

# AN ACT

To amend sections 2152.20, 2981.01, 2981.11, and 2981.13 of the Revised Code to eliminate unnecessary and inconsistent language mistakenly retained by Sub. H.B. 241 of the 126th General Assembly, to include in the law's forfeiture provisions language regarding the Department of Taxation that was omitted by that act, and to declare an emergency.

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 1. That sections 2152.20, 2981.01, 2981.11, and 2981.13 of the Revised Code be amended to read as follows:

Sec. 2152.20. (A) If a child is adjudicated a delinquent child or a juvenile traffic offender, the court may order any of the following dispositions, in addition to any other disposition authorized or required by this chapter:

(1) Impose a fine in accordance with the following schedule:

(a) For an act that would be a minor misdemeanor or an unclassified misdemeanor if committed by an adult, a fine not to exceed fifty dollars;

(b) For an act that would be a misdemeanor of the fourth degree if committed by an adult, a fine not to exceed one hundred dollars;

(c) For an act that would be a misdemeanor of the third degree if committed by an adult, a fine not to exceed one hundred fifty dollars;

(d) For an act that would be a misdemeanor of the second degree if committed by an adult, a fine not to exceed two hundred dollars;

(e) For an act that would be a misdemeanor of the first degree if committed by an adult, a fine not to exceed two hundred fifty dollars;

(f) For an act that would be a felony of the fifth degree or an unclassified felony if committed by an adult, a fine not to exceed three hundred dollars;

(g) For an act that would be a felony of the fourth degree if committed by an adult, a fine not to exceed four hundred dollars;

(h) For an act that would be a felony of the third degree if committed by

an adult, a fine not to exceed seven hundred fifty dollars;

(i) For an act that would be a felony of the second degree if committed by an adult, a fine not to exceed one thousand dollars;

(j) For an act that would be a felony of the first degree if committed by an adult, a fine not to exceed one thousand five hundred dollars;

(k) For an act that would be aggravated murder or murder if committed by an adult, a fine not to exceed two thousand dollars.

(2) Require the child to pay costs;

(3) Unless the child's delinquent act or juvenile traffic offense would be a minor misdemeanor if committed by an adult or could be disposed of by the juvenile traffic violations bureau serving the court under Traffic Rule 13.1 if the court has established a juvenile traffic violations bureau, require the child to make restitution to the victim of the child's delinquent act or juvenile traffic offense or, if the victim is deceased, to a survivor of the victim in an amount based upon the victim's economic loss caused by or related to the delinquent act or juvenile traffic offense. The court may not require a child to make restitution pursuant to this division if the child's delinquent act or juvenile traffic offense would be a minor misdemeanor if committed by an adult or could be disposed of by the juvenile traffic violations bureau serving the court under Traffic Rule 13.1 if the court has established a juvenile traffic violations bureau. If the court requires restitution under this division, the restitution shall be made directly to the victim in open court or to the probation department that serves the jurisdiction or the clerk of courts on behalf of the victim.

If the court requires restitution under this division, the restitution may be in the form of a cash reimbursement paid in a lump sum or in installments, the performance of repair work to restore any damaged property to its original condition, the performance of a reasonable amount of labor for the victim or survivor of the victim, the performance of community service work, any other form of restitution devised by the court, or any combination of the previously described forms of restitution.

If the court requires restitution under this division, the court may base the restitution order on an amount recommended by the victim or survivor of the victim, the delinquent child, the juvenile traffic offender, a presentence investigation report, estimates or receipts indicating the cost of repairing or replacing property, and any other information, provided that the amount the court orders as restitution shall not exceed the amount of the economic loss suffered by the victim as a direct and proximate result of the delinquent act or juvenile traffic offense. If the court decides to order restitution under this division and the amount of the restitution is disputed

by the victim or survivor or by the delinquent child or juvenile traffic offender, the court shall hold a hearing on the restitution. If the court requires restitution under this division, the court shall determine, or order the determination of, the amount of restitution to be paid by the delinquent child or juvenile traffic offender. All restitution payments shall be credited against any recovery of economic loss in a civil action brought by or on behalf of the victim against the delinquent child or juvenile traffic offender or the delinquent child's or juvenile traffic offender's parent, guardian, or other custodian.

