
DEPARTMENT OF COMMERCE (COM)

- Removes the requirement that a person not organized under Ohio law, not licensed as a foreign corporation, or that does not have a principal place of business in Ohio submit a consent to service of process when filing for an exemption for a security offered or sold in reliance on Regulation D of the Securities Act of 1933.
- Permits the Division of Securities to waive, in part or in whole, certain license, renewal, and notice filing fees for certain professionals involved in securities investment if, in the same calendar year, they are required to pay an additional fee as a result of federal law changes bringing them under state regulation.
- Requires that assessments for video service providers be deposited into the Video Service Authorization Fund rather than the Division of Administration Fund.
- Increases the maximum annual fee placed on credit union share guaranty corporations from \$5,000 to \$25,000.
- Removes certain public improvements from the Prevailing Wage Law.
- Prohibits a public authority from applying prevailing wage requirements to a public improvement that is undertaken by, or under contract for, a school district or an educational service center.
- Permits contractors, subcontractors, and public authorities to temporarily exceed continuing law's permissible apprentice-to-skilled-worker ratio.
- Requires labor organizations to file with the Director of Commerce any portion of a collective bargaining agreement, contract, or understanding that governs wages paid to persons and the apprentice to skilled worker ratio under the agreement, contract, or understanding.
- Specifies that any change in the prevailing wage rate on an ongoing project takes effect two weeks after the Director becomes aware of the change.
- Makes changes regarding interested party complaints and the procedure for investigating those complaints.
- Exempts contractors and subcontractors from liability for prevailing wage violations in certain circumstances.



- Abolishes the Penalty Enforcement Fund and directs the Director of Budget and Management to transfer the Fund's cash balance to the Labor Operating Fund.
- Requires the Director to deposit moneys received from prevailing wage penalties into the Labor Operating Fund.
- Requires the Director and the Treasurer of State to transfer from the Prevailing Wage Custodial Fund to the Labor Operating Fund funds that the Director determines are not returnable to employees.
- Modifies the Real Estate Brokers Law as follows:
 - Prohibits a member of the Ohio Real Estate Commission from holding office for more than two consecutive full terms.
 - Limits or changes the exclusion of persons from the definitions of "real estate broker," "real estate salesperson," "foreign real estate dealer," and "foreign real estate salesperson."
 - Allows the Commission to adopt rules for the clarification of the activities that require a license, for specifying standards for the approval of the post-licensure courses required for new licensees, and for the termination of an agency relationship for a licensee to become a principal in the transaction.
 - Requires the Superintendent of Real Estate and Professional Licensing to mail a notice of license renewal for licensed business entities to the business address.
 - Requires the Superintendent to make notice of successful license renewal electronically.
 - Permits the Superintendent to issue advisory letters in lieu of initiating disciplinary action or issuing a citation.
 - Revises the disciplinary procedures.
 - Provides for an initial licensing time period.
 - Makes various licensing fees nonrefundable.
 - Makes changes to the provisions regarding returned checks and draft instruments.

--Requires any civil penalties collected for operating as a real estate broker or salesperson without a license to be deposited into the Real Estate Operating Fund instead of the Real Estate Recovery Fund.

--Permits, instead of requires as provided in former law, the transfer of excess funds from the Division of Real Estate Operating Fund to the Real Estate Education and Research Fund.

--Increases the limit for Real Estate Education and Research Fund moneys that may be used to advance loans.

--Makes changes to the education requirements for licensees.

--Makes changes to the provisions regarding brokers and salespersons who place their licenses on deposit to participate in the armed forces.

--Permits a licensee to disclose confidential information if the disclosure is to a registered appraiser for specified reasons.

--Makes changes to the regulation of advertisements of salespersons and brokers.

--Changes the procedure that the Ohio Real Estate Commission uses regarding the reversal, vacation, or modification of its own orders.

--Prohibits a salesperson from selling, assigning, or otherwise transferring the salesperson's interest in a commission.

--Prohibits a salesperson or broker from participating in a dual agency relationship in which the licensee is a party to the transaction or an officer in an entity that has an interest in the property that is the subject of the transaction.

--Makes changes to the provisions regarding complaints against licensees and complaints against unlicensed individuals.

--Permits the Commission to take disciplinary action that relates to unlicensed persons and entities.

--Requires a licensee to notify the Superintendent of Real Estate in writing, within 15 days, if the licensee is the subject of certain types of administrative orders.

--Prohibits a cause of action against a licensee on imputed knowledge and for releasing information requested by a registered appraiser assistant or by a licensed or certified appraiser.



--Changes all occurrences in the Real Estate Brokers Law of "physically handicapped" to "disabled."

--Makes various other changes to the Real Estate Brokers Law.

- Authorizes revenue resulting from any contracts with the Department pertaining to the responsibilities and operations described in the Liquor Control Law to be credited to the Liquor Control Fund.
- Allows the Director of Budget and Management to transfer money from the General Revenue Fund to the Liquor Control Fund if the Director determines that the amount in the Liquor Control Fund is insufficient.
- Authorizes the state to transfer to JobsOhio all or a portion of the enterprise acquisition project, that is, the spirituous liquor distribution system, for a transfer price payable by JobsOhio to the state, and requires any such transfer to be treated as an absolute conveyance and true sale of the interest in the enterprise acquisition project.
- Defines "enterprise acquisition project" as all or any portion of the capital or other assets of the spirituous liquor distribution and merchandising operations of the Division of Liquor Control, including inventory, warehouses, the exclusive right to manage and control spirituous liquor distribution and merchandising in the state and to sell spirituous liquor in the state, and the assets and liabilities of the continuing Facilities Establishment Fund.
- Requires any transfer of the enterprise acquisition project that is a lease or grant of a franchise to be for a term not to exceed 25 years or that is an assignment and sale, conveyance, or other transfer to contain a provision that the state has the option to have conveyed or transferred back to it, at no cost, the enterprise acquisition project no later than 25 years after the original transfer was authorized.
- Exempts from specified taxes the gross receipts and income of JobsOhio derived from the enterprise acquisition project.
- States that the proceeds of any transfer may be expended as provided in the transfer agreement for specified purposes.
- Requires the transfer agreement to include a requirement that JobsOhio pay for the operations of the Division of Liquor Control with regard to the Division's spirituous liquor merchandising operations.



- Establishes other provisions governing the transfer, including allowing JobsOhio, in the ordinary course of doing business, to dispose of any regular inventory or tangible personal property.
- Staggers the terms of the nine members of the Residential Construction Advisory Committee so that only three of the members' terms expire in any given year.
- Requires the Director of Commerce to decide which members of the Residential Construction Advisory Committee will serve shortened terms for terms beginning July 1, 2011, for the purpose of commencing the staggered-term format, after which all members will serve full three-year terms.

