
MISCELLANEOUS

COVID violations: expunge, refund fines, reinstate permits

- Vacates violations or sanctions imposed against businesses under certain COVID-related orders or rules.
- Requires state agencies and boards of health to expunge any record of a violation, and to treat any finding of a violation as a nullity.
- Returns to businesses money collected by a state agency or board of health in civil or administrative penalties for violations.
- Requires state agencies and boards of health to cease any disciplinary action against a business for violations occurring before the bill's effective date.
- Requires state agencies and boards of health to restore rights and privileges of a business lost as a result of a violation.
- Requires the Liquor Control Commission to reinstate a revoked liquor permit if certain conditions apply, including:
 - The permit has been revoked as a result of a violation of certain rules governing COVID-19 and disorderly conduct; and
 - The permit holder pays a fine of \$2,500.
- For each permit reinstated, requires the Commission to notify certain entities, including the liquor permit holder and the Division of Liquor Control.

Buy Ohio preference for personal protective equipment

- Requires state agencies to give preference to U.S. and Ohio products through the "competitive sealed bid process" when purchasing personal protective equipment with a purchase cost of less than \$50,000.

Open Meetings Law

- Extends until December 31, 2021, the temporary authorization for public bodies to meet via electronic technology.

State Teachers Retirement Board meetings

- Authorizes the State Teachers Retirement Board to adopt a permanent policy that allows Board members to attend Board meetings by means of teleconference or video conference.
- Requires, if the Board adopts the policy, that it require at least $\frac{1}{3}$ of the Board members be present in person where the meeting is being held for other members to attend by teleconference or video conference, and include the number of meetings that each Board member must attend in person.

- Permits a Board member attending a meeting via teleconference or video conference to be considered present in person at the meeting, to be counted for purposes of establishing a quorum, and to vote at the meeting.

COVID violations: expunge, refund fines, reinstate permits

(Sections 701.60 and 743.20)

The bill generally requires the expungement and refunding of fines in the case of a business¹¹¹ that violated any COVID-19-related order, rule, or directive issued by an elected state officer, a state agency, or a board of health.¹¹² It also requires state agencies and boards of health to restore rights and privileges of a business lost as a result of a violation, including reinstatement of licenses and permits. These provisions do not prohibit the enforcement of non-COVID-related matters.

Vacate and expunge violations

First, the bill vacates any violation (and any sanctions imposed in response to a violation) that occurred between March 14, 2020, and the bill's effective date. Any record of a violation must be expunged not later than 30 days after the bill takes effect.¹¹³

Reinstate rights and privileges

Elected state officers, state agencies, and boards of health must treat any finding of a violation as a nullity and take the steps within their power to restore, within 30 days, any rights

¹¹¹ Defined to mean a corporation, association, partnership, limited liability company, sole proprietorship, joint venture, or other business entity composed of one or more individuals, whether or not the entity is operated for profit.

¹¹² The bill specifically includes executive orders (or an order related to an executive order); state or local orders issued under R.C. Chapter 3701; emergency rules under the Administrative Procedure Act (R.C. 119.03(G) (including O.A.C. Rule 4301:1-1-13 (emergency suspension of sales of beer, wine, mixed beverages, and spirituous liquor for on-premises consumption) and O.A.C. Rule 4301:1-1-80 (limitation on hours for on-premises sales or consumption and expansion of sales of beer, wine, mixed beverages, and spirituous liquor for off-premises consumption))); but also generally applies to any order, rule, or directive of elected state officers, state agencies, and boards of health.

¹¹³ Not later than 60 days after the bill takes effect, the Liquor Control Commission must notify business owners that violations of these three rules were expunged: O.A.C. Rule 4301:1-1-13 (emergency suspension of sales of beer, wine, mixed beverages, and spirituous liquor for on-premises consumption), O.A.C. Rule 4301:1-1-80 (limitation on hours for on-premises sales or consumption and expansion of sales of beer, wine, mixed beverages, and spirituous liquor for off-premises consumption), and O.A.C. Rule 4301:1-1-52(B)(1) (prohibited activity-engaging in disorderly activities).

or privileges lost as a result of a finding of violation; the bill specifically includes “reinstatement of a revoked license and other right or privilege to do business.”

A separate provision of the bill requires the Liquor Control Commission to reinstate a liquor permit if:

1. The permit has been revoked as a result of a violation of certain rules governing COVID-19 and disorderly conduct;
2. The violation occurred between March 14, 2020, and the provision’s effective date; and
3. The permit holder pays a fine of \$2,500.

For each permit that has been reinstated, the Commission must notify the following:

1. The liquor permit holder whose permit is reinstated;
2. The Division of Liquor Control and the Investigative Unit of the Department of Public Safety. Following receipt of the notification, the Division and the Investigative Unit must delete any records of the revocation.
3. The General Assembly.

It is unclear if the general reinstatement requirement conflicts with the more specific provisions requiring payment of a \$2,500 fine to reinstate a liquor permit.

Cease disciplinary action

The bill requires elected state officers, state agencies, and boards of health to cease any disciplinary action against a business for violations occurring between March 14, 2020, and the bill’s effective date.

Refund civil and administrative fines

The bill generally requires elected state officers, state agencies, and local boards of health to refund any money collected in a civil or administrative penalty for a violation. Not later than 30 days after the bill takes effect, these amounts must be determined and refunded to businesses. A board of health refunds the money directly to each business. Elected state officers and state agencies must certify a list of businesses and amounts to the Director of Budget and Management, who then must issue the refunds to each business. If a business no longer exists, the OBM Director or the board of health must make a reasonable effort to locate, and issue the refund to, the owner.

