



Ohio Legislative Service Commission

Final Analysis

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Am. Sub. H.B. 201 130th General Assembly (As Passed by the General Assembly)

Reps. Butler, J. Adams, Terhar, Thompson, Hayes, R. Adams, Amstutz, Anielski, Beck, Bishoff, Blair, Blessing, Budish, Burkley, Conditt, Green, Hood, Huffman, Letson, Milkovich, Perales, Retherford, Sykes, Winburn, Batchelder

Sens. Burke, Coley, Eklund, Jordan, Patton, Seitz

Effective date: March 23, 2015

ACT SUMMARY

Entries of mortgage satisfaction

- Requires a mortgagee to record a release of a mortgage evidencing its satisfaction within 90 days from the date of its satisfaction, regardless of whether it is a residential or commercial mortgage.
- Expands to a current owner of real property to which a mortgage pertains the provision permitting a mortgagor to bring a cause of action for damages of \$250 for a mortgagee's failure to record a satisfied mortgage.
- Requires a current owner of property to provide a notice to a mortgagee if the mortgagee fails to record a satisfied mortgage within the required time period.
- Creates a cause of action for the current owner to collect damages when a mortgagee fails to record the satisfied mortgage after the current owner provides the notice.
- Provides requirements and damages for noncompliance with the requirements for a mortgagee, mortgagor, and property owner who are parties to an unreleased mortgage that has been satisfied, but not recorded, prior to the act's effective date.

Health care coverage

- Lowers to 26 (from 28) the age to which health insurance coverage must be extended, upon the request of the insured, under certain health policies or plans that provide coverage to an insured's unmarried dependent children.
- Increases to 30 (from 25) the minimum number of hours that an eligible employee works in a normal work week for the purposes of the law governing small employer health benefit plans.
- Specifies that a volunteer firefighter is not an employee for the purposes of the federal Patient Protection and Affordable Care Act.
- Increases the potential length of one-time, limited duration health insurance policies, from policies that are not longer than six months to policies that are less than 12 months.
- Specifies that chemotherapy parity requirements, as they apply to high deductible health plans, apply only after the respective deductible has been met.

CONTENT AND OPERATION

Entries of satisfaction

Overview

The act makes changes to the law for recording mortgage satisfactions to include current owner rights and duties and to expand the law to cover commercial properties.

Background

When a person who holds a mortgage on residential property (mortgagor) sells the property, the deed is transferred to the buyer of the property (current owner) at closing. Continuing law requires the mortgagee to record the satisfaction of the mortgagor's mortgage with the county recorder within a certain period of time.¹ If the mortgagee fails to record the satisfaction, and the current owner has a mortgage on the property, the county records will indicate that there are two mortgages on the property – the mortgagor's mortgage and the current owner's mortgage. However, the mortgagee's failure to record the satisfaction may be unknown because the recording takes place after closing of the sale of the property. If the current owner subsequently attempts to sell the property, the fact of the mortgagee's failure to record the satisfaction

¹ R.C. 5301.36.



of the mortgagor's mortgage will be revealed and may complicate the transfer of the property to a subsequent owner. In this case, both the mortgagor and current owner are negatively affected by the failure of the mortgagee to record the satisfaction.

Recording requirements

The act expands the former law's requirement regarding entries of mortgage satisfactions to include mortgages encumbering commercial real property, in addition to residential real property as under continuing law, and requires the recording of a release. The act requires, within 90 days from the date of the satisfaction of any mortgage, the mortgagee to record a release of the mortgage evidencing the fact of its satisfaction in the appropriate county recorder's office. Former law required, within 90 days from the date of the satisfaction of a residential mortgage, the mortgagee to record the fact of the satisfaction in the appropriate county recorder's office.²

Under the act, "satisfaction" means that the obligation secured by a mortgage has been paid in full and the underlying obligation terminated, with no opportunities for future advancements. The act removes the definition of "residential mortgage" and provides, for purposes of the entries of satisfaction requirements, that "mortgagee" includes the original mortgagee or any successor to or assignee of the original mortgagee.³ In general terms, a mortgagor is a person with an interest in real property who pledges that property as security for a debt; in other words, the borrower.⁴

Penalties for noncompliance

Failure to record

The act maintains the penalty for a mortgagee's failure to record the satisfaction of a mortgage in accordance with the law; it permits a mortgagor, specified in the act as the mortgagor of the unrecorded satisfaction, to recover, in a civil action, damages of \$250. The act explicitly expands this permission for recovery in a civil action to the current owner of the real property to which the mortgage pertains. The act specifies that this remedy not bar other legal damages, in addition to continuing law's provision that this remedy does not bar other legal remedies.⁵

² R.C. 5301.36(B).