Consent to service of process in connection with Regulation D exemption notice filings

(R.C. 1707.11)

The act removes the requirement that certain parties submit a consent to service of process when filing for an exemption for a security offered or sold in reliance on Regulation D of the Securities Act of 1933.²⁶ Regulation D provides exemptions that allow companies to offer and sell their securities without registering them with the SEC.²⁷ Under former law, the following parties were required to consent to service of process when filing for that exemption:

- Each person not organized under the laws of Ohio;
- Those not licensed as a foreign corporation;
- A person that does not have a principle place of business in Ohio.

Waiver of certain license, renewal, and notice filing fees regarding securities investment

(R.C. 1707.17)

The act permits the Division of Securities to waive, in part or in whole, license, renewal, and notice filing fees for professionals involved in securities investment if, in the same calendar year, those subject to the fee would be required to pay an additional

²⁶ R.C. 1707.03(X), not in the act.

²⁷ Regulation D Offerings. *Available at* <http://www.sec.gov/answers/regd.htm> (last visited July 7, 2011).



fee as a result of changes in federal law and regulations requiring them to be subject to state rather than federal regulation. Under the act, the Division may waive fees by rule or order. This provision applies to investment advisers who are subject to U.S. Securities and Exchange Commission regulation but whose status will change when, under changes made the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Act"), effective July 1, 2011, they become subject to state regulation by the Division of Securities. The federal Act raises the assets-under-management threshold used to define which investment advisers are subject to the federal law.²⁸ Consequently, jurisdiction over investment advisers managing securities portfolios under the new threshold could change mid-year, and those investment advisers would be subject to an additional fee. Salespersons and dealers of securities and investment adviser representatives, state retirement system investment officers, and the Bureau of Workers' Compensation Chief Investment Officer remain subject to the license, renewal, and notice filing fees in continuing law and may not be affected by the federal Act.

Assessments for video service providers

(R.C. 1332.24)

The act requires that assessments for video service providers be deposited into the Video Service Authorization Fund rather than the Division of Administration Fund. Under continuing law, the Director of Commerce may impose annual assessments on video service providers. The total amount of annual assessments is not to exceed the lesser of \$450,000 or the Department of Commerce's annual, actual administrative costs in carrying out the Department's duties relating to video service. The Video Service Authorization Fund is required to be used by the Department in carrying out these duties.²⁹

Increase in annual fee for credit union share guaranty corporations

(R.C. 1761.04)

The act increases the maximum annual fee placed on credit union share guaranty corporations to \$25,000. Under former law, the annual fee was \$5,000.

²⁸ 124 Stat. 1576 (2010), 15 U.S.C. 80b-3a (a).

²⁹ R.C. 1332.25, not in the act.



The Prevailing Wage Law

Works subject to the Prevailing Wage Law

(R.C. 4115.03, 4115.033, 4115.034, 4115.04, 4115.10, and 4582.12; repealed R.C. 4115.032 and 4582.37; R.C. 4582.01 and 4582.21, not in the act)

The act removes some projects from the Prevailing Wage Law, so that contractors and subcontractors on those public improvement projects do not have to pay workers the prevailing wage rate paid under collective bargaining agreements in the same area for similar work.

First, the act removes from the Prevailing Wage Law's requirements some new construction and reconstruction projects that cost \$250,000 or less and \$75,000 or less, respectively. Previously, any new construction on public improvements that cost \$78,258 or less was exempt from the Prevailing Wage Law (the statutory threshold of \$50,000 as adjusted biennially by the Director of Commerce pursuant to that Law). Reconstruction costing \$23,447 or less was similarly exempt (the statutory threshold of \$15,000 as biennially adjusted). New construction and reconstruction on public improvements that involve roads, streets, alleys, sewers, ditches, and other works connected to road or bridge construction continue to be subject to those thresholds, adjusted biennially by the Director. All other new construction and reconstruction on public improvements is subject to the new thresholds, which are not subject to biennial adjustment by the Director. The new threshold for new construction is phased in under the act so that for the first year after September 29, 2011, the threshold is \$125,000, for the second year the threshold is \$200,000, and for the third and subsequent years the threshold is \$250,000. For reconstruction, the act similarly phases in the new threshold so that the threshold is \$38,000 for the first year after September 29, 2011, \$60,000 for the second year, and \$75,000 for the third and subsequent years.

Second, the act removes from the Prevailing Wage Law's requirements certain economic development projects that formerly were subject to the Prevailing Wage Law (see "**Department of Development – Payment of prevailing wage on economic development projects**," below).

Third, the act exempts from the Prevailing Wage Law any public improvement undertaken by, or under contract for, a port authority created by a municipal corporation, township, or county that was not included in a port authority in existence on December 16, 1964. Accordingly, the act repeals requirements under the law governing those port authorities that laborers and mechanics employed on the construction or repair of a port authority facility be paid pursuant to the Prevailing Wage Law.



Fourth, the act exempts from the Prevailing Wage Law any portion of a public improvement that is undertaken and completely solely with donated labor. The donated labor that is exempt can be donated by (1) the individuals performing the labor, (2) a labor organization and its members, or (3) a contractor or subcontractor that donates all labor and materials for that portion of the public improvement project.

Prohibited prevailing wage work

(R.C. 4115.04)

The act prohibits a public authority from applying the prevailing wage requirements to a public improvement undertaken by or for the board of education of any school district or the governing board of any educational service center. Such public improvements are exempt from the Prevailing Wage Law under continuing law.

Apprentice-to-skilled-worker ratios under the Prevailing Wage Law

(R.C. 4115.05)

The act allows contractors, subcontractors, and public authorities on a public improvement to deviate from the apprentice-to-skilled-worker ratio that is permitted under continuing law. Contractors, subcontractors, and public authorities are limited still to an apprentice-to-skilled-worker ratio that is no greater than the ratio allowed in the collective bargaining agreement or understanding on which the prevailing wage rate for the public improvement is based (i.e., the collective bargaining agreements or understandings governing the same trade or occupation in the locality where the public work is being performed). The act provides, however, that a contractor, subcontractor, or public authority that exceeds the permissible ratio by two or fewer apprentices for not more than two days in any 30-day period is not in violation of the Law with respect to that excess.

Prevailing wage rate

(R.C. 4115.05)

For purposes of establishing prevailing wage rates, which are based on collective bargaining agreements and understandings governing the same trade or occupation in the locality where a particular public work is being performed, the act requires labor organizations to file with the Director of Commerce all relevant portions of any collective bargaining agreement, contract, or understanding to which the labor organization is a party. This requirement applies only to a labor organization that is a party to a collective bargaining agreement, contract, or understanding, including a successor agreement, contract, or understanding, that establishes wages for a trade or

occupation typically employed on public improvements. The filing must occur within 90 days after the agreement, contract, or understanding is executed. If the agreement, contract, or understanding is in effect on September 29, 2011, the labor organization must file the relevant portions within 90 days of that date. Any labor organization that files the relevant portions of a collective bargaining agreement, contract, or understanding as required under the act must certify under penalty of law that the filing contains, in full, all provisions of the agreement, contract, or understanding concerning wages and the apprentice-to-skilled-worker ratio.