The bill makes an exception in the case of a violation of one of these three rules:

- Ohio Administrative Code (O.A.C.) Rule 4301:1-1-13 (Emergency suspension of sales of beer, wine, mixed beverages, and spirituous liquor for on-premises consumption), which was in effect from April 7, 2020, to August 6, 2020;
- O.A.C. Rule 4301:1-1-80 (Limitation on hours for on-premises sales or consumption and expansion of sales of beer, wine, mixed beverages, and spirituous liquor for off-premises consumption), which was in effect from July 13, 2020, to November 29, 2020; and

- O.A.C. Rule 4301:1-1-52(B)(1) (Prohibited activity-engaging in disorderly activities), if enforced regarding COVID-19.

If a business violates one of these three rules, the business's fine is not refunded if a non-COVID-related conviction also was assessed at the time of adjudication.

Also regarding these three rules, the Liquor Control Commission must notify businesses that their violations were expunged and must report to the General Assembly about the expungements and the refunds, not later than 30 days after those actions are complete.

Venue for enforcement

Finally, the bill allows a business to bring an action to enforce these provisions in the county where the business is located.¹¹⁴

Buy Ohio preference for personal protective equipment

(R.C. 125.035 and 125.05)

The bill requires state agencies to give preference to U.S. and Ohio products through the "competitive sealed bid process" when purchasing personal protective equipment with a purchase cost of less than \$50,000. Under continuing law, purchases greater than \$50,000 generally already are subject to that process.

Under current law, a state agency may purchase, without competitive selection, any supplies or services that cost less than \$50,000. Before making the purchase, a state agency must comply with the first and second requisite procurement program. The process outlined in statute requires that a state agency submit a purchasing request to the Department of Administrative Services (DAS). DAS determines if the request can be fulfilled through a first or second requisite procurement programs such as the Ohio Penal Industries or Ohio Pharmacy Services at the Department of Mental Health and Addiction Services. If the request cannot be fulfilled in that manner, DAS provides a waiver and the agency may make the purchase without competitive selection.

The bill establishes an exemption to the above-described process for purchases of personal protective equipment. The agency still must comply with the first and second requisite procurement program. But, if the purchase cannot be filled in that manner, the purchase must be made in accordance with the criteria and procedures established by DAS for use by all state agencies in giving preference to U.S. and Ohio products. These criteria and procedures generally apply, under current law, to any purchases for an amount above \$50,000.

Under the bill, "personal protective equipment" means equipment worn to minimize exposure to hazards that cause workplace injuries and illnesses.

¹¹⁴ This does not include the provision under Section 743.20 of the bill, related to the reinstatement of liquor permits specifically.

Open Meetings Law

(Sections 610.115 and 610.116)

The bill extends until December 31, 2021, the temporary authorization for public bodies to meet via electronic technology. Under current law, this authorization expires on July 1, 2021.

H.B. 197 of the 133rd General Assembly authorized public bodies, during the state of emergency declared by Executive Order 2020-01D, but not beyond December 1, 2020, to hold and attend meetings and hearings by means of teleconference, video conference, or any other similar electronic technology. The act specified that if a public body holds a meeting or hearing under this authority: (1) any resolution, rule, or formal action of any kind has the same effect as if it had occurred during an open meeting or hearing of the public body, (2) members of a public body who attend meetings or hearings by means of teleconference, video conference, or any other similar electronic technology, must be considered present as if in person at the meeting or hearing, must be permitted to vote, and must be counted in determining whether a quorum is present, (3) public bodies must provide notice of the meetings or hearings to the public, and (4) the public body must provide the public access to the meeting or hearing commensurate with the method in which the meeting or hearing is being conducted.

H.B. 404 of the 133rd General Assembly extended this authority until July 1, 2021.

State Teachers Retirement Board meetings

(R.C. 3307.091)

The bill creates a permanent exception to the Open Meetings Law by allowing the State Teachers Retirement Board to adopt a policy that allows a Board member to attend a Board meeting by means of teleconference or video conference. A Board member who attends a meeting by teleconference or video conference is considered present in person at the meeting, may vote, and is counted for purposes of determining whether a quorum is present.

The Board must include in the policy, if adopted, the number of regular meetings at which each Board member must be present in person, provided that number is not less than $\frac{1}{2}$ of the regular Board meetings annually. The Board also must include in the policy all of the following requirements with respect to a meeting at which a member attends by teleconference or video conference:

- That at least $\frac{1}{3}$ of the members attending the meeting must be present in person at the physical location where the meeting is conducted (the Board consists of 11 members¹¹⁵);
- That all votes taken at the meeting must be taken by roll call vote;
- That a member who intends to attend a meeting by teleconference or video conference must notify the chairperson of that intent not less than 48 hours before the meeting, except in the case of an emergency as defined in the policy.

¹¹⁵ R.C. 3307.05, not in the bill.

At any meeting in which a member attends by teleconference or video conference, the Board must ensure that the public can hear and, if the means of attendance technologically permits it, to observe the discussions and deliberations of all the Board members, whether the member is participating in person or electronically.

Unless one of the requirements described above applies, the bill prohibits a person from doing any of the following:

- Limiting the number of Board members who may attend a meeting by teleconference or video conference;
- Limiting the total number of meetings that the Board may allow members to attend by teleconference or video conference;
- Limiting the number of meetings at which any one Board member may attend by teleconference or video conference;
- Imposing other limits or obligations on a Board member because the member attends a meeting by teleconference or video conference.

Generally, under continuing law, the Open Meetings Law requires a public body to take official action and conduct all deliberations on official business only in open meetings where the public may attend and observe. Members of a public body must attend meetings in person to be considered present or to vote at the meeting and for purposes of determining whether a quorum is present at the meeting.¹¹⁶

¹¹⁶ R.C. 121.22.