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## DEPARTMENT OF AGRICULTURE (AGR)

- Expands continuing provisions stating that the Director of Agriculture has sole and exclusive authority to regulate the provision of food nutrition information to include in that information allergens and the designation of food as healthy or unhealthy.
- States that the Director has sole and exclusive authority in Ohio to regulate the provision of consumer incentive items at food service operations, and defines "consumer incentive item."
- States that the regulation of the provision of consumer incentive items at food service operations and how those operations are characterized are matters of general statewide interest that require statewide regulation.
- Modifies and expands prohibitions against political subdivisions' taking specified actions with regard to food nutrition information and consumer incentive items, including enacting, adopting, or continuing in effect local legislation relating to the provision of consumer incentive items at food service operations.
- Revises specified fees for phytosanitary certificates issued by the Director of Agriculture, including eliminating a \$25 fee for collectors or dealers that are licensed under the Nursery Stock and Plant Pests Law and adding a \$25 fee for shipments comprised exclusively of nursery stock.
- Allows the Director to contract with individuals or entities to perform gypsy moth trapping in lieu of employing seasonal gypsy moth tenders as authorized in continuing law.
- Extends through June 30, 2013, the extra 2¢ per-gallon earmark of wine tax revenue that is credited to the Ohio Grape Industries Fund.
- Eliminates the requirement that no less than 30% of the money in the Ohio Grape Industries Fund be expended by the Ohio Grape Industries Committee for specified purposes, including the marketing of grapes and grape products, but retains a 70% cap on those expenditures.
- Extends statutory rights, privileges, and protections associated with the ownership or use of assistance dogs by mobility impaired persons to persons diagnosed with autism or assistance dogs used by those persons.



- Requires a person proposing to operate a commercially used weighing and measuring device that provides the final quantity and final cost of a transaction and that is a livestock scale, vehicle scale, railway scale, vehicle tank meter, bulk rack meter, or LPG meter to obtain a permit for its operation from the Director of Agriculture.
- Specifies that a commercially used weighing and measuring device operation permit may be renewed annually.
- Establishes a permit application fee of \$75 for a commercially used weighing and measuring device operation permit and an annual permit renewal fee of the same amount.
- Requires the proceeds of fees associated with the issuance of permits for commercially used weighing and measuring devices to be credited to the renamed Metrology and Scale Certification and Device Permitting Fund, which provides funding for the administration of the weights and measures program.
- Alters the specified provisions of the weights and measures program a violation of which triggers a civil or criminal penalty.

## **Regulation of food service operations**

(R.C. 3717.53)

### **Regulation of food nutrition information and consumer incentive items**

The act expands continuing provisions stating that the Director of Agriculture has sole and exclusive authority to regulate the provision of food nutrition information at food service operations to include in that information allergens and the designation of food as healthy or unhealthy. A food service operation is a place, location, site, or separate area where food intended to be served in individual portions is prepared or served for a charge or required donation. It includes a catering food service operation and vending machine location.

The act adds that the Director has sole and exclusive authority in Ohio to regulate the provision of consumer incentive items at food service operations. Under the act, a consumer incentive item is any licensed media character, toy, game, trading card, contest, point accumulation, club membership, admission ticket, token, code or password for digital access, coupon, voucher, incentive, crayons, coloring placemat, or



other premium, prize, or consumer product that is associated with a meal served by or acquired from a food service operation.

The act states that the regulation of the provision of consumer incentive items at food service operations and how food service operations are characterized, in addition to the provision of food nutrition information under continuing law, are matters of general statewide interest that require statewide regulation.

The act prohibits a political subdivision from doing any of the following:

(1) Enacting, adopting, or continuing in effect local legislation relating to the provision or nonprovision of food nutrition information or consumer incentive items at food service operations;

(2) Conditioning a license, a permit, or regulatory approval on the provision or nonprovision of food nutrition information or consumer incentive items at food service operations;

(3) Banning, prohibiting, or otherwise restricting food at food service operations based on the food nutrition information or on the provision or nonprovision of consumer incentive items;

(4) Conditioning a license, a permit, or regulatory approval for a food service operation on the existence or nonexistence of food-based health disparities; or

(5) Where food service operations are permitted to operate, banning, prohibiting, or otherwise restricting food service operations based on the existence or nonexistence of food-based health disparities as recognized by the Department of Health, the National Institute of Health, or the Centers for Disease Control.

Under law changed in part by the act, a political subdivision is prohibited only from adopting or continuing in effect local legislation relating to the provision of food nutrition information at food service operations. Local legislation includes, but is not limited to, an ordinance, resolution, regulation, rule, motion, or amendment that is enacted or adopted by a political subdivision.

### **Phytosanitary certificates fees**

(R.C. 927.69)

The act revises the fees for phytosanitary certificates issued by the Director of Agriculture as follows:



(1) Eliminates a \$25 fee for collectors or dealers that are licensed under the Nursery Stock and Plant Pests Law;

(2) Adds a \$25 fee for shipments comprised exclusively of nursery stock; and

(3) Adds a \$25 fee for replacement of an issued certificate because of a mistake on the certificate or a change made by the shipper if no additional inspection is required.

### **Seasonal gypsy moth traptenders**

(R.C. 901.09)

The act allows the Director of Agriculture to contract with individuals or entities to perform gypsy moth trapping in lieu of employing seasonal gypsy moth tenders as authorized in continuing law.

### **Grape industries**

(R.C. 924.52 and 4301.43)

#### **Wine tax diversion to Ohio Grape Industries Fund**

The act extends through June 30, 2013, the extra 2¢ per-gallon earmark of wine tax revenue that is credited to the Ohio Grape Industries Fund. Continuing law imposes a tax on the distribution of wine, vermouth, and sparkling and carbonated wine and champagne at rates ranging from 30¢ per gallon to \$1.48 per gallon. From the taxes paid, a portion is credited to the Fund for the encouragement of the state's grape industry, and the remainder is credited to the General Revenue Fund. The amount credited to the Ohio Grape Industries Fund was scheduled to decrease from 3¢ to 1¢ per gallon on July 1, 2011.