If, upon receipt of the relevant portions of a collective bargaining agreement, contract, or understanding, the Director determines that the prevailing wage rate has changed in the locality in which an ongoing project is being constructed, the act requires that any change in that rate take effect two weeks after the Director receives those documents.

Interested party complaints alleging a violation of the Prevailing Wage Law

(R.C. 4115.03, 4115.13, and 4115.16)

The act makes certain changes regarding the complaints that an interested party can make alleging a violation of the Prevailing Wage Law and the process for investigating those complaints.

First, the act narrows the scope of persons who can file a complaint as an "interested party." Contractors who submit a bid to secure the award of a contract for construction of a public improvement, their subcontractors, and any labor organization or trade association that has as members such contractors or subcontractors or employees thereof, still can file a complaint with the Director of Commerce, as interested parties, alleging a violation of the Prevailing Wage Law. However, those persons no longer can file such a complaint with respect to any part of the public improvement other than that part involving the contract on which they, their primary contractor, or their members or members' employer have bid. The act accomplishes this change by amending the definition of "interested party" to mean the above-mentioned parties with respect only to the particular contract on which they, their primary contractor, or their members or members' employer have bid. Previously, those parties were "interested parties" with respect to the entire public improvement.

Second, the act requires an interested party who files a complaint alleging a violation of the Prevailing Wage Law to allege a specific violation by a specific contractor or subcontractor. The complaint must be in writing on a form furnished by the Director and must include sufficient evidence to justify the complaint. If the



complaint fails to allege a specific violation or if it lacks sufficient evidence to justify the complaint, the Director is prohibited from investigating the complaint under the act.

Third, the act increases the time in which the Director has to make a determination concerning an interested party's complaint before the interested party can file a complaint in court. Formerly, an interested party could file a complaint in court alleging a violation of the Prevailing Wage Law if the Director failed to rule on the merits of the complaint within 60 days after the complaint was filed. The act requires instead that the Director or the designated representative investigating the complaint conclude the investigation and make a determination not later than 120 days after the complaint is filed. The Director or the designated representative can take up to an additional 90 days to conclude the investigation and make a determination if the parties to the complaint are given notice of the extension before the initial 120-day period expires. The Director or the designated representative can take more time than that if the Director, or the designated representative, and all parties to the complaint agree to a different time frame. After the permissible time expires, the interested party can file a complaint in court as permitted under continuing law.

Liability for failure to comply with the Prevailing Wage Law

(R.C. 4115.10 and 4115.13)

The act limits contractors' and subcontractors' liability for violations of the Prevailing Wage Law in two particular instances. First, the act provides that no contractor or subcontractor is responsible for paying the penalties resulting from an underpayment of wages by its subcontractor, if the contractor or subcontractor has made a good faith effort to ensure that its subcontractor complied with the prevailing wage requirements. Second, the act exempts from any further proceedings under the Prevailing Wage Law a contractor or subcontractor whose underpayment to an employee is less than \$1,000, if the contractor or subcontractor makes full restitution to the affected employee.

Prevailing wage funds

(R.C. 4115.10 and 4115.101; Section 512.70)

The act abolishes the Penalty Enforcement Fund and requires the Director of Budget and Management to transfer any funds remaining in the Penalty Enforcement Fund on July 1, 2011, to the Labor Operating Fund. The Director of Commerce is required, under the act, to deposit all moneys received from prevailing wage penalties into the Labor Operating Fund, instead of the Penalty Enforcement Fund as was required previously.



The act requires the Director of Commerce, if the Director determines that any funds in the Prevailing Wage Custodial Fund are not returnable to employees, to certify to the Treasurer of State the amount of the funds that are not returnable. The Treasurer of State is required, upon the receipt of such a certification, to transfer the certified amount of the funds from the Prevailing Wage Custodial Fund to the Labor Operating Fund.

The Real Estate Brokers Law

Ohio Real Estate Commission

Limit on number of terms

(R.C. 4735.03)

The act prohibits a member of the Ohio Real Estate Commission from holding office for more than two consecutive full terms, while former law allowed a member of the Commission to hold office indefinitely.

Adoption of rules

(R.C. 4735.10 and 4735.59)

The act allows the Commission to adopt rules for the clarification of the activities that require a license under the Real Estate Brokers Law in addition to the other provisions of continuing law.

The act requires the Commission to adopt rules specifying standards for the approval of the ten hour post-licensure courses required for newly licensed real estate brokers and real estate salespersons as discussed below in "**Education requirements.**" Former law required the Commission to adopt rules specifying standards for the approval of courses of study required for licenses, or offered in preparation for license examinations, or required as continuing education for licenses.

The act permits the Real Estate Commission to adopt rules in accordance with the Administrative Procedure Act to require disclosures when a licensee terminates an agency relationship and becomes a principal in the transaction.

Commission orders

(R.C. 4735.19)

The act changes the procedure that the Real Estate Commission uses regarding the reversal, vacation, or modification of its own orders. Upon application of an interested party, or upon its own motion and notice to the interested parties, the act



permits the Commission to hold a hearing to consider reversing, vacating, or modifying an order. Former law permitted the Commission to reverse, vacate, or modify its own orders but did not authorize holding a hearing. The act requires an application to be filed with the Division within 15 days after the mailing of the notice of the commission to the interested parties, just as required under continuing law. The act allows any applicant or respondent dissatisfied with an order of the Commission to appeal in accordance with the Administrative Procedure Act. Former law allowed any applicant, licensee, or complainant, who was dissatisfied with an order to appeal.

The act also authorizes the Commission to adopt rules regulating when an interested party may request reconsideration.

Superintendent of Real Estate and Professional Licensing

(R.C. 4735.05 and 4735.14)

The act allows the Superintendent of Real Estate and Professional Licensing to issue advisory letters in conjunction with the enforcement of the Real Estate Brokers Law in lieu of initiating disciplinary action or issuing a citation under former law.

The act requires the Superintendent to appoint a hearing examiner for any proceeding involving disciplinary action that may lead to a civil penalty. This requirement is in addition to the provision in continuing law that requires the Superintendent to appoint an examiner for other disciplinary action proceedings.

With regard to licensing, the act requires that the notice be mailed to the personal residence address of each broker or salesperson, or if the licensee is a partnership, association, limited liability company, limited liability partnership, or corporation, to the brokerage's business address that is on file with the Division. Former law required the Superintendent to send the notice to the most current address as filed with the Superintendent by the licensee two months prior to the filing deadline. Under the act, a licensee cannot renew the license any earlier than two months prior to the filing deadline.

