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## MISCELLANEOUS

### Legal age to purchase cigarettes, other tobacco products

- Raises from 18 to 21 the legal age for a person to receive or purchase cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes.
- Would have specified that the provisions regarding the sale or distribution of cigarettes, other tobacco products, alternative nicotine products, or rolling papers do not apply to a person who was at least 18 on October 1, 2019 (VETOED).
- Prohibits a person who is 18 or older but younger than 21 from knowingly furnishing false information concerning that person's name, age, or other identification for the purpose of obtaining tobacco products.
- Modifies the definition of "tobacco product."
- Defines "vapor product," replaces "electronic cigarette" with "electronic smoking device," and includes both terms within the definition of "alternative nicotine products."
- Requires clear and visible posting of signage indicating the legal age for receiving or purchasing cigarettes, other tobacco products, alternative nicotine products, or papers to roll cigarettes at locations where those products are sold.
- Specifies that a child may obtain tobacco products if accompanied by the child's parent, spouse, or legal guardian, each of whom must be 21 or older.
- Would have specified that a child may obtain tobacco products if accompanied by the child's parent, spouse, or legal guardian who was at least 18 on October 1, 2019 (VETOED).
- Specifies that a child who knowingly furnishes false information concerning that child's name, age, or other identification for the purpose of obtaining tobacco products may be subject to performing up to 20 hours of community service.

### State agency regulatory rulemaking

- Requires state agencies to submit a report to the Joint Committee on Agency Rule Review (JCARR) providing details about the state agency's review of its principles of law or policy that are not stated in rule.
- Requires JCARR to make the reports available on its website.
- Removes the requirement that the review be completed at reasonable intervals.
- Not later than December 31, 2019, requires certain state agencies to produce a base inventory of rules containing regulatory restrictions.
- Until July 1, 2023, requires certain state agencies to eliminate two restrictions before enacting a new rule containing a restriction.

## **New community authorities**

- Specifies that a facility can be located outside a new community district.
- Allows an organizational board of commissioners to add territory to a new community district with the permission of the person who owns or controls the real estate unless the developer objects.
- Allows an owner of real estate to agree to community development charges via a declaration of covenants.

## **Land conveyances**

- Authorizes the conveyance of various parcels of state-owned land in Portage County under the jurisdiction of Kent State University.

## **Certain telephone numbers not a public record**

- Provides that telephone numbers for a victim, a witness to a crime, or a party to a motor vehicle accident are not public records.

## **Harmonization confirmed**

- Confirms the harmonization of R.C. 149.45 to clarify its relationship to R.C. 149.43.

## **Legal age to purchase cigarettes, other tobacco products**

(R.C. 2927.02(B), (C), and (E))

Generally speaking, the act increases from 18 to 21 the age at which a person may purchase or receive cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes (hereafter referred to as “tobacco products”). More specifically, the act prohibits a manufacturer, producer, distributor, wholesaler, or retailer of tobacco products, an agent, employee, or representative of any of those persons, or other person from doing any of the following to a person under 21:

- Giving, selling, or otherwise distributing tobacco products;
- Giving away, selling, or distributing tobacco products in any place that does not have posted in a conspicuous place a legibly printed sign in letters at least one-half inch high stating that giving, selling, or otherwise distributing tobacco products to a person under 21 is prohibited by law;
- Knowingly furnishing any false information regarding the name, age, or other identification of the person with purpose to obtain tobacco products for that person.

The act also prohibits a person from selling or offering to sell tobacco products from a vending machine, unless the location is an area to which persons under 21 are not generally permitted access.

The Governor vetoed a provision that would have specified that the provisions regarding the sale or distribution of cigarettes, other tobacco products, alternative nicotine products, or rolling papers do not apply to a person who was at least 18 on October 1, 2019.

## **False information to obtain tobacco products**

(R.C. 2927.024)

The act prohibits a person who is 18 or older but younger than 21 from knowingly furnishing false information concerning that person's name, age, or other identification for the purpose of obtaining tobacco products. A person who violates this prohibition is guilty of furnishing false information to obtain tobacco products, a fourth degree misdemeanor. If the offender previously has been convicted of or pleaded guilty to a violation, furnishing false information to obtain tobacco products is a third degree misdemeanor.

## **“Tobacco product” definition**

(R.C. 2927.02(A)(7))

The act modifies the definition of “tobacco product” by providing that it also means any product that is derived from tobacco or that contains any form of nicotine, if it is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled, or ingested by any other means and includes an electronic smoking device and snus. “Tobacco product” also means any component or accessory used in the consumption of a tobacco product, such as filters, rolling papers, pipes, blunt or hemp wraps, and liquids used in electronic smoking devices, whether or not they contain nicotine. “Tobacco product” does not include any product that is a drug, device, or combination product, as those terms are defined or described under federal law.

## **“Vapor product” and “electronic smoking device” as “alternative nicotine product”**

(R.C. 2927.02(A)(2), (5), and (8))

The act includes “vapor product” and “electronic smoking device” within the definition of “alternative nicotine product.” As a result, the prohibition described above includes vapor products and electronic smoking devices.

