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Senator Manning

Cosponsors: Senators Coley, Patton, Seitz, Balderson, Beagle, Eklund,

Faber, Hite, Jones, Lehner, Niehaus, Peterson, Schaffer

Representatives Blair, Blessing, Buchy, Butler, Carney, Combs,

Damschroder, Garland, Grossman, Hall, Kozlowski, Lundy, McClain,

Milkovich, Newbold, Ramos, Thompson

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A B I L L

To amend sections 3734.41 and 3734.42 of the Revised 1
Code to revise requirements governing background 2
investigations for purposes of the Solid, 3
Hazardous, and Infectious Wastes Law. 4

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 3734.41 and 3734.42 of the Revised 5
Code be amended to read as follows: 6

Sec. 3734.41. As used in sections 3734.41 to 3734.47 of the 7
Revised Code: 8

(A) "Applicant" means any person seeking a permit or license 9
for an off-site facility and any person or business concern 10
operating such a facility for an applicant. 11

(B) "Application" means the forms and accompanying documents 12
filed in connection with the applicant's request for a permit. 13

(C) "Business concern" means any corporation, association, 14

firm, partnership, trust, or other form of commercial 15
organization. 16

(D) "Disclosure statement" means a statement submitted to the 17
director of environmental protection and the attorney general by 18
an applicant. The statement shall include all of the following: 19

(1) The full name, business address, and social security 20
number of the applicant or, if the applicant is a business 21
concern, of all officers, directors, partners, or key employees 22
thereof and all individuals or business concerns holding any 23
equity in or debt liability of that business concern or, if the 24
business concern is a publicly traded corporation, all individuals 25
or business concerns holding more than five per cent of the equity 26
in or debt liability of that business concern, except that when 27
the debt liability is held by a chartered lending institution, the 28
applicant need supply only the name and business address of the 29
lending institution; 30

(2) The full name, business address, and social security 31
number of all officers, directors, or partners of any business 32
concern disclosed in the statement and the names and addresses of 33
all persons holding any equity in or debt liability of any 34
business concern so disclosed or, if the business concern is a 35
publicly traded corporation, all individuals or business concerns 36
holding more than five per cent of the equity in or debt liability 37
of that business concern, except that when the debt liability is 38
held by a chartered lending institution, the applicant need supply 39
only the name and business address of the lending institution; 40

(3) The full name and business address of any company in 41
which the applicant holds an equity interest and that collects, 42
transfers, transports, treats, stores, or disposes of solid 43
wastes, infectious wastes, or hazardous waste or processes solid 44
wastes that consist of scrap tires; 45

(4) A description of the experience and credentials, 46
including any past or present permits or licenses, for the 47
collection, transfer, transportation, treatment, storage, or 48
disposal of solid wastes, infectious wastes, or hazardous waste, 49
or the processing of solid wastes that consist of scrap tires, 50
possessed by the applicant or, if the applicant is a business 51
concern, by the officers, directors, partners, or key employees 52
thereof; 53

(5) A listing and explanation of any civil or criminal 54
prosecution by government agencies, administrative enforcement 55
actions resulting in the imposition of sanctions, or license 56
revocations or denials issued by any state or federal authority in 57
the ten years immediately preceding the filing of the application, 58
that are pending or have resulted in a finding or a settlement of 59
a violation of any law or rule or regulation relating to the 60
collection, transfer, transportation, treatment, storage, or 61
disposal of solid wastes, infectious wastes, or hazardous waste, 62
or the processing of solid wastes that consist of scrap tires, or 63
of any other environmental protection statute, by the applicant 64
or, if the applicant is a business concern, by the business 65
concern or any officer, director, partner, or key employee 66
thereof. For the purposes of division (D)(5) of this section, 67
violations of any law or rule relating to the transportation of 68
solid wastes, infectious wastes, or hazardous waste do not include 69
violations that also apply to the transportation of commodities 70
that are not wastes. 71

(6) A listing and explanation of any judgment of liability or 72
conviction that was rendered pursuant to any state or federal law 73
or local ordinance resulting in the imposition of a sanction 74
against the applicant or, if the applicant is a business concern, 75
against the business concern or any officer, director, partner, or 76
key employee thereof; 77