The act requires the Superintendent to make notice of successful renewal available electronically to licensees as soon as practicable, but not later than 30 days after receipt by the Division of Real Estate and Professional Licensing of a complete application and renewal fee.



Licensing

Licensing periods

(R.C. 4735.06 and 4735.09)

Under the act, the initial licensing period for a real estate broker's license or real estate salesperson's license begins at the time the license is issued and ends on the applicant's first birthday thereafter, unless the applicant for a real estate broker's license was an inactive or active salesperson immediately preceding application for a broker's license. In that case, the initial licensing period begins at the time the license is issued and ends on the date the licensee's continuing education is due, as set when the applicant was a salesperson. Former law was silent on the initial licensing period.

Placing of broker's licenses on deposit

(R.C. 4735.10)

The act changes the terminology of former law regarding brokers who place their licenses on deposit to become salespersons. The act refers to this as placing a license "in an inactive status" instead of "on deposit." Continuing law allows the Commission to adopt reasonable rules in accordance with the Administrative Procedure Act, necessary for implementing the provisions of the Real Estate Brokers Law relating, but not limited to, this approval.

Education requirements

(R.C. 4735.07 and 4735.09)

The act requires real estate brokers and salespersons to complete, within 12 months of licensure, ten hours of classroom instruction in schools, seminars, or educational institutions that are approved by the Real Estate Commission, instead of requiring licensees to complete the hours at an institution of higher education or other institution. The act removes the requirement that a broker's instruction include issues in managing a real estate company or office and that a salesperson's instruction cover current issues regarding consumers, real estate practice, ethics, and real estate law, and instead requires the Commission to approve the curriculum and providers of the courses.

The act explicitly states that a broker or salesperson licensee may not begin taking instruction to fulfill the ten-hour requirement mentioned above until the date the license is issued to the licensee. Former law was silent on when a licensee could begin instruction.

The act extends to all salesperson license applicants the requirement that a person who has not been licensed as a broker or salesperson within a four-year period preceding a current application must have successfully completed a pre-licensure classroom instruction within a ten-year period preceding the application. Former law required this only for salesperson license applicants who began instruction prior to August 1, 2001.

The act removes the specific education requirements for applicants for a salesperson's license who began instruction prior to August 1, 2001, and makes the requirements the same for all salesperson's license applicants.

Failure to comply with education requirements

(R.C. 4735.14 and 4735.141)

If the continuing education requirements are not met by an existing licensee within the periods specified, continuing law requires the licensee's license to be suspended automatically. The act specifies that the Superintendent's manner of notification of the license suspension be sent by regular mail to the personal residence address of the licensee that is on file with the Division of Real Estate and Professional Licensing.

Continuing law requires that if the license of a real estate broker is suspended for failure to comply with the continuing education requirements, the license of a real estate salesperson associated with that broker correspondingly is suspended. The act requires a sole broker to notify an affiliated salesperson of a suspension for failure to meet the continuing education requirements in writing within three days of receiving the notice described above.

Under the act, a salesperson whose license is suspended due to association with a broker who failed to comply with the continuing education requirements may have the license reactivated if either of the following occurs:

(1) The associated broker subsequently submits proof to the Superintendent that the broker has complied with the continuing education requirements and requests that the broker's license be reactivated, and the Superintendent reactivates the license.

(2) The salesperson submits an application to leave the association of a suspended broker to associate with a different broker.

In the case of (2) above, the suspended license of the salesperson must be reactivated for no fee. The Superintendent may process the application for reactivation regardless of whether the licensee's license is returned to the Superintendent.



The act requires any licensee whose license is reactivated, including a salesperson who continues to be associated with a previously suspended broker or who leaves the association of the suspended broker, to comply with the continuing education requirements and to otherwise be in compliance with the Real Estate Brokers Law. Former law required a licensee who continued to be associated with a previously suspended broker to comply with the continuing education requirements and be in compliance with the Law.

If a licensee fails to comply with the continuing education requirements for existing licensees, the act prohibits the Superintendent from renewing the licensee's license, and requires the licensee to pay the penalty fee provided for under continuing law, which is 50% of the renewal fee.

The act removes the requirement that a salesperson who has a license reactivated submit proof of completing 30 hours of continuing education, and instead requires a licensee to submit proof of completion of the required continuing education with the licensee's notice of renewal, submitted in the manner provided by the Superintendent. Former law required proof satisfactory to be submitted to the Superintendent as prescribed by the Ohio Real Estate Commission or on or before the third year following the licensee's birthday occurring immediately after reactivation for any person whose license was reactivated after failing to meet the continuing education requirements.

Members of the armed forces

(R.C. 4735.13)

Continuing law allows a licensee who enters the armed forces to place a license on deposit with the Commission. The act allows such a licensee, who fails to meet the continuing education requirements because the licensee is in the armed forces, an extension to complete the requirements within 12 months after the licensee's first birthday after discharge. Former law required that the requirements be completed within 12 months of the licensee's discharge.

The act changes who must notify the licensee of the licensee's obligations under the continuing education requirements at the time the licensee applies for reactivation of the licensee's license after discharge. The act requires the Superintendent of Real Estate and Professional Licensing to notify the licensee, as opposed to the Commission, as under former law.



Disabled licensees

(R.C. 4735.141)

The act permits an extension to satisfactorily complete the required 30 hours of continuing education for any licensee who is a disabled licensee at any time during the last three months of the third year of the continuing education reporting period, instead of for "physically handicapped" licensees as under former law. The act specifies that the length of the extension will be determined by the Superintendent.

Fees

Nonrefundable fees

(R.C. 4735.06, 4735.09, and 4735.15)

The act makes the application, reactivation, or transfer fee for a real estate broker's license and a real estate salesperson's license nonrefundable. Former law provided that if an applicant for a broker's or salesperson's license was not admitted and a waiver was not involved, one-half of the application fee would be retained by the Superintendent to cover the expenses of processing the application and the other half would be returned to the applicant.

Unpaid checks or draft instruments

(R.C. 4735.182)

If a check or other draft instrument used to pay any fee required by the Real Estate Brokers Law is returned to the Superintendent unpaid by the financial institution upon which it is drawn for any reason, the act requires the Superintendent to notify the entity or person that the check or other draft instrument was returned for insufficient funds. Former law applies these provisions to checks or draft instruments returned due to insufficient funds, as opposed to checks or drafts unpaid by the financial institutions upon which they are drawn for any reason.

Additionally, if the check or draft instrument was submitted by a licensee, continuing law requires the Superintendent to notify the licensee that the licensee's license will be suspended unless the licensee, within 15 days after the mailing of the notice, resubmits the fee and an additional \$100 fee to the Superintendent. If the licensee does not submit both fees within that time period, or if any check or other draft instrument used to pay either of those fees is returned to the Superintendent unpaid by the financial institution upon which it is drawn for any reason, the license must be suspended immediately without a hearing and the licensee must cease activity as a licensee under the Real Estate Brokers Law. The act extends the requirement for the



resubmission fee and the additional \$100 fee to a person or entity applying to qualify foreign real estate or renew a property registration, to an applicant for licensure, and to an education course provider or course provider applicant. Former law was silent in these cases.