³ R.C. 5301.36(H); Section 3(D).

⁴ See *Black's Law Dictionary*, 9th Ed., p. 1101, 1105.

⁵ R.C. 5301.36(C) and (E).



Current owner's notice of noncompliance and penalty for noncompliance with that notice

If the satisfaction of the mortgage remains unrecorded upon the expiration of 90 days, the act directs the current owner of the real property to which the mortgage pertains to provide written notice to the mortgagee, in accordance with the Rules of Civil Procedure, of the failure to enter the release of the mortgage of record. The notice must be in substantially the same form as the one provided in the act, which form notifies the mortgagee of (1) the duty to record a release, (2) the identity of the satisfied mortgage, (3) the mortgagee's failure to record the release, and (4) the consequences of failing to record the release within 15 days of receiving the notice (actions for damages, costs, and reasonable attorneys' fees, as provided in the act (discussed below)).⁶

Within 15 days after delivery of the notice, the mortgagee must record a release of the mortgage evidencing the fact of its satisfaction in the appropriate county recorder's office and pay any fees required for the recording. The mortgagee may, by contract with the mortgagor or current owner, recover the cost of the fees required for the recording of the satisfaction by the county recorder.⁷

If the mortgagee fails to record the satisfaction in accordance with the act's provisions, the current owner of the real property may recover, in a civil action, reasonable attorneys' fees and costs incurred in such an action or otherwise to obtain the recording of a satisfaction of mortgage plus damages of \$100 for each day of noncompliance, not to exceed \$5,000 in total damages. The act specifies that the recovery of these fees, costs, and damages does not preclude or affect any other legal remedies or damages that may be available to the current owner.⁸

Under the act, a current owner may combine civil actions or bring separate action for recovery of the \$250 in damages for the mortgagee's failure to record the satisfaction and the damages for the mortgagee's failure to do so after receiving the notice.⁹

The act provides a safe harbor clause for mortgagees that record a release of a mortgage evidencing its satisfaction within the required time periods. Such a mortgagee

⁶ R.C. 5301.36(D)(1).

⁷ R.C. 5301.36(D)(2).

⁸ R.C. 5301.36(E).

⁹ R.C. 5301.36(G).



is not in violation of the act's provisions, or subject to any damages or fees, due to the failure of a county recorder to timely process that release of mortgage.¹⁰

Transition provisions

Under the act, with respect to an unreleased *commercial* mortgage that has been satisfied more than 90 days prior to the act's effective date, but not recorded, the mortgagee will not be subject to a civil action or damages as described above under "**Failure to record.**" The current owner of the real property to which such a mortgage pertains must provide the mortgagee the written notice described in "**Current owner's notice of noncompliance and penalty for noncompliance with that notice,**" above, not sooner than on the act's effective date and may recover damages in a civil action for failure to comply with the notice as described in the act.

With respect to an unreleased *commercial* mortgage that has been satisfied less than 90 days prior to the act's effective date, but not recorded, the mortgagee will not be subject to a civil action or damages as described above under "**Failure to record.**" The current owner of the real property to which such a mortgage pertains must provide the mortgagee the written notice not sooner than on the 90th day after the mortgage was satisfied and may recover damages in a civil action for failure to comply with the notice as described in the act.