#### **Expenditures by Ohio Grape Industries Committee**

The act eliminates the requirement that no less than 30% of the money in the Ohio Grape Industries Fund, but retains the requirement that no more than 70% of the money, be expended by the Ohio Grape Industries Committee on each of the following:

(1) Conducting research on grapes and grape products, including production, processing, and transportation of grapes and grape products; and

(2) Performing specified activities regarding the marketing of grapes and grape products.



## **Assistance dogs**

(R.C. 955.011)

The act extends statutory rights, privileges, and protections associated with the ownership or use of assistance dogs by mobility impaired persons to persons diagnosed with autism or assistance dogs used by those persons. It does so by revising the definition of "mobility impaired person," for purposes of the statutes governing assistance dogs, to include a person who is diagnosed with autism. Those rights, privileges, and protections include all of the following:

- (1) Exemption from dog registration fees;
- (2) Entitlement to full use and enjoyment of all places of public accommodation;
- (3) Protection from physical harm through the application of criminal penalties for assaulting an assistance dog;
- (4) Protection from harassment through the application of criminal penalties for harassing an assistance dog; and
- (5) Protection from theft of an assistance dog through the application of criminal penalties for such theft.

## **Division of Weights and Measures**

### **Commercially used weighing and measuring device permit program**

(R.C. 1327.46, 1327.501, and 1327.511)

The act establishes a new permit requirement as part of the Department of Agriculture's weights and measures program. Under the act, a person operating certain commercially used weighing and measuring devices that provide the final quantity and final cost of a transaction must obtain a permit issued by the Director of Agriculture or the Director's designee.

The act defines "commercially used weighing and measuring device" to mean a device described in the National Institute of Standards and Technology Handbook 44 or its supplements and revisions and any other weighing and measuring device designated by rules adopted under the Weights and Measures Law. "Commercially used weighing and measuring device" includes, but is not limited to, a livestock scale, vehicle scale, railway scale, vehicle tank meter, bulk rack meter, and LPG meter (see below).

The act limits the devices for which a permit is required to livestock scales, vehicle scales, railway scales, vehicle tank meters, bulk rack meters, and LPG meters. An application for a permit must be submitted to the Director on a form that the Director prescribes and provides. The applicant must include with the application any information that is specified on the application form as well as the application fee established by the act. Upon receipt of a completed application and the required fee, the Director or the Director's designee must issue or deny the permit.

A permit applicant must pay a \$75 application fee. A person who seeks to renew a permit must pay an annual \$75 permit renewal fee. If a permit renewal fee is more than 60 days past due, the Director may assess a late penalty.

For purposes of the permit program, the Director must: (1) establish procedures and requirements governing the issuance or denial of permits, and (2) establish late penalties to be assessed for the late payment of a permit renewal fee and fees for the replacement of lost or destroyed permits.

All money collected through the payment of fees and the imposition of penalties must be credited to the renamed Metrology and Scale Certification and Device Permitting Fund, formerly the Metrology and Scale Certification Fund. In addition to renaming the Fund, the act adds to the purposes for which money in the Fund may be used. Under the act, money may be used for services rendered by the Department of Agriculture in operating the metrology laboratory program, the device permitting program, and the type evaluation program. Under law revised by the act, money in the Fund only may be used for the type evaluation program.

The act includes the following definitions for purposes of the permitting program:

(1) "Livestock scale" means a scale equipped with stock racks and gates that is adapted to weighing livestock standing on the scale platform.

(2) "Vehicle scale" means a scale that is adapted to weighing highway, farm, or other large industrial vehicles other than railroad cars.

(3) "Railway scale" means a rail scale that is designed to weigh railroad cars.

(4) "Vehicle tank meter" means a vehicle mounted device that is designed for the measurement and delivery of liquid products from a tank.

(5) "Bulk rack meter" means a wholesale device, usually mounted on a rack that is designed for the measurement and delivery of liquid products.



(6) "LPG meter" means a system, including a mechanism or machine of the meter type, that is designed to measure and deliver liquefied petroleum gas in the liquid state by a definite quantity whether installed in a permanent location or mounted on a vehicle.

### **Other changes to the weights and measures program**

(R.C. 1327.46, 1327.50, 1327.51, 1327.54, 1327.57, 1327.62, and 1327.99)

The act alters provisions of the Weights and Measures Law governing civil and criminal penalties. The alterations involve amending the provisions of that Law that trigger a civil or criminal penalty.

The act allows civil penalties to be levied for a violation of any provision of the Weights and Measures Law and any rule adopted under that Law. Under former law, civil penalties could be levied only regarding violations of provisions related to misrepresentation of prices of items sold by weight or some other measure or related to using incorrect weights and measures and other offenses. Law unchanged by the act provides that civil penalties must not exceed \$500 for a first violation, \$2,500 for a second violation, and \$10,000 for each subsequent violation that occurs within five years of the second violation.

Additionally, the act authorizes criminal penalties for violations of the commercially used weighing and measuring device permitting program and for a violation of any rule adopted under the Weights and Measures Law. Law largely unchanged by the act allows for criminal penalties regarding violations of provisions related to misrepresentation of prices of items sold by weight or some other measure or related to using incorrect weights and measures and other offenses. Law retained by the act provides that a criminal violation under the Weights and Measures Law is a second degree misdemeanor on the first offense and a first degree misdemeanor on each subsequent offense that occurs within seven years of the first offense.