If a person or entity fails to submit both fees within 15 days after the mailing of the notice or if any check or other draft instrument used to pay either of those fees is returned to the Superintendent unpaid by the financial institution upon which it is drawn for any reason, then the following apply:

(1) If the check or draft instrument is remitted by a person or entity applying to qualify foreign real estate or renew a property registration, the property registration will be suspended immediately without a hearing and the applicant must cease activity as a licensee.

(2) If the check or draft instrument is remitted by an applicant for licensure, the application will automatically be denied or approval withdrawn.

(3) If the check or draft instrument is remitted by an education course provider or course provider applicant, the application will be denied or approval withdrawn.

Operating and education and research funds

(R.C. 4735.06 and 4735.211)

If the Director of Commerce determines that funds in the Division of Real Estate Operating Fund are in excess of those necessary to fund all the expenses of the Division in any biennium, the act permits the Director to pay the excess funds to the Real Estate Education and Research Fund. Former law required the Director to pay the excess funds to the Real Estate Education and Research Fund.

The act increases the limit for Real Estate Education and Research Fund moneys that may be used to advance loans from \$800, as in former law, to \$2,000. These loans are to applicants for salesperson licenses to defray the costs of satisfying the educational requirements of obtaining a license.

Licensee duties

Notification of misconduct

(R.C. 4735.13)

The act adds to the types of misconduct of which a broker or salesperson licensee must notify the Superintendent within 15 days and requires the notification to be in



writing. If a licensee is the subject of an order by the Department of Commerce, Department of Insurance, or the Department of Agriculture revoking or permanently surrendering any professional license, certificate, or registration or if the licensee is the subject of an order by any government agency concerning real estate, financial matters, or the performance of fiduciary duties with respect to any license, certificate, or registration, in addition to the misconduct described in continuing law, the act requires the licensee to notify the Superintendent.

If a licensee fails to notify the Superintendent of misconduct within the required time, the act allows the Superintendent to suspend the license of the licensee instead of revoking the license, as allowed under former law.

Business location

(R.C. 4735.13, 4735.16, and 4735.17)

The act stipulates that a post office box is not a definite place of business for purposes of the continuing requirement that every licensed real estate broker has and maintain a definite place of business in Ohio.

In the case of a change of business location, the act requires a broker to give notice to the Superintendent on a form prescribed by the Superintendent within 30 days after the change of location. Former law only required that the broker give notice in writing to the Superintendent and was silent on the time frame.

The act moves the requirement that every real estate broker licensed under the Real Estate Brokers Law must have and maintain a definite place of business in Ohio. Continuing law requires a real estate broker to prominently display the broker's license in the office or place of business of the broker.

Licensees as members and officers of entities

(R.C. 4735.13)

The act requires a licensed real estate broker who is a member or officer of a partnership, association, limited liability company, limited liability corporation, or corporation to only act as a broker for the entity. Former law prohibited a licensed real estate broker from performing any acts other than as the agent of the entity. The act removes former law's prohibition against the broker having any real estate salespersons associated with the broker.

Agency disclosure statements

(R.C. 4735.58)

The act requires a licensee who is a purchaser's agent or a seller's subagent working with a purchaser to indicate the accurate agency relationship on the agency disclosure statement required by continuing law.

Termination of duties

(R.C. 4735.74)

The act creates an exemption to continuing law's provision requiring a licensee to maintain confidentiality after the termination of duties. The act permits the licensee to disclose confidential information received during the course of the transaction if the disclosure is regarding sales information requested by a registered appraiser assistant or a licensed or certified appraiser for the purposes of performing an appraisal. The act bars any cause of action against a licensee for releasing information for this reason.

Advertising

(R.C. 4735.16)

The act changes former law's advertising requirements by removing the requirement that a broker or salesperson indicate in an advertisement that the licensee is a broker or salesperson and by requiring different information in advertisements based on whether a real estate broker or salesperson owns or does not own the property being advertised. The act requires any licensed real estate broker or salesperson who advertises to buy, sell, exchange, or lease real estate, or to engage in any act regulated by the Real Estate Brokers Law, with respect to property the licensee does not own, to be identified in an advertisement by name and to indicate the name of the brokerage with which the licensee is affiliated. With respect to property that the licensee owns, the act requires the licensed real estate broker or salesperson to be identified in the advertisement by name and indicate that the property is agent-owned. If the property is listed with a real estate brokerage, the advertisement must also indicate the name of the brokerage with which the property is listed. In both situations, the brokerage name must be displayed in equal prominence with the name of the salesperson in the advertisement.

The act defines "brokerage" for purposes of the advertising requirements to mean the name under which the real estate company or sole broker is doing business, or if the real estate company or sole broker does not use such a name, the name of the real estate company or sole broker as licensed.

Former law required licensed brokers and salespersons, whether or not they owned the property being sold, exchanged, or leased, to be identified by name in the advertisement and to indicate that the licensee was a broker or salesperson. Additionally, except for a salesperson who advertised the sale, exchange, or lease of real estate that the salesperson owned and that was not listed for sale, exchange, or lease with a broker, a salesperson who advertised was required to also indicate the name of the broker under whom the salesperson was licensed and the fact that the salesperson's broker was a broker.

Agency agreements

(R.C. 4735.55)

The act specifies that each written agency agreement must contain a statement that it is illegal pursuant to the Federal Housing Law, *as amended*, to refuse to make certain housing actions based on protected classes. Former law required the statement to express that it is illegal pursuant to the Federal Fair Housing Law to make certain housing actions based on protected classes.

Similarly, the act specifies that each written agency agreement must contain a copy of the U.S. Department of Housing and Urban Development (HUD) equal housing opportunity logotype, *as amended*. Former law required an agreement to contain a copy of the HUD equal opportunity logotype.

Compliance with federal law

(R.C. 4735.62)

The act requires a licensee, in the licensee's fiduciary capacity, to use best efforts to further the interest of a client by complying with the Federal Fair Housing Law, *as amended*, in addition to the other requirements contained in continuing law. Former law required the licensee to comply with the Federal Fair Housing Law.

Prohibitions

(R.C. 4735.21 and 4735.71)

Continuing law prohibits a real estate salesperson or foreign real estate salesperson from collecting any money in connection with any real estate or foreign real estate brokerage transaction, whether as a commission, deposit, payment, rental, or otherwise, except in the name of and with the consent of the licensed real estate broker or licensed foreign real estate dealer under whom the salesperson is licensed. The act adds the specification that the broker or dealer under whom the salesperson was

licensed at the time the salesperson earned the commission must be the broker or dealer who consents.