With respect to an unreleased *residential* mortgage that has been satisfied, but not recorded, prior to the act's effective date, the mortgagee will be subject to a civil action or damages as described above for failure to comply with the notice. If such a mortgage was satisfied more than 90 days prior to the act's effective date, the current owner of the real property to which the mortgage pertains must provide the mortgagee the written notice not sooner than on the act's effective date and may recover damages in a civil action for failure to comply with the notice. If such a mortgage was satisfied less than 90 days prior to the act's effective date, the current owner must provide the mortgagee the written notice not sooner than on the 90th day after the mortgage was satisfied and may recover damages in a civil action for failure to comply with the notice.¹¹

Insurance coverage for dependent children

The act provides that, once an unmarried child has attained the limiting age for dependent children specified in a health insurance policy, contract, agreement, or benefit plan and upon the request of the insured, the health insurer must offer to cover the unmarried child until the child reaches age 26 if certain conditions are satisfied (see

¹⁰ R.C. 5301.36(F).

¹¹ R.C. 5301.361.



"**Limiting age**," below). Former law required that such coverage be extended until the unmarried child reached age 28; however, continuing state law does not require insurers to offer dependent coverage in general.¹²

The insurers subject to these provisions of the act are health insuring corporations, sickness and accident insurers, multiple employer welfare arrangements, and public employee benefit plans. The provisions do not apply to health insurance that is part of employee benefits offered by private employers that self-insure their benefit programs. These programs are generally precluded from state regulation by the federal Employee Retirement Income Security Act (ERISA) (see "**ERISA**," below).

As noted above, coverage must be extended to an unmarried dependent child upon the request of the insured and if certain conditions are met, including the following: (1) the child is the natural child, stepchild, or adopted child of the insured, (2) the child is an Ohio resident or a full-time student at an accredited public or private institution of higher education, (3) the child is not Medicaid or Medicare eligible, and (4) the child is not employed by an employer that offers any health benefit plan under which the child is eligible for coverage.

Application

These provisions of the act apply to policies, contracts, agreements, and plans that are delivered, issued for delivery, or renewed in Ohio on or after January 1, 2016.¹³

Limiting age

Continuing law allows a health insurance policy or plan offered by a sickness and accident insurer, a health insuring corporation, multiple employer welfare arrangement, or public employee benefit plan that offers coverage for unmarried dependent children to place a "limiting age" on such coverage. Under continuing law, the attainment of that age may not operate to terminate coverage if the child continues to be both: (1) incapable of self-sustaining employment by reason of mental retardation or physical handicap and (2) primarily dependent on the policyholder for support or maintenance.

Mandated health benefits legislation

The act's requirements regarding extended coverage for unmarried dependents could be considered mandated health benefits. Under the former law, no mandated

¹² R.C. 1751.14, 3923.24, and 3923.241.

¹³ Section 3.



health benefits legislation enacted by the General Assembly could be applied to any policy, contract, plan, or other arrangement providing sickness and accident or other health benefits until the Superintendent of Insurance determined, pursuant to a hearing conducted in accordance with the Administrative Procedure Act, that the provision could be applied fully and equally in all respects to (1) employee benefit plans subject to regulation by the federal ERISA and (2) employee benefit plans established or modified by the state or its political subdivisions.¹⁴

The act includes provisions that exempt its requirements regarding coverage for unmarried dependents from review by the Superintendent. Therefore, the coverage may be implemented without a hearing and determination that the coverage can be applied to employee benefit plans subject to ERISA.¹⁵

ERISA

ERISA is a comprehensive federal statute governing the administration of employee benefit plans. ERISA generally precludes state regulation of benefits offered by private employers that self-insure their benefit programs. Larger employers frequently choose to establish their own health insurance plans for their employees in lieu of purchasing coverage from a sickness and accident insurer or health insuring corporation.

Eligible employees under small employer benefit plans

The act specifies, for the purposes of the law governing small employer benefit plans, that an eligible employee means an employee who works a normal work week of 30 or more hours. Prior law provided that an eligible employee had to work a normal work week of 25 or more hours. A small employer, in connection with a group health benefit plan, is an employer who employs an average of at least two but no more than 50 eligible employees on business days during the preceding calendar year and who employs at least two employees on the first day of the plan year.¹⁶ This change conforms Ohio law to provisions in the Patient Protection and Affordable Care Act (ACA) that relate to mandatory health insurance coverage.

¹⁴ R.C. 3901.71, not in the act.

¹⁵ R.C. 1751.69(B) and 3923.85(B).

¹⁶ R.C. 3924.01.