If the court requires restitution under this division, the court may order that the delinquent child or juvenile traffic offender pay a surcharge, in an amount not exceeding five per cent of the amount of restitution otherwise ordered under this division, to the entity responsible for collecting and processing the restitution payments.

The victim or the survivor of the victim may request that the prosecuting authority file a motion, or the delinquent child or juvenile traffic offender may file a motion, for modification of the payment terms of any restitution ordered under this division. If the court grants the motion, it may modify the payment terms as it determines appropriate.

(4) Require the child to reimburse any or all of the costs incurred for services or sanctions provided or imposed, including, but not limited to, the following:

(a) All or part of the costs of implementing any community control imposed as a disposition under section 2152.19 of the Revised Code, including a supervision fee;

(b) All or part of the costs of confinement in a residential facility described in section 2152.19 of the Revised Code or in a department of youth services institution, including, but not limited to, a per diem fee for room and board, the costs of medical and dental treatment provided, and the costs of repairing property the delinquent child damaged while so confined. The amount of reimbursement ordered for a child under this division shall not exceed the total amount of reimbursement the child is able to pay as determined at a hearing and shall not exceed the actual cost of the confinement. The court may collect any reimbursement ordered under this division. If the court does not order reimbursement under this division, confinement costs may be assessed pursuant to a repayment policy adopted under section 2929.37 of the Revised Code and division (D) of section 307.93, division (A) of section 341.19, division (C) of section 341.23 or 753.16, division (C) of section 2301.56, or division (B) of section 341.14, 753.02, 753.04, or 2947.19 of the Revised Code.

(B) Chapter 2981. of the Revised Code applies to a child who is adjudicated a delinquent child for violating section 2923.32 or 2923.42 of the Revised Code or for committing an act that, if committed by an adult, would be a felony drug abuse offense.

~~(3) Sections 2923.44 to 2923.47 of the Revised Code apply to children who are adjudicated or could be adjudicated by a juvenile court to be delinquent children for an act in violation of section 2923.42 of the Revised Code. Subject to division (B) of section 2923.44 and division (E) of section 2923.45 of the Revised Code, a delinquent child of that nature loses any right to the possession of, and forfeits to the state any right, title, and interest that the delinquent child may have in, property as defined in section 2923.41 of the Revised Code and further described in section 2923.44 or 2923.45 of the Revised Code.~~

(C) The court may hold a hearing if necessary to determine whether a child is able to pay a sanction under this section.

(D) If a child who is adjudicated a delinquent child is indigent, the court shall consider imposing a term of community service under division (A) of section 2152.19 of the Revised Code in lieu of imposing a financial sanction under this section. If a child who is adjudicated a delinquent child is not indigent, the court may impose a term of community service under that division in lieu of, or in addition to, imposing a financial sanction under this section. The court may order community service for an act that if committed by an adult would be a minor misdemeanor.

If a child fails to pay a financial sanction imposed under this section, the court may impose a term of community service in lieu of the sanction.

(E) The clerk of the court, or another person authorized by law or by the court to collect a financial sanction imposed under this section, may do any of the following:

(1) Enter into contracts with one or more public agencies or private vendors for the collection of the amounts due under the financial sanction, which amounts may include interest from the date of imposition of the financial sanction;

(2) Permit payment of all, or any portion of, the financial sanction in installments, by credit or debit card, by another type of electronic transfer, or by any other reasonable method, within any period of time, and on any terms that the court considers just, except that the maximum time permitted for payment shall not exceed five years. The clerk may pay any fee associated with processing an electronic transfer out of public money and may charge the fee to the delinquent child.

(3) To defray administrative costs, charge a reasonable fee to a child

who elects a payment plan rather than a lump sum payment of a financial sanction.

Sec. 2981.01. (A) Forfeitures under this chapter shall be governed by all of the following purposes:

(1) To provide economic disincentives and remedies to deter and offset the economic effect of offenses by seizing and forfeiting contraband, proceeds, and certain instrumentalities;

(2) To ensure that seizures and forfeitures of instrumentalities are proportionate to the offense committed;

(3) To protect third parties from wrongful forfeiture of their property;

(4) To prioritize restitution for victims of offenses.