A “vapor product” is a product, other than a cigarette or other tobacco product that contains or is made or derived from nicotine and that is intended and marketed for human consumption, including by smoking, inhaling, snorting, or sniffing. It includes any component, part, or additive that is intended for use in an electronic smoking device, a mechanical heating element, battery, or electronic circuit and is used to deliver the product. It also includes any product containing nicotine, regardless of concentration. It does not include any product that is a drug, device, or combination product, as those terms are defined or described under federal law.

The act changes “electronic cigarette” to “electronic smoking device” and modifies the definition by providing that it means any device that can be used to deliver aerosolized or vaporized nicotine or any other substance to the person inhaling from the device including an

electronic cigarette, electronic cigar, electronic hookah, vaping pen, or electronic pipe (removes reference to “electronic cigarillo”). “Electronic smoking device” includes any component, part, or accessory of such a device, whether or not sold separately, and includes any substance intended to be aerosolized or vaporized during the use of the device. “Electronic smoking device” does not include any product that is a drug, device, or combination product, as those terms are defined or described under federal law.

## **Vending machine notice**

(R.C. 2927.02(C))

Under the act, if a person is selling or offering to sell tobacco products by or from a vending machine, the vending machine must have a clearly visible notice that is posted in the area where the vending machine is located and states in letters that are legibly printed and at least one-half inch high:

“It is illegal for any person under the age of 21 to purchase tobacco  
or alternative nicotine products.”

## **Child possessing, using, purchasing, receiving tobacco products**

(R.C. 2151.87)

The act modifies continuing law by specifying that a child may use, consume, or possess tobacco products, purchase or attempt to purchase tobacco products, order, pay for, or share the cost of tobacco products, or accept or receive tobacco products if the child is accompanied by the child’s parent, spouse, or legal guardian, each of whom must be 21 or older. (The Governor vetoed a stipulation that this provision would not apply to a child if the child’s parent, spouse, or legal guardian was at least 18 on October 1, 2019.)

The act removes the various penalties a child can incur for using, consuming, or possessing tobacco products, purchasing or attempting to purchase tobacco product, paying for or sharing the cost of tobacco products, or accepting or receiving tobacco products, but maintains the prohibition against knowingly furnishing false information concerning that child’s name, age, or other identification for the purpose of obtaining tobacco products. A violation of that prohibition may result in the child performing not more than 20 hours of community service. The act also removes the exception that allows a child to accept, receive, use, consume, or possess cigarettes, other tobacco products, alternative nicotine products, or rolling papers while participating in a research protocol.

## **Exceptions to prohibitions; forfeiture; affirmative defenses**

(R.C. 2927.02(D), (E), and (G) and 2927.022)

The act provides that the continuing exceptions to the prohibitions regarding giving, selling, or otherwise distributing tobacco products apply when the person receiving the cigarettes is under 21.

Additionally, it provides that the continuing law seizure and forfeiture provisions apply when tobacco products are given, sold, or otherwise distributed to a person under age 21 in

violation of the prohibitions described above and when those products are used, possessed, purchased, or received by a person under 21 in violation of the law.

Finally, continuing law provides certain affirmative defenses to a charge of giving, selling, or otherwise distributing tobacco products to an underage person. The act adjusts the language describing these affirmative defenses to reflect the age increase to 21.

## **State agency regulatory rulemaking**

### **Agency review of principles of law or policy**

(R.C. 121.93)

In an effort to identify principles of law or policies that should be set forth formally as administrative rules, continuing law requires state agencies to review their operations periodically, but at least once during a Governor's term. The act removes a stipulation that the reviews be conducted "at reasonable intervals," so state agencies must conduct at least one review during a Governor's term under the act. The act also requires a state agency to send a report to the Joint Committee on Agency Rule Review (JCARR) about the agency's review with details about which principles or policies were identified. JCARR must make the reports available on its website.

### **Inventory of regulatory restrictions**

(R.C. 121.95)

The act requires certain state agencies to review their existing rules in order to prepare a base inventory of regulatory restrictions by December 31, 2019. In the base inventory, the agency must provide all of the following information concerning each regulatory restriction:

- A description of the regulatory restriction;
- The rule in which the restriction appears;
- The statute under which the restriction was adopted;
- Whether state or federal law expressly and specifically requires the agency to adopt the regulatory restriction or the agency adopted it under the agency's general authority;
- Whether removing the restriction would require a change to state or federal law, provided that removing a regulatory restriction adopted under a law granting the agency general authority is presumed not to require a change to state or federal law;
- Any other information JCARR considers necessary.

After completing the inventory, the agency must post it on its website and send a copy to JCARR, which must review the inventory and send it to the Speaker of the House and the President of the Senate.

In addition, through June 30, 2023, the act prohibits an agency from adopting any new regulatory restriction unless it simultaneously removes two or more existing regulatory restrictions. The agency cannot merge two existing regulatory restrictions into a single restriction in order to accomplish this.

