

**As Passed by the Senate**

**129th General Assembly  
Regular Session  
2011-2012**

**Sub. S. B. No. 302**

**Senator Manning**

**Cosponsors: Senators Coley, Patton, Seitz, Balderson, Beagle, Eklund,  
Faber, Hite, Jones, Lehner, Niehaus, Peterson, Schaffer**

—

**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 statement for any new officer, director, partner, or key employee, to be submitted within ninety days from the addition of the officer, director, partner, or key employee;	210 211 212 213
(2) Information required to be included in a disclosure statement <del>for</del> <u>regarding the addition of</u> any new business concern, to be submitted within ninety days from the addition of the new business concern;	214 215 216 217
<del>(3) Information regarding any new criminal conviction, to be submitted within ninety days from the judgment entry of conviction.</del>	218 219 220
<u>(E)(1) The attorney general shall enter in the database established under section 109.5721 of the Revised Code the name, the fingerprints, and other relevant information concerning each officer, director, partner, or key employee of an applicant, permittee, or prospective owner.</u>	221 222 223 224 225
<u>(2) For purposes of section 109.5721 of the Revised Code, annually on a date assigned by the attorney general, an applicant, permittee, or prospective owner shall provide the attorney general with a list of both of the following:</u>	226 227 228 229
<u>(a) Each officer, director, partner, or key employee of the applicant, permittee, or prospective owner and the person's address and social security number;</u>	230 231 232
<u>(b) Any officer, director, partner, or key employee of the applicant, permittee, or prospective owner who has left a position previously held with the applicant, permittee, or prospective owner during the previous one-year period and the person's social security number.</u>	233 234 235 236 237
<u>(3) Annually, the attorney general shall update the database</u>	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 361  
wastes other than wastes generated by the facility owner, the 362  
prospective owner shall file a disclosure statement with the 363  
attorney general and the director. The prospective owner shall 364  
file the disclosure statement at least one hundred eighty days 365~~

prior to the proposed change in ownership. ~~Upon~~ 366

Upon receipt of the disclosure statement, the attorney 367  
general shall prepare an investigative report and transmit it to 368  
the director. The director shall review the disclosure statement 369  
and investigative report to determine whether the statement or 370  
report contains information that if submitted with a permit 371  
application would require a denial of the permit pursuant to 372  
section 3734.44 of the Revised Code. If the director determines 373  
that the statement or report contains such information, the 374  
director shall disapprove the change in ownership. 375

(2) If the parties to a change in ownership decide to proceed 376  
with the change prior to the action of the director on the 377  
disclosure statement and investigative report, the parties shall 378  
include in all contracts or other documents reflecting the change 379  
in ownership language expressly making the change in ownership 380  
subject to the approval of the director and expressly negating the 381  
change if it is disapproved by the director pursuant to division 382  
(~~F~~)(I)(1) of this section. 383

(3) As used in this section, "change in ownership" includes 384  
any a change in the names, other than those of the individuals or 385  
entities who own a solid waste facility, infectious waste 386  
facility, or hazardous waste facility. "Change in ownership" does 387  
not include a legal change in a business concern's name when its 388  
ownership otherwise remains the same. "Change in ownership" also 389  
does not include a personal name change of officers, directors, 390  
partners, or key employees, contained in ~~the~~ a disclosure 391  
statement. 392

**Section 2.** That existing sections 3734.41 and 3734.42 of the 393  
Revised Code are hereby repealed. 394