(B) As used in this chapter:

(1) "Aircraft" has the same meaning as in section 4561.01 of the Revised Code.

(2) "Computers," "computer networks," "computer systems," "computer software," and "telecommunications device" have the same meanings as in section 2913.01 of the Revised Code.

(3) "Financial institution" means a bank, credit union, savings and loan association, or a licensee or registrant under Chapter 1321. of the Revised Code.

(4) "Firearm" and "dangerous ordnance" have the same meanings as in section 2923.11 of the Revised Code.

(5) "Innocent person" includes any bona fide purchaser of property that is subject to forfeiture, including any person who establishes a valid claim to or interest in the property in accordance with section 2923.04 of the Revised Code, and any victim of an alleged offense.

(6) "Instrumentality" means property otherwise lawful to possess that is used in or intended to be used in an offense. An "instrumentality" may include, but is not limited to, a firearm, a mobile instrumentality, a computer, a computer network, a computer system, computer software, a telecommunications device, money, and any other means of exchange.

(7) "Law enforcement agency" includes, but is not limited to, the state board of pharmacy, the enforcement division of the department of taxation, and the office of the prosecutor.

(8) "Mobile instrumentality" means an instrumentality that is inherently mobile and used in the routine transport of persons. "Mobile instrumentality" includes, but is not limited to, any vehicle, any watercraft, and any aircraft.

(9) "Money" has the same meaning as in section 1301.01 of the Revised Code.

(10) "Offense" means any act or omission that could be charged as a criminal offense or a delinquent act, whether or not a formal criminal prosecution or delinquent child proceeding began at the time the forfeiture is initiated. Except as otherwise specified, an offense for which property may be forfeited includes any felony and any misdemeanor. The commission of an "offense" includes the commission of a delinquent act.

(11) "Proceeds" means both of the following:

(a) In cases involving unlawful goods, services, or activities, "proceeds" means any property derived directly or indirectly from an offense. "Proceeds" may include, but is not limited to, money or any other means of exchange. "Proceeds" is not limited to the net gain or profit realized from the offense.

(b) In cases involving lawful goods or services that are sold or provided in an unlawful manner, "proceeds" means the amount of money or other means of exchange acquired through the illegal transactions resulting in the forfeiture, less the direct costs lawfully incurred in providing the goods or services. The lawful costs deduction does not include any part of the overhead expenses of, or income taxes paid by, the entity providing the goods or services. The alleged offender or delinquent child has the burden to prove that any costs are lawfully incurred.

(12) "Property" means "property" as defined in section 2901.01 of the Revised Code and any benefit, privilege, claim, position, interest in an enterprise, or right derived, directly or indirectly, from the offense.

(13) "Property subject to forfeiture" includes contraband and proceeds and may include instrumentalities as provided in this chapter.

(14) "Prosecutor" has the same meaning as in section 2935.01 of the Revised Code. When relevant, "prosecutor" also includes the attorney general.

(15) "Vehicle" has the same meaning as in section 4501.01 of the Revised Code.

(16) "Watercraft" has the same meaning as in section 1547.01 of the Revised Code.

(C) The penalties and procedures under Chapters 2923., 2925., and 2933. of the Revised Code remain in effect to the extent that they do not conflict with this chapter.

Sec. 2981.11. (A)(1) Any property that has been lost, abandoned, stolen, seized pursuant to a search warrant, or otherwise lawfully seized or forfeited and that is in the custody of a law enforcement agency shall be kept safely by the agency, pending the time it no longer is needed as evidence or for another lawful purpose, and shall be disposed of pursuant to sections

2981.12 and 2981.13 of the Revised Code.