(7) A listing of any agency outside this state that has or 78
has had regulatory responsibility over the applicant in connection 79
with its collection, transfer, transportation, treatment, storage, 80
or disposal of solid wastes, infectious wastes, or hazardous waste 81
or processing of solid wastes that consist of scrap tires. 82

~~(8) Any other information the attorney general or the 83
director may require that relates to the competency, reliability, 84
or good character of the applicant. 85~~

(E) "Key employee" means any individual, other than a public 86
official or employee as defined in division (B) of section 102.01 87
of the Revised Code who is required to file a statement under 88
section 102.02 of the Revised Code, employed by the applicant or 89
the licensee in a supervisory capacity or empowered to make 90
discretionary decisions with respect to the solid waste, 91
infectious waste, or hazardous waste operations of the business 92
concern, but does not include any employee exclusively engaged in 93
the physical or mechanical collection, transfer, transportation, 94
treatment, storage, or disposal of solid wastes, infectious 95
wastes, or hazardous waste or processing of solid wastes that 96
consist of scrap tires. If the applicant or permittee has entered 97
into a contract with another person to operate the facility that 98
is the subject of the permit or license or application for a 99
permit or license, "key employee" also includes those employees of 100
the contractor who act in a supervisory capacity, or are empowered 101
to make discretionary decisions, with respect to the operation of 102
the solid, infectious, or hazardous waste facility. An officer or 103
director of a business concern required to file a disclosure 104
statement under section 3734.42 of the Revised Code who meets the 105
definition of "key employee" shall be considered a key employee 106
for purposes of the filing and disclosure requirements of sections 107
3734.42 to 3734.47 of the Revised Code. 108

(F) "License" means the annual license required by section 109

3734.05 of the Revised Code for an off-site solid waste disposal 110
or transfer facility or an off-site infectious waste treatment 111
facility. 112

(G) "Off-site facility" means a facility that is located off 113
the premises where the solid wastes, infectious wastes, or 114
hazardous waste is generated, but does not include any such 115
facility that exclusively disposes of wastes that are generated 116
from the combustion of coal, or from the combustion of primarily 117
coal in combination with scrap tires, that is not combined in any 118
way with garbage or any such facility that is owned and operated 119
by the generator of the waste and that exclusively stores, 120
processes, or disposes of or transfers solid wastes, exclusively 121
treats infectious wastes, or exclusively disposes of hazardous 122
waste, generated at one or more premises owned by the generator. 123

(H) "Permit" means a permit to install and any subsequent 124
modifications for an off-site solid waste disposal facility, 125
including an incineration facility, or transfer facility, issued 126
under section 3734.05 of the Revised Code; a permit to install and 127
any subsequent modifications for an off-site solid waste facility 128
that is a scrap tire storage, monocell, monofill, or recovery 129
facility issued under section 3734.76, 3734.77, or 3734.78 of the 130
Revised Code, as applicable; a permit to install and any 131
subsequent modifications for an off-site infectious waste 132
treatment facility issued under section 3734.05 of the Revised 133
Code; and a permit to install and operate an off-site hazardous 134
waste treatment, storage, or disposal facility and the 135
modification or renewal of a hazardous waste permit for the 136
treatment, storage, or disposal of hazardous waste issued under 137
section 3734.05 of the Revised Code. 138

(I) "Permittee" means any person who has received a permit or 139
license for an off-site facility. 140

Sec. 3734.42. (A)(1) ~~Except as otherwise provided in division~~ 141
~~(E)(2) of this section, every~~ Every applicant for a permit other 142
than a permit modification or renewal shall file a disclosure 143
statement, on a form developed by the attorney general, with the 144
director of environmental protection and the attorney general at 145
the same time the applicant files an application for a permit 146
other than a permit modification or renewal with the director. 147
148

(2) Any individual required to be listed in the disclosure 149
statement shall be fingerprinted for identification and 150
investigation purposes in accordance with procedures established 151
by the attorney general. An individual required to be 152
fingerprinted under this section shall not be required to be 153
fingerprinted more than once under this section. 154