For these purposes, a “state agency” includes an administrative department created under R.C. 121.02, an administrative department head appointed under R.C. 121.03 (essentially all cabinet-level departments), a state agency organized under an administrative department or administrative department head, the Department of Education, the State Lottery Commission, the Ohio Casino Control Commission, the State Racing Commission, and the Public Utilities Commission of Ohio.

Rules adopted by an otherwise independent official or entity organized under an agency are attributed to the parent agency for the purposes of the provisions. This means that a parent agency must include rules containing regulatory restrictions adopted by those otherwise independent officials or entities as part of its total number of regulatory restrictions. A “regulatory restriction” requires or prohibits an action. Rules that include the words “shall,” “must,” “require,” “shall not,” “may not,” and “prohibit” are considered to contain regulatory restrictions.

However, the following types of rules or regulatory restrictions are not required to be included in an agency’s inventory of regulatory restrictions:

- An internal management rule;
- An emergency rule;
- A rule that state or federal law requires the agency to adopt verbatim;
- A regulatory restriction contained in materials or documents incorporated by reference into a rule;
- Access rules for confidential personal information;
- A rule concerning instant lottery games;
- Any other rule that is not subject to review by JCARR.

## **New community authorities**

(R.C. 349.01, 349.03, and 349.07)

Continuing law allows a developer to establish a “new community district” by petitioning a board of county commissioners or legislative authority of a municipal corporation.<sup>134</sup> The board or legislative authority may approve the petition if it finds that creating the district “will be conducive to the public health, safety, convenience, and welfare” and is intended to result in development of facilities for industrial, commercial, residential, cultural, educational, and recreational activities. If the petition is approved, a new community authority (NCA) is established to develop land in the district, provide services in the district, and

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<sup>134</sup> The developer must petition the organizational board of commissioners, which is the board of county commissioners or the legislative authority of a municipal corporation depending where the district is located. See R.C. 349.01(F).

raise revenue by levying community “charges” in the district. The act modifies the law regarding NCAs in three ways.

First, the act specifies that a facility can be located outside of the district. Second, it allows a county or municipal corporation to add territory to a district if the person who owns or controls<sup>135</sup> the property within the territory agrees and the developer does not object. Finally, the act specifies that a real estate owner can agree to pay a community development charge via a declaration of covenants, a legal document that contains guidelines for a planned community. Accordingly, the act modifies the definition of community development charge to accommodate changes agreed to via a declaration of covenants.<sup>136</sup>

## **Land conveyances**

(Sections 753.10, 753.20, 753.30, 753.40, and 753.50)

The act authorizes the conveyance of various parcels of state-owned land in Portage County under the jurisdiction of Kent State University. The grantee and consideration for each conveyance will be determined by the University’s Board of Trustees. The proceeds must be paid to the University and used for purposes to be determined by the Board. The Auditor of State, with help from the Attorney General, must prepare the deeds, which must state the consideration and be executed by the Governor in the name of the state, countersigned by the Secretary of State, sealed with the Great Seal of the State, presented to the Auditor of State for recording, and delivered to the grantees. The grantees must present the deeds for recording in the Office of the Portage County Recorder and must pay all costs of the conveyances including the county recording fee.

## **Certain telephone numbers not a public record**

(R.C. 149.43(A)(1)(mm))

The act provides that telephone numbers for a victim (as defined in the Victim’s Rights Law), a witness to a crime, or a party to a motor vehicle accident that are listed on any law enforcement record or report are not public records.

## **Harmonization of R.C. 149.45 confirmed**

(Section 815.30)

If a section of law is amended by two or more acts, and if the two or more acts do not reflect each other, R.C. 1.52(B) specifies that the amendments are to be harmonized into a composite text, if possible, so that effect may be given to all the amendments.<sup>137</sup> In late 2018,

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<sup>135</sup> Through leases of at least 40 years, options, or contracts to purchase.

<sup>136</sup> The change to R.C. 349.03(A) is corrective. The language the act removes related to an acreage requirement that H.B. 500 (132<sup>nd</sup> General Assembly) eliminated.

<sup>137</sup> R.C. 1.52(B) provides: “If amendments to the same statute are enacted at the same or different sessions of the legislature, one amendment without reference to another, the amendments are to be

the 132<sup>nd</sup> General Assembly amended R.C. 149.45 (redaction of information) in three acts, H.B. 341, S.B. 214, and S.B. 229. The act presents the section without amendment to confirm that these three sets of amendments to the section have been harmonized under R.C. 1.52(B).

The H.B. 341 amendments to R.C. 149.45 were made together with, and in relation to, amendments simultaneously made to R.C. 149.43 (public records). (R.C. 149.43 appears elsewhere in the act.) Confirming the harmonization of R.C. 149.45 in the act helps to clarify this relationship.

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harmonized, if possible, so that effect may be given to each. If the amendments are substantively irreconcilable, the latest in date of enactment prevails. The fact that a later amendment restates language deleted by an earlier amendment, or fails to include language inserted by an earlier amendment, does not of itself make the amendments irreconcilable. Amendments are irreconcilable only when changes made by each cannot reasonably be put into simultaneous operation.”