(2) This chapter does not apply to the custody and disposal of any of the following:

(a) Vehicles subject to forfeiture under Title XLV of the Revised Code, except as provided in division (A)(6) of section 2981.12 of the Revised Code;

(b) Abandoned junk motor vehicles or other property of negligible value;

(c) Property held by a department of rehabilitation and correction institution that is unclaimed, that does not have an identified owner, that the owner agrees to dispose of, or that is identified by the department as having little value;

(d) Animals taken, and devices used in unlawfully taking animals, under section 1531.20 of the Revised Code;

(e) Controlled substances sold by a peace officer in the performance of the officer's official duties under section 3719.141 of the Revised Code;

(f) Property recovered by a township law enforcement agency under sections 505.105 to 505.109 of the Revised Code;

(g) Property held and disposed of under an ordinance of the municipal corporation or under sections 737.29 to 737.33 of the Revised Code, except that a municipal corporation that has received notice of a citizens' reward program as provided in division (F) of section 2981.12 of the Revised Code and disposes of property under an ordinance shall pay twenty-five per cent of any moneys acquired from any sale or auction to the citizens' reward program.

(B)(1) Each law enforcement agency that has custody of any property that is subject to this section shall adopt and comply with a written internal control policy that does all of the following:

(a) Provides for keeping detailed records as to the amount of property acquired by the agency and the date property was acquired;

(b) Provides for keeping detailed records of the disposition of the property, which shall include, but not be limited to, both of the following:

(i) The manner in which it was disposed, the date of disposition, detailed financial records concerning any property sold, and the name of any person who received the property. The record shall not identify or enable identification of the individual officer who seized any item of property.

(ii) The general types of expenditures made with amounts that are gained from the sale of the property and that are retained by the agency, including the specific amount expended on each general type of expenditure, except that the policy shall not provide for or permit the identification of any

specific expenditure that is made in an ongoing investigation.

(c) Complies with section 2981.13 of the Revised Code if the agency has a law enforcement trust fund or similar fund created under that section.

(2) Each law enforcement agency that during any calendar year has any seized or forfeited property covered by this section in its custody, including amounts distributed under section 2981.13 of the Revised Code to its law enforcement trust fund or a similar fund created for the state highway patrol, department of public safety, department of taxation, or state board of pharmacy, shall prepare a report covering the calendar year that cumulates all of the information contained in all of the public records kept by the agency pursuant to this section for that calendar year. The agency shall send a copy of the cumulative report to the attorney general not later than the first day of March in the calendar year following the calendar year covered by the report.

(3) The records kept under the internal control policy shall be open to public inspection during the agency's regular business hours. The policy adopted under this section and each report received by the attorney general is a public record open for inspection under section 149.43 of the Revised Code.

(4) Not later than the fifteenth day of April in each calendar year in which reports are sent to the attorney general under division (B)(2) of this section, the attorney general shall send to the president of the senate and the speaker of the house of representatives a written notice that indicates that the attorney general received reports that cover the previous calendar year, that the reports are open for inspection under section 149.43 of the Revised Code, and that the attorney general will provide a copy of any or all of the reports to the president of the senate or the speaker of the house of representatives upon request.

(C) A law enforcement agency with custody of property to be disposed of under section 2981.12 or 2981.13 of the Revised Code shall make a reasonable effort to locate persons entitled to possession of the property, to notify them of when and where it may be claimed, and to return the property to them at the earliest possible time. In the absence of evidence identifying persons entitled to possession, it is sufficient notice to advertise in a newspaper of general circulation in the county and to briefly describe the nature of the property in custody and inviting persons to view and establish their right to it.

(D) As used in sections 2981.11 to 2981.13 of the Revised Code:

(1) "Citizens' reward program" has the same meaning as in section 9.92 of the Revised Code.

(2) "Law enforcement agency" includes correctional institutions.

(3) "Township law enforcement agency" means an organized police department of a township, a township police district, a joint township police district, or the office of a township constable.

Sec. 2981.13. (A) Except as otherwise provided in this section, property ordered forfeited as contraband, proceeds, or an instrumentality pursuant to this chapter shall be disposed of, used, or sold pursuant to section 2981.12 of the Revised Code. If the property is to be sold under that section, the prosecutor shall cause notice of the proposed sale to be given in accordance with law.