(3) The attorney general, within one hundred eighty days 155
after receipt of the disclosure statement from an applicant for a 156
permit, shall prepare and transmit to the director an 157
investigative report on the applicant, based in part upon the 158
disclosure statement, except that this deadline may be extended 159
for a reasonable period of time, for good cause, by the director 160
or the attorney general. In preparing this report, the attorney 161
general may request and receive criminal history information from 162
the federal bureau of investigation and any other law enforcement 163
agency or organization. The attorney general may provide such 164
confidentiality regarding the information received from a law 165
enforcement agency as may be imposed by that agency as a condition 166
for providing that information to the attorney general. 167

(4) The review of the application by the director shall 168
include a review of the disclosure statement and investigative 169
report. 170

(B) All applicants and permittees shall provide any 171

assistance or information requested by the director or the 172
attorney general and shall cooperate in any inquiry or 173
investigation conducted by the attorney general and any inquiry, 174
investigation, or hearing conducted by the director. If, upon 175
issuance of a formal request to answer any inquiry or produce 176
information, evidence, or testimony, any applicant or permittee, 177
any officer, director, or partner of any business concern, or any 178
key employee of the applicant or permittee refuses to comply, the 179
permit of the applicant or permittee may be denied or revoked by 180
the director. 181

(C) The attorney general may charge and collect such fees 182
from applicants and permittees as are necessary to cover the costs 183
of administering and enforcing the investigative procedures 184
authorized in sections 3734.41 to 3734.47 of the Revised Code. The 185
attorney general shall transmit moneys collected under this 186
division to the treasurer of state to be credited to the solid and 187
hazardous waste background investigations fund, which is hereby 188
created in the state treasury. Moneys in the fund shall be used 189
solely for paying the attorney general's costs of administering 190
and enforcing the investigative procedures authorized in sections 191
3734.41 to 3734.47 of the Revised Code. 192

~~(D) Annually on the anniversary date of the submission to the 193
director by the attorney general of the investigative report for a 194
specific facility, or annually on another date assigned by the 195
attorney general, the An appropriate applicant, a permittee, or a 196
prospective owner shall submit to the attorney general, on a form 197
provided by the attorney general, ~~any and all information required~~ 198
~~to be included in a disclosure statement that has changed or been~~ 199
~~added in the immediately preceding year. If, in the immediately~~ 200
~~preceding year, there have been no changes in or additions to the~~ 201
~~information required to be included in a disclosure statement, the~~ 202
~~appropriate applicant, permittee, or prospective owner shall~~ 203~~

~~submit to the attorney general an affidavit stating that there~~ 204
~~have been no changes in or additions to that information during~~ 205
~~that time period.~~ 206

~~Notwithstanding the requirement for an annual submission of~~ 207
~~information,~~ the following information shall be submitted within 208
the periods specified: 209

(1) Information required to be included in the disclosure 210
statement for any new officer, director, partner, or key employee, 211
to be submitted within ninety days from the addition of the 212
officer, director, partner, or key employee; 213

(2) Information required to be included in a disclosure 214
statement ~~for~~ regarding the addition of any new business concern, 215
to be submitted within ninety days from the addition of the new 216
business concern; 217

~~(3) Information regarding any new criminal conviction, to be~~ 218
~~submitted within ninety days from the judgment entry of~~ 219
~~conviction.~~ 220

(E)(1) The attorney general shall enter in the database 221
established under section 109.5721 of the Revised Code the name, 222
the fingerprints, and other relevant information concerning each 223
officer, director, partner, or key employee of an applicant, 224
permittee, or prospective owner. 225

(2) For purposes of section 109.5721 of the Revised Code, 226
annually on a date assigned by the attorney general, an applicant, 227
permittee, or prospective owner shall provide the attorney general 228
with a list of both of the following: 229

(a) Each officer, director, partner, or key employee of the 230
applicant, permittee, or prospective owner and the person's 231
address and social security number; 232