The act also prohibits a salesperson licensed under the Real Estate Brokers Law from selling, assigning, or otherwise transferring the salesperson's interest in a commission or any portion thereof to an unlicensed person or entity. If the salesperson does make such a prohibited assignment or transfer, the broker is prohibited from paying the transferee or assignee any portion of the commission. The act prohibits a cause of action against a broker for not paying an assignee or transferee any portion of the assignment or transfer.

The act prohibits a salesperson or broker licensed under the Real Estate Brokers Law from participating in a dual agency relationship in which the licensee is a party to the transaction, either personally or as an officer or member of a partnership, association, limited liability company, limited liability partnership, or corporation that has an interest in the real property that is the subject of the transaction or an entity that has an intention of purchasing, leasing, or exchanging the real property. This is in addition to the provisions in continuing law that generally prohibit a licensee or brokerage from participating in a dual agency relationship unless the seller and the purchaser have full knowledge of the representation and that prohibit a brokerage from participating in such a relationship unless the brokerage establishes a procedure regarding confidential information and each licensee to fulfill the licensee's duties exclusively to the licensee's client.

Complaints and investigation procedure

(R.C. 4735.05 and 4735.052)

The act prohibits the Superintendent from initiating an investigation of a violation for a person who held a license on voluntary hold or a suspended or inactive license under the Real Estate Brokers Law on the date of the alleged violation. Former law prohibited the Superintendent from investigating any person who held a valid license under the Real Estate Brokers Law any time during the 12 months preceding the date of the alleged violation.

The act lengthens the time, to 14 business days, within which the Superintendent must send a written notice, by regular mail, to a party who is the subject of an investigation if the Superintendent determines there exists reasonable evidence of a violation after an investigation. Former law required the Superintendent to mail the notice within seven business days.

The act removes former law's requirement that the notice required above inform the party that a hearing concerning the alleged violation be held at the next regularly



scheduled meeting of the Real Estate Commission, that the notice contain a statement giving the date and place of that meeting, and that the notice contain a statement informing the party that the party or party's attorney may appear in person, present evidence, examine witnesses, or submit written testimony. Instead, the act requires the hearing to be held upon the party's request, before a hearing examiner pursuant to the Administrative Procedure Act.

The act requires the hearing examiner to file a report of findings of fact and conclusions of law with the Superintendent, the Commission, the complainant, and the parties after the conclusion of formal hearings. The act allows the parties and the Division to file written objections to the report within 20 days of receipt of the copy of the written report of findings of fact and conclusions of law. The act requires the Commission to consider the objections before approving, modifying, or disapproving the report.

The act requires the Commission to review the hearing examiner's report at the next regularly scheduled Commission meeting, which must be held at least 20 business days after receipt of the hearing examiner's report. At that meeting, the Commission must hear the testimony of the complainant or the parties. If the violation relates to acting as a real estate salesperson or broker without a license, the Commission must decide whether to impose disciplinary sanctions upon a party for that violation.

The act requires the Commission to keep a record, rather than a transcript, of the hearing.

The act requires civil penalties collected as disciplinary sanctions from a party for a violation to be deposited in the Real Estate Operating Fund instead of the Real Estate Recovery Fund, as former law required.

The act allows the Superintendent to reserve the right to bring a civil action against a party that fails to pay a civil penalty for breach of contract in any court of competent jurisdiction.

Disciplinary action

Licensees

(R.C. 4735.18 and 4735.181)

The act makes permissive the imposition of disciplinary sanctions on any licensee who, in the licensee's capacity as a broker or salesperson, or in the handling of the licensee's own property, is found guilty of engaging in misconduct as specified in continuing and new law (disciplinary sanctions remain mandatory for felonies or



crimes of moral turpitude). Former law required disciplinary sanctions to be mandatory for the misconduct.

In addition to the types of misconduct listed in continuing law, the act allows the imposition of disciplinary sanctions for a licensee who is found guilty of any of the following:

(1) Advertising any property offering it for sale or for rent without the consent of the owner or an authorized agent (in addition to having placed a sign on the property as under ongoing law);

(2) Having an unsatisfied lien in any court of record against the licensee arising out of the licensee's conduct as a broker or salesperson;

(3) Failing to comply with the provisions relating to earnest money in the Real Estate Brokers Law.

The act removes the requirement in former law that the Commission immediately notify the Real Estate Appraiser Board of any disciplinary action taken against a licensee who also is a state certified real estate appraiser under the Real Estate Appraiser Law.

The act removes the reference to the complaint investigation section of the Real Estate Brokers Law that requires the Ohio Real Estate Commission, when imposing disciplinary sanctions on a licensee, to act pursuant to that section.

The act prohibits any broker or salesperson from failing to comply with requirements regarding change of address notification and maintenance of salesperson licenses by brokers. This prohibition is in addition to those in continuing law, which prohibit any broker or salesperson from failing to comply with requirements regarding agency agreements, brokerage policies on agency, and agency disclosure statements. Continuing law permits the Superintendent to initiate disciplinary action against a licensee or to serve a citation and impose sanctions upon a licensee who violates the prohibitions.

Unlicensed persons or entities

(R.C. 4735.32)

The act permits the Commission to commence an investigation and take disciplinary action that relates to unlicensed persons and entities in addition to licensees.



Compensation for brokers and foreign real estate dealers

(R.C. 4735.20)

The act expands the exemption that allows licensed real estate brokers or licensed foreign real estate dealers to pay or receive a commission to a broker or dealer of another state, to also include a broker or dealer of another country. This payment must be done in accordance with rules adopted by the Commission.

Liability limitation based on imputed knowledge

(R.C. 4735.68)

The act prohibits a cause of action against a broker or affiliated or past licensee based on imputed knowledge of any defect, adverse condition, or repair in real property or failure to disclose such information. This is in addition to continuing law's limitations on liability for a licensee whose client provided false information or a client who made a misrepresentation unless the licensee or client had actual knowledge of such false information or misrepresentation, or the licensee acted with reckless disregard for the truth.

Definitions

(R.C. 4735.01)

The act changes all occurrences in the Real Estate Brokers Law of "physically handicapped" to "disabled" and changes the definition of "disabled licensee" (formerly "physically handicapped licensee") to include a person who is under a severe disability, instead of a severe physical disability, that prevents the person from being able to attend any instruction lasting at least three hours in duration.