(B) If the contraband or instrumentality forfeited under this chapter is sold, any moneys acquired from a sale and any proceeds forfeited under this chapter shall be applied in the following order:

(1) First, to pay costs incurred in the seizure, storage, maintenance, security, and sale of the property and in the forfeiture proceeding;

(2) Second, in a criminal forfeiture case, to satisfy any restitution ordered to the victim of the offense or, in a civil forfeiture case, to satisfy any recovery ordered for the person harmed, unless paid from other assets;

(3) Third, to pay the balance due on any security interest preserved under this chapter;

(4) Fourth, apply the remaining amounts as follows:

(a) If the forfeiture was ordered by a juvenile court, ten per cent to one or more certified alcohol and drug addiction treatment programs as provided in division (D) of section 2981.12 of the Revised Code;

(b) If the forfeiture was ordered in a juvenile court, ninety per cent, and if the forfeiture was ordered in a court other than a juvenile court, one hundred per cent to the law enforcement trust fund of the prosecutor and to the following fund supporting the law enforcement agency that substantially conducted the investigation: the law enforcement trust fund of the county sheriff, municipal corporation, township, or park district created under section 511.18 or 1545.01 of the Revised Code; the state highway patrol contraband, forfeiture, and other fund; the department of public safety investigative unit contraband, forfeiture, and other fund; the department of taxation enforcement fund; the board of pharmacy drug law enforcement fund created by division (B)(1) of section 4729.65 of the Revised Code; the medicaid fraud investigation and prosecution fund; or the treasurer of state for deposit into the peace officer training commission fund if any other state law enforcement agency substantially conducted the investigation. In the case of property forfeited for medicaid fraud, any remaining amount shall be used by the attorney general to investigate and prosecute medicaid fraud

offenses.

If the prosecutor declines to accept any of the remaining amounts, the amounts shall be applied to the fund of the agency that substantially conducted the investigation.

(c) If more than one law enforcement agency is substantially involved in the seizure of property forfeited under this chapter, the court ordering the forfeiture shall equitably divide the amounts, after calculating any distribution to the law enforcement trust fund of the prosecutor pursuant to division (B)(4) of this section, among the entities that the court determines were substantially involved in the seizure.

(C)(1) A law enforcement trust fund shall be established by the prosecutor of each county who intends to receive any remaining amounts pursuant to this section, by the sheriff of each county, by the legislative authority of each municipal corporation, by the board of township trustees of each township that has a township police department, township police district police force, or office of the constable, and by the board of park commissioners of each park district created pursuant to section 511.18 or 1545.01 of the Revised Code that has a park district police force or law enforcement department, for the purposes of this section.

There is hereby created in the state treasury the state highway patrol contraband, forfeiture, and other fund, the department of public safety investigative unit contraband, forfeiture, and other fund, the medicaid fraud investigation and prosecution fund, the department of taxation enforcement fund, and the peace officer training commission fund, for the purposes of this section.

Amounts distributed to any municipal corporation, township, or park district law enforcement trust fund shall be allocated from the fund by the legislative authority only to the police department of the municipal corporation, by the board of township trustees only to the township police department, township police district police force, or office of the constable, and by the board of park commissioners only to the park district police force or law enforcement department.

(2)(a) No amounts shall be allocated to a fund created under this section or used by an agency unless the agency has adopted a written internal control policy that addresses the use of moneys received from the appropriate fund. The appropriate fund shall be expended only in accordance with that policy and, subject to the requirements specified in this section, only for the following purposes:

(i) To pay the costs of protracted or complex investigations or prosecutions;

(ii) To provide reasonable technical training or expertise;

(iii) To provide matching funds to obtain federal grants to aid law enforcement, in the support of DARE programs or other programs designed to educate adults or children with respect to the dangers associated with the use of drugs of abuse;

(iv) To pay the costs of emergency action taken under section 3745.13 of the Revised Code relative to the operation of an illegal methamphetamine laboratory if the forfeited property or money involved was that of a person responsible for the operation of the laboratory;

(v) For other law enforcement purposes that the superintendent of the state highway patrol, department of public safety, prosecutor, county sheriff, legislative authority, board of township trustees, or board of park commissioners determines to be appropriate.

(b) The board of pharmacy drug law enforcement fund shall be expended only in accordance with the written internal control policy so adopted by the board and only in accordance with section 4729.65 of the Revised Code, except that it also may be expended to pay the costs of emergency action taken under section 3745.13 of the Revised Code relative to the operation of an illegal methamphetamine laboratory if the forfeited property or money involved was that of a person responsible for the operation of the laboratory.