(b) Any officer, director, partner, or key employee of the 233

applicant, permittee, or prospective owner who has left a position 234
previously held with the applicant, permittee, or prospective 235
owner during the previous one-year period and the person's social 236
security number. 237

(3) Annually, the attorney general shall update the database 238
established under section 109.5721 of the Revised Code to reflect 239
the information provided by an applicant, permittee, or 240
prospective owner under divisions (E)(2)(a) and (b) of this 241
section. 242

(4) Notwithstanding division (C) of this section, the 243
attorney general shall charge and collect fees from an applicant, 244
permittee, or prospective owner that is required to submit 245
information under this division in accordance with rules adopted 246
under section 109.5721 of the Revised Code. The fees shall not 247
exceed fees that are charged to any other person who is charged 248
fees for purposes of the database established under that section 249
and who is not an officer, director, partner, or key employee of 250
an applicant, permittee, or prospective owner under this section. 251

(F)(1) Every three years, the attorney general shall request 252
from the federal bureau of investigation any information regarding 253
a criminal conviction with respect to each officer, director, 254
partner, or key employee of an applicant, permittee, or 255
prospective owner. The attorney general may take any actions 256
necessary for purposes of this division, including, as necessary, 257
requesting the submission of any necessary documents authorizing 258
the release of information. 259

(2) Every three years, an applicant, permittee, or 260
prospective owner shall submit an affidavit listing all of the 261
following regarding a business concern required to be listed in 262
the applicant's, permittee's, or prospective owner's disclosure 263
statement: 264

(a) Any administrative enforcement order issued to the 265
business concern in connection with any violation of any federal 266
or state environmental protection laws, rules, or regulations 267
during the previous three-year period; 268

(b) Any civil action in which the business concern was 269
determined to be liable or was the subject of injunctive relief or 270
another type of civil relief in connection with any violation of 271
any federal or state environmental protection laws, rules, or 272
regulations during the previous three-year period; 273

(c) Any criminal conviction for a violation of any federal or 274
state environmental protection laws, rules, or regulations that 275
has been committed knowingly or recklessly by the business concern 276
during the previous three-year period. 277

(G) With respect to an applicant, permittee, or prospective 278
owner, the attorney general shall notify the director of 279
environmental protection of any crime ascertained under division 280
(E) or (F) of this section that is a disqualifying crime under 281
section 3734.44 of the Revised Code. The attorney general shall 282
provide the notification not later than thirty days after the 283
crime was ascertained. 284

(H) The failure to provide ~~such~~ information under this 285
section may constitute the basis for the revocation ~~or~~ of a permit 286
or license, the denial of a permit or license application, the 287
denial of a renewal of ~~any~~ a permit or license issued in 288
accordance with this chapter, ~~provided that prior, or the~~ 289
disapproval of a change in ownership as described in division (I) 290
of this section. Prior to ~~any such~~ a denial ~~or~~, revocation, or 291
disapproval, the director shall notify the applicant ~~or~~, 292
permittee, or prospective owner of the director's intention to do 293
so ~~and~~. The director shall give the applicant ~~or~~, permittee, or 294
prospective owner fourteen days from the date of the notice to 295
explain why the information was not provided. The director shall 296

consider ~~this information~~ the explanation when determining whether 297
to revoke ~~or deny~~ the permit or license, deny the permit or 298
license application or renewal, or disapprove the change in 299
ownership. 300

Nothing in this ~~division~~ section affects the rights of the 301
director or the attorney general granted under sections 3734.40 to 302
3734.47 of the Revised Code to request information from a person 303
at any other time. 304

~~(E)(1) Except as otherwise provided in division (E)(2) of~~ 305
~~this section, every permittee who is not otherwise required to~~ 306
~~file a disclosure statement shall file a disclosure statement~~ 307
~~within five years after June 24, 1988, pursuant to a schedule for~~ 308
~~submissions of disclosure statements developed by the attorney~~ 309
~~general. The schedule shall provide all permittees and holders of~~ 310
~~a license with at least one hundred eighty days' notice prior to~~ 311
~~the date upon which the statement is to be submitted. All other~~ 312
~~terms of the schedule shall be established at the discretion of~~ 313
~~the attorney general and shall not be subject to judicial review.~~ 314

