution

⁸⁸ *State ex rel. Lockhart v. Boberek*, 45 Ohio St. 2d 292 (1976) and *State ex rel. Burnett v. Ducey*, 36 Ohio L. Abs. 467, 44 N.E.2d 803 (2d Dist. Ct. App. 1942). See Ohio Const., art II, sec 38.

⁸⁹ Ohio Const., Art. II, Secs. 1a, 1b, 1e, 1f, and 1g.

⁹⁰ *State ex rel. Ohio Liberty Council v. Brunner*, 125 Ohio St.3d 315, 324 (2010). See also *State ex rel. Schwartz v. Brown*, 32 Ohio St.2d 4, 8 (1972) and *State ex rel. Durrell v. Celebrezze*, 63 Ohio App. 2d 125, 130 (10th Dist. Ct. App. 1979).

⁹¹ Ohio Const. Art. II, Sec. 1e(A) and Art. X, Sec. 3; *State ex rel. City of Youngstown v. Mahoning County Board of Elections*, 2015-Ohio-3761 at para. 9; and *State ex rel. Walker v. Husted*, 2015-Ohio-3749.



vests the judicial power of the state in the courts,⁹² and the Ohio Supreme Court has ruled that "interpretation of the state and federal Constitutions is a role exclusive to the judicial branch."⁹³

In *State ex rel. City of Youngstown v. Mahoning County Board of Elections*, the court considered whether the law allowed a board of elections to decide a constitutional question. It opined:⁹⁴

[Such a] conclusion would authorize a board of elections to adjudicate a constitutional question and require this court to affirm its decision even if the court disagreed with the board's conclusion on the underlying constitutional question, so long as the board had not abused its discretion.

Based on this statement, a reviewing court might find that the bill violates the separation of powers by allowing administrative entities to usurp the courts' authority to interpret the Constitution.

HISTORY

| ACTION | DATE |
|--|----------|
| Introduced | 02-16-16 |
| Reported, H. Financial Institutions, Housing & Urban Development | 04-27-16 |
| Passed House (95-1) | 05-11-16 |
| Reported, S. Civil Justice | --- |

H0463-RS-corrected-131.docx/ks

⁹² Ohio Const., Art. IV, Sec. 1.

⁹³ *Beagle v. Walden*, 78 Ohio St.3d 59, 62 (1997). See also *State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 86 Ohio St.3d 451, 467 (1999) and *South Euclid v. Jemison*, 28 Ohio St.3d 157, 158 (1986).

⁹⁴ *State ex rel. City of Youngstown v. Mahoning County Board of Elections* at para. 11.