(c) The state highway patrol contraband, forfeiture, and other fund, the department of public safety investigative unit contraband, forfeiture, and other fund, the department of taxation enforcement fund, the board of pharmacy drug law enforcement fund, and a law enforcement trust fund shall not be used to meet the operating costs of the state highway patrol, of the investigative unit of the department of public safety, of the state board of pharmacy, of any political subdivision, or of any office of a prosecutor or county sheriff that are unrelated to law enforcement.

(d) Forfeited moneys that are paid into the state treasury to be deposited into the peace officer training commission fund shall be used by the commission only to pay the costs of peace officer training.

(3) Any of the following offices or agencies that receive amounts under this section during any calendar year shall file a report with the specified entity, not later than the thirty-first day of January of the next calendar year, verifying that the moneys were expended only for the purposes authorized by this section or other relevant statute and specifying the amounts expended for each authorized purpose:

(a) Any sheriff or prosecutor shall file the report with the county auditor.

(b) Any municipal corporation police department shall file the report with the legislative authority of the municipal corporation.

(c) Any township police department, township police district police force, or office of the constable shall file the report with the board of township trustees of the township.

(d) Any park district police force or law enforcement department shall file the report with the board of park commissioners of the park district.

(e) The superintendent of the state highway patrol and the tax commissioner shall file the report with the attorney general.

(f) The executive director of the state board of pharmacy shall file the report with the attorney general, verifying that cash and forfeited proceeds paid into the board of pharmacy drug law enforcement fund were used only in accordance with section 4729.65 of the Revised Code.

(g) The peace officer training commission shall file a report with the attorney general, verifying that cash and forfeited proceeds paid into the peace officer training commission fund pursuant to this section during the prior calendar year were used by the commission during the prior calendar year only to pay the costs of peace officer training.

(D) The written internal control policy of a county sheriff, prosecutor, municipal corporation police department, township police department, township police district police force, office of the constable, or park district police force or law enforcement department shall provide that at least ten per cent of the first one hundred thousand dollars of amounts deposited during each calendar year in the agency's law enforcement trust fund under this section, and at least twenty per cent of the amounts exceeding one hundred thousand dollars that are so deposited, shall be used in connection with community preventive education programs. The manner of use shall be determined by the sheriff, prosecutor, department, police force, or office of the constable after receiving and considering advice on appropriate community preventive education programs from the county's board of alcohol, drug addiction, and mental health services, from the county's alcohol and drug addiction services board, or through appropriate community dialogue.

The financial records kept under the internal control policy shall specify the amount deposited during each calendar year in the portion of that amount that was used pursuant to this division, and the programs in connection with which the portion of that amount was so used.

As used in this division, "community preventive education programs" include, but are not limited to, DARE programs and other programs designed to educate adults or children with respect to the dangers associated

with using drugs of abuse.

(E) Upon the sale, under this section or section 2981.12 of the Revised Code, of any property that is required by law to be titled or registered, the state shall issue an appropriate certificate of title or registration to the purchaser. If the state is vested with title and elects to retain property that is required to be titled or registered under law, the state shall issue an appropriate certificate of title or registration.

(F) Any failure of a law enforcement officer or agency, prosecutor, court, or the attorney general to comply with this section in relation to any property seized does not affect the validity of the seizure and shall not be considered to be the basis for suppressing any evidence resulting from the seizure, provided the seizure itself was lawful.

SECTION 2. That existing sections 2152.20, 2981.01, 2981.11, and 2981.13 of the Revised Code are hereby repealed.

SECTION 3. Sections 1 and 2 of this act shall take effect on July 1, 2007.

SECTION 4. This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reason for such necessity is that it is crucial that this act's elimination of the unnecessary and inconsistent language and its inclusion of the omitted language regarding the Department of Taxation occur on July 1, 2007, which is the effective date of Sub. H.B. 241 of the 126th General Assembly. Therefore, this act shall go into immediate effect.

Sub. H. B. No. 120

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*Speaker* \_\_\_\_\_ *of the House of Representatives.*

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*President* \_\_\_\_\_ *of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

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*Governor.*

Sub. H. B. No. 120

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

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*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the \_\_\_ day of \_\_\_\_\_, A. D. 20\_\_\_\_.

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*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_