~~(2) An applicant for a permit for an off site solid waste~~ 315
~~facility that is a scrap tire storage, monocell, monofill, or~~ 316
~~recovery facility issued under section 3734.76, 3734.77, or~~ 317
~~3734.78 of the Revised Code, as applicable, shall file a~~ 318
~~disclosure statement within five years after October 29, 1993,~~ 319
~~pursuant to a schedule for submissions of disclosure statements~~ 320
~~developed by the attorney general. The schedule shall provide all~~ 321
~~such applicants with at least one hundred eighty days' notice~~ 322
~~prior to the date upon which the statement shall be submitted. All~~ 323
~~other terms of the schedule shall be established at the discretion~~ 324
~~of the attorney general and shall not be subject to judicial~~ 325
~~review.~~ 326

~~Beginning five years after October 29, 1993, an applicant for~~ 327
~~such a permit shall file a disclosure statement in accordance with~~ 328

~~division (A)(1) of this section.~~ 329

~~(3) When a permittee submits a disclosure statement at the 330
time it submits an application for a renewal or modification of 331
its permit, the attorney general shall remove the permittee from 332
the submission schedule established pursuant to division (E)(1) or 333
(2) of this section.~~ 334

~~(4) After receiving a disclosure statement under division 335
(E)(1) or (2) of this section, the attorney general shall prepare 336
an investigative report and transmit it to the director. The 337
director shall review the disclosure statement and investigative 338
report to determine whether the statement or report contains 339
information that if submitted with a permit application would 340
require a denial of the permit pursuant to section 3734.44 of the 341
Revised Code. If the director determines that the statement or 342
report contains such information, the director may revoke any 343
previously issued permit pursuant to section 3734.45 of the 344
Revised Code, or the director shall deny any application for a 345
renewal of a permit or license. When the renewal of the license is 346
being performed by a board of health, the director shall instruct 347
the board of health about those circumstances under which the 348
renewal is required to be denied by this section.~~ 349

~~(F)(I)(1) Whenever there is a change in ownership of any 350
operating off-site solid waste facility, including incinerators, 351
any transfer facility, any operating off-site infectious waste 352
treatment facility, or any operating off-site hazardous waste 353
treatment, storage, or disposal facility, the prospective owner 354
shall file a disclosure statement with the attorney general and 355
the director at least one hundred eighty days prior to the 356
proposed change in ownership. In addition, whenever there is a 357
change in ownership of any operating on-site solid waste facility, 358
any operating on-site infectious waste facility, or any operating 359
on-site hazardous waste facility and the prospective owner intends 360~~

to operate the facility as an off-site facility by accepting wastes other than wastes generated by the facility owner, the prospective owner shall file a disclosure statement with the attorney general and the director. The prospective owner shall file the disclosure statement at least one hundred eighty days prior to the proposed change in ownership. ~~Upon~~

Upon receipt of the disclosure statement, the attorney general shall prepare an investigative report and transmit it to the director. The director shall review the disclosure statement and investigative report to determine whether the statement or report contains information that if submitted with a permit application would require a denial of the permit pursuant to section 3734.44 of the Revised Code. If the director determines that the statement or report contains such information, the director shall disapprove the change in ownership.

(2) If the parties to a change in ownership decide to proceed with the change prior to the action of the director on the disclosure statement and investigative report, the parties shall include in all contracts or other documents reflecting the change in ownership language expressly making the change in ownership subject to the approval of the director and expressly negating the change if it is disapproved by the director pursuant to division ~~(F)~~(I)(1) of this section.

(3) As used in this section, "change in ownership" includes any a change in the names, other than those of the individuals or entities who own a solid waste facility, infectious waste facility, or hazardous waste facility. "Change in ownership" does not include a legal change in a business concern's name when its ownership otherwise remains the same. "Change in ownership" also does not include a personal name change of officers, directors, partners, or key employees, contained in the a disclosure statement.

Section 2. That existing sections 3734.41 and 3734.42 of the Revised Code are hereby repealed.

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