The act limits or changes the exclusion of persons from the definitions of "real estate broker," "real estate salesperson," "foreign real estate dealer," and "foreign real estate salesperson." Under former law, the terms "real estate broker," "real estate salesperson," "foreign real estate dealer," and "foreign real estate salesperson" did not include a person, partnership, association, limited liability company, limited liability partnership, or corporation, or the regular employees thereof, who perform any of the acts or transactions specified in the Real Estate Brokers Law, whether or not for, or with the intention, in expectation, or upon the promise of receiving or collecting a fee, commission, or other valuable consideration:

(1) With reference to real estate situated in this state or any interest in it owned by such person, partnership, association, limited liability company, limited liability



partnership, or corporation, or acquired on its own account in the regular course of, or as an incident to the management of the property and the investment in it;

(2) As receiver or trustee in bankruptcy, as guardian, executor, administrator, trustee, assignee, commissioner, or any person doing the things mentioned in the Real Estate Brokers Law, under authority or appointment of, or incident to a proceeding in, any court, or as a public officer, or as executor, trustee, or other bona fide fiduciary under any trust agreement, deed of trust, will, or other instrument creating a like bona fide fiduciary obligation;

(3) As a person who engages in the brokering of the sale of business assets, not including the negotiation of the sale, lease exchange, or assignment of any interest in real estate;

(4) Various other specifications unchanged by the act.

The act changes (1) above and applies with reference to real estate situated in this state and removes the provision relating to any interest in real estate situated in this state.

The act changes (2) above and requires that the public officer be a "bona fide" public officer and that the trust agreement, deed of trust, will, or other instrument creating a like bona fide fiduciary obligation be executed in good faith. The act defines bona fide as made in good faith or without purpose of circumventing license law.

The act changes (3) above and instead of not including the negotiation of the sale, lease, exchange, or assignment of any interest in real estate, does not include the actual sale, lease, exchange, or assignment of any interest in real estate.

The act limits the exemption of persons, partnerships, associations, limited liability companies, limited liability partnerships, or corporations as provided in (1) above by the legal interest in the real estate held by that person or entity to performing any of the acts or transactions specified in or comprehended by the Real Estate Brokers Law.

Other changes

(R.C. 4735.02, 4735.09, 4735.10, 4735.142, and 4735.32)

The act makes other non-substantive changes to the Real Estate Broker's Law.



Liquor Control Fund

(R.C. 4301.12)

The act authorizes revenue resulting from any contracts with the Department of Commerce pertaining to the responsibilities and operations described in the Liquor Control Law to be credited to the continuing Liquor Control Fund.³⁰ In addition, if the Director of Budget and Management determines that the amount in the Fund is insufficient, the Director may transfer money from the General Revenue Fund to the Liquor Control Fund. Under continuing law, the Liquor Control Fund generally consists of money from the sales of spirituous liquor, application fees for liquor licenses, and fines levied under the liquor control laws.³¹ Money in the Fund may be used for specified purposes related to those laws.

Transfer of spirituous liquor distribution system to JobsOhio

(R.C. 4301.12, 4313.01, and 4313.02)

Overview

The act authorizes the state to transfer to JobsOhio all or a portion of the spirituous liquor distribution system for a transfer price payable by JobsOhio to the state. It requires any such transfer to be treated as an absolute conveyance and true sale of the interest in the spirituous liquor distribution system. Any such transfer that is a lease or grant of a franchise must be for a term not to exceed 25 years or that is an assignment and sale, conveyance, or other transfer must contain a provision that the state has the option to have conveyed or transferred back to it, at no cost, the system no later than 25 years after the original transfer was authorized. Finally, the act authorizes the proceeds of any transfer to be expended as provided in the transfer agreement for specified purposes.

Transfer of system

Under the act, the state may enter into an agreement with JobsOhio to transfer all or a portion of the enterprise acquisition project for a transfer price payable by JobsOhio to the state. "Enterprise acquisition project" means, as applicable, all or any portion of the capital or other assets of the spirituous liquor distribution and merchandising

³⁰ It is unclear to what contracts the act refers in the provision concerning revenue resulting from any contracts with the Department of Commerce pertaining to the responsibilities and operations described in the Liquor Control Law that is to be credited to the Liquor Control Fund.

³¹ It is unclear whether the Liquor Control Fund will receive money from sales of spirituous liquor due to the transfer of the profits from spirituous liquor sales to JobsOhio under the act (see below).



operations of the Division of Liquor Control, including inventory, real property rights, equipment, furnishings, the spirituous liquor distribution system including transportation, the monetary management system, warehouses, contract rights, rights to take assignment of contracts and related receipts and revenues, accounts receivable, the exclusive right to manage and control spirituous liquor distribution and merchandising and to sell spirituous liquor in the state subject to the control of the Division of Liquor Control pursuant to the terms of the transfer agreement, and all necessary appurtenances thereto, or leasehold interests therein, and the assets and liabilities of the continuing Facilities Establishment Fund. "Transfer" means an assignment and sale, conveyance, granting of a franchise, lease, or transfer of all or an interest.³²

Any transfer of the enterprise acquisition project must be treated as an absolute conveyance and true sale of the interest in the enterprise acquisition project purported to be conveyed for all purposes and not as a pledge or other security interest. The characterization of any such transfer as a true sale and absolute conveyance cannot be negated or adversely affected by any of the following:

- (1) The acquisition or retention by the state of a residual or reversionary interest in the enterprise acquisition project;
- (2) The participation of any state officer or employee as a member or officer of, or contracting for staff support to, JobsOhio or any subsidiary of JobsOhio;
- (3) Any regulatory responsibility of an officer or employee of the state, including the authority to collect amounts to be received in connection therewith; or
- (4) The retention of the state of any legal title to or interest in any portion of the enterprise acquisition project for the purpose of regulatory activities, or any characterization of JobsOhio or obligations of JobsOhio under accounting, taxation, or securities regulations, or any other reason whatsoever.

The act states that an absolute conveyance and true sale or lease exist regardless of whether JobsOhio has any recourse against the state or the treatment or characterization of the transfer as a financing for any purpose. Upon and following the transfer, the state cannot have any right, title, or interest in the enterprise acquisition project other than any residual interest that may be described in the transfer agreement regarding the term of the transfer and the rental or lease of the project (see below). The fair market value of the enterprise acquisition project in the transfer agreement must be conclusive and binding on the state and JobsOhio.

³² It is unclear what is intended by "all or an interest."

Any transfer of the enterprise acquisition project that is a lease or grant of a franchise must be for a term not to exceed 25 years. Any transfer of the enterprise acquisition project that is an assignment and sale, conveyance, or other transfer must contain a provision that the state must have the option to have conveyed or transferred back to it, at no cost, the enterprise acquisition project, as it then exists, no later than 25 years after the original transfer authorized in the transfer agreement on such other terms as must be provided in the transfer agreement.

Exemption from taxes

The act states that the exercise of the powers granted by the act's provisions governing the transfer will be for the benefit of the people of Ohio. All or any portion of the enterprise acquisition project transferred pursuant to the transfer agreement that would be exempt from real property taxes or assessments or real property taxes or assessments in the absence of the transfer must, as it may from time to time exist thereafter, remain exempt from real property taxes or assessments levied by the state and its subdivisions to the same extent as if not transferred. The gross receipts and income of JobsOhio derived from the enterprise acquisition project must be exempt from taxation levied by the state and its subdivisions, including, but not limited to, the municipal and state income, sales, use and storage, and commercial activity taxes levied pursuant to continuing law. Any transfer from the state to JobsOhio of the enterprise acquisition project, or item included or to be included in the project, must be exempt from the sales and use and storage taxes levied pursuant to ongoing law.

