
DEPARTMENT OF COMMERCE

Medical Marijuana

- Creates the Division of Marijuana Control (DMC) within the Department of Commerce (COM) and requires the State Board of Pharmacy (PRX) and COM to transfer the Medical Marijuana Control Program to DMC no later than December 31, 2023.
- Establishes a Superintendent of Marijuana Control to oversee DMC.
- Specifies that licenses and registrations issued by COM and PRX remain in effect for the remainder of their term and that forms of medical marijuana approved by PRX remain approved unless that approval is later revoked by DMC.
- Specifies that COM and PRX rules related to the Medical Marijuana Control Program remain in effect until repealed or amended by DMC, but requires DMC to review and propose revisions to existing rules on retail dispensaries by March 1, 2024.
- Allows DMC to investigate alleged violations of the Medical Marijuana Law, including by subpoenaing documents and witnesses.
- Requires PRX to allow DMC to access the Ohio Automated Rx Reporting System (OARRS) as needed to ensure compliance with the Medical Marijuana Law.
- Makes conforming changes throughout the Revised Code.

Division of Financial Institutions

- Replaces the requirement that the Superintendent of Financial Institutions obtain a criminal records check in relation to a person who controls a bank, or has a substantial interest in or participates in managing a bank, with a requirement that the Superintendent request a criminal records check of a person who exercises “control” of a bank.
- Defines “control” as the power to vote, directly or indirectly, at least 25% of the voting shares or interests or the power to elect or appoint a majority of executive officers or directors.
- Rebuttably presumes a person to exercise control when the person holds the power to vote, directly or indirectly, at least 10% of the voting shares or interests.

State Fire Marshal

- Eliminates the Underground Storage Tank Revolving Loan Program under which the State Fire Marshal may issue loans to political subdivisions to assist with costs in removing underground storage tank systems that store petroleum and hazardous substances.
- Repeals the law establishing the Underground Storage Tank Revolving Loan Fund, which is used for purposes of the program.

Division of Industrial Compliance

Manufactured homes

- Expands the scope of manufactured home installation inspections by requiring the Division of Industrial Compliance, local building departments, or certified private entities to conduct the inspections anywhere in Ohio, not just in manufactured home parks.

Board of Building Standards

- Requires the Board of Building Standards to establish a grant program for local building departments to increase recruitment, training, and retention of qualified personnel.
- Specifies that money for the grant program is to come from the Industrial Compliance Operating Fund.

Real property

Ohio fire and building codes

- Requires the State Fire Marshall to exclude an exterior patio that has a means of egress on at least three sides, or within 50 feet of an open side, and that is compliant with the Americans with Disabilities Act, in establishing occupant load for a building.
- Requires the Director of Commerce, the State Fire Marshal, the Board of Building Standards, and a representative of local building departments to develop guidelines for the enforcement of the Ohio Building Code and Fire Code in a coordinated manner.
- Allows a retail establishment to obtain a temporary fire permit lasting 14 days in the event the local fire code official is unavailable to conduct an inspection or issue