Application

These provisions of the act apply to policies, contracts, agreements, and plans that are delivered, issued for delivery, or renewed in Ohio on or after January 1, 2016.¹⁷

Volunteer firefighters

With respect to a volunteer firefighter appointed by a municipal corporation or township, the act provides that the firefighter is a bona fide volunteer and is not a municipal corporation or township employee for the purposes of the federal Patient Protection and Affordable Care Act. The act specifies that a firefighter is not an employee even if the firefighter or, in some instances, a family member of the firefighter, receives any benefits provided by the following:

- (1) The Volunteer Fire Fighters' Dependents Fund;
- (2) The Industrial Commission or Bureau of Workers' Compensation;
- (3) An annuity program established by a township or municipal corporation for its volunteer firefighters;
- (4) A standard liability and casualty insurance policy purchased by a township or municipal corporation for members of its fire department;
- (5) The tuition waiver available to a person attending a state-funded college or university who is the child or spouse of a firefighter killed in the line of duty;
- (6) A sickness and accident insurance policy that covers a volunteer fire department and its members;
- (7) The law that prohibits an employer from terminating an employee who is a volunteer firefighter when that employee is absent from or late to work in order to respond to an emergency prior to the time the employee is to report to work.¹⁸

One-time, limited-duration policies

The act increases the potential length of one-time, limited-duration (OTLD) health insurance policies, from policies that are not longer than six months to policies that are less than 12 months.¹⁹ OTLD policies are distinct from other health insurance

¹⁷ Section 3.

¹⁸ R.C. 505.377, 737.082, and 737.222.

¹⁹ See **COMMENT**.



policies in that certain requirements that apply to standard insurance policies do not apply to OTLD policies. The following is a list of the requirements that do not apply to OTLD policies:

- Uniform prescription drug information on standardized identification cards or other identifying electronic technology;
- Limitations on administrative expenses retained in relation to health policies;
- Coverage of adult dependent children;
- Biologically based mental illness parity;
- Pre-existing conditions coverage;
- Coverage of emergency services;
- Required continuation of coverage;
- Requirements for the discontinuation of insurance products;
- Small employer health benefit plan law requirements.²⁰

Chemotherapy parity

The act specifies that chemotherapy parity requirements, as they apply to high deductible health plans, including catastrophic health plans, apply only after the respective deductible has been met.²¹ Continuing law requires that orally administered chemotherapy be covered on at least the same basis as intravenously administered or injected cancer medications. This change ensures that such plans will be eligible under federal law for health savings accounts (HSA).

To provide context, an HSA is a tax-exempt savings account that can be used to pay or reimburse certain medical expenses. An HSA can only be set up in relation to certain types of health benefit plans. Federal guidance provided by the Internal Revenue Service specifies that high deductible health plans that include prescription

²⁰ R.C. 1739.061, 3923.022, 3923.24(E), 3923.241(D), 3923.281, 3923.57, 3923.58, 3923.601, 3923.65, 3923.83, and 3924.01(H).

²¹ R.C. 1751.69(C) and 3923.85(C)



drug coverage are eligible for an HSA only if the prescription drug coverage provides no benefits until the deductible is met.²²

COMMENT

The operation of R.C. 3923.58 was suspended by S.B. 9 of the 130th General Assembly. This section required insurers to offer open enrollment to individuals that could not otherwise obtain insurance (perhaps because of a pre-existing condition). This section was suspended because the open enrollment program was largely subsumed by the federal Patient Protection and Affordable Care Act (PPACA). The act's amendment of this section does not supersede that suspension.

Because OTLD policies do not have to meet certain requirements, such as the coverage of pre-existing conditions, they may not constitute qualified health plans with regard to the individual mandate enacted in the PPACA. As such, individuals covered by OTLD policies might be subject to the tax penalty associated with the mandate.

HISTORY

ACTION	DATE
Introduced	06-11-13
Reported, H. Financial Institutions, Housing & Urban Development	02-13-14
Passed House (97-0)	02-26-14
Reported, S. Insurance & Financial Institutions	12-10-14
Passed Senate (26-5)	12-11-14
House concurred in Senate amendments (65-25)	12-17-14

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²² U.S. Internal Revenue Service. *Health Savings Accounts and Other Tax-Favored Health Plans* (Publication 969), 2013.