Proceeds of transfer

Under the act, the proceeds of any transfer may be expended as provided in the transfer agreement for one or more of the following purposes:

(1) Funding, payment, or defeasance of outstanding bonds issued pursuant to the laws governing various state and local capital improvements and economic development and secured by pledged liquor profits. "Pledged liquor profits," by reference to the Public Facilities Commission Law, means all receipts of the state representing the gross profit on the sale of spirituous liquor after paying all costs and expenses of the Division of Liquor Control and providing an adequate working capital reserve for the Division as provided in continuing law, but excluding the sum required by the law that was in effect on May 2, 1980, that required \$2.25 for each gallon of spirituous liquor sold by the state to be credited to the General Revenue Fund.

(2) Deposit into the General Revenue Fund;

(3) Deposit into all of the following continuing funds: Clean Ohio Revitalization Fund, Innovation Ohio Loan Fund, Research and Development Loan Fund, Logistics



and Distribution Infrastructure Fund, Advanced Energy Research and Development Fund, and Advanced Energy Research and Development Taxable Fund;

(4) Conveyance to JobsOhio for the purposes for which it was created.

Spirituos liquor revenue

The act specifies that a sum equal to \$3.38 for each gallon of spirituous liquor sold by the Division of Liquor Control, JobsOhio, or a designee of JobsOhio, rather than only the Division under law revised by the act, during the period covered by specified payments to the Treasurer of State under ongoing law must be paid into the state treasury to the credit of the General Revenue Fund.

Other provisions

The act allows the state to covenant, pledge, and agree in the transfer agreement, with and for the benefit of JobsOhio, that it must maintain statutory authority for the enterprise acquisition project and the revenues of the project and not otherwise materially impair any obligations supported by a pledge of revenues of the project. The transfer agreement may provide or authorize the manner for determining material impairment of the security for any such outstanding obligations, including by assessing and evaluating the revenues of the enterprise acquisition project.

The Director of Budget and Management, in consultation with the Director of Commerce, may, without need for any other approval, negotiate terms of any documents, including the transfer agreement, necessary to effect the transfer and the acceptance of the transfer of the enterprise acquisition project. The Director of Budget and Management and the Director of Commerce must execute the transfer agreement on behalf of the state. The Director of Budget and Management also, without need for any other approval, may retain or contract for the services of specified persons such as financial advisers to effect the transfer agreement. Any transfer agreement may contain terms and conditions established by the state to carry out and effectuate the transfer, including covenants binding the state in favor of JobsOhio. The transfer agreement must be sufficient to effectuate the transfer without regard to any other laws governing other property sales or financial transactions by the state. The Director of Budget and Management may create any funds or accounts, within or without the state treasury, as are needed for the transactions and activities authorized by the act's provisions governing the transfer.

Under the act, the transfer agreement may authorize JobsOhio, in the ordinary course of doing business, to convey, lease, release, or otherwise dispose of any regular inventory or tangible personal property. Ownership of the interest in the enterprise acquisition project that is transferred to JobsOhio and the transfer agreement must be



maintained in JobsOhio or a nonprofit entity the sole member of which is JobsOhio until the enterprise acquisition project is transferred back to the state pursuant to the act (see above for a discussion of the project's conveyance back to the state; see below for a discussion of the rental or lease of the enterprise acquisition project).

The transfer agreement may authorize JobsOhio to fix, alter, and collect rentals and other charges for the use and occupancy of all or any portion of the enterprise acquisition project. The agreement also may authorize JobsOhio to lease any portion of the enterprise acquisition project to the state and must include a contract with, or the granting of an option to, the state to have the project, as it then exists, transferred back to it without charge in accordance with the terms of the transfer agreement after retirement or redemption, or provision for that retirement or redemption, of all obligations supported by a pledge of spirituous liquor profits. "Spirituous liquor profits" means all receipts representing the gross profit on the sale of spirituous liquor less the costs, expenses, and working capital provided for therein, but excluding the sum required by the law that was in effect on May 2, 1980, that required \$2.25 for each gallon of spirituous liquor sold by the state to be paid into the General Revenue Fund, provided that from and after the initial transfer of the enterprise acquisition project to JobsOhio and until the transfer back to the state under the act, the reference in provisions governing the gross profit on the sale of spirituous liquor to all costs and expenses of the Division and also an adequate working capital reserve for the Division must be to all costs and expenses of JobsOhio and providing an adequate working capital reserve for JobsOhio.

JobsOhio, the Director of Budget and Management, and the Director of Commerce must, subject to the approval of the Controlling Board, enter into a contract, which may be part of the transfer agreement, for the continuing operation by the Division of Liquor Control of spirituous liquor distribution and merchandising subject to standards for performance provided in that contract that may relate to the act's provisions governing the transfer agreement and the impairment of obligations supported by pledged revenues. The contract must establish other terms and conditions for the assignment of duties to, and the provision of advice, services, and other assistance by, the Division of Liquor Control to JobsOhio. The terms and conditions may include providing for the necessary staffing and payment by JobsOhio of appropriate compensation to the Division for the performance of those duties and the provision of such advice, services, and other assistance.

The act states that the Division of Liquor Control must manage and actively supervise the activities required or authorized under ongoing law establishing the powers and duties of the Division, including, but not limited to, controlling the traffic in beer and intoxicating liquor in the state and fixing the wholesale and retail prices at



which the various classes, varieties, and brands of spirituous liquor are sold by the Division.

The act requires the transfer agreement to require JobsOhio to pay for the operations of the Division of Liquor Control with regard to the Division's spirituous liquor merchandising operations. The payments from JobsOhio must be deposited into the state treasury to the credit of the continuing Liquor Control Fund.

Finally, the act requires the transaction regarding and transfer of the enterprise acquisition project to comply with all applicable provisions of the Ohio Constitution.

Residential Construction Advisory Committee membership

(R.C. 4740.14; Section 747.40)

Under prior law, all nine members of the Residential Construction Advisory Committee served parallel three-year terms. As a result, all members' terms concluded at the same time, requiring the Director of Commerce to either reappoint or appoint members to fill the entire committee every three years.

The act creates a staggered scheme by which only three members' terms expire in any given year. Beginning with terms to commence July 1, 2011, three members' terms will end on June 30, 2012, three members' terms will end on June 30, 2013, and three members' terms will end on June 30, 2014. The Director of Commerce will decide which members serve shortened terms, within the parameters specified in the act. After the staggered scheme is begun, all successive members will serve full three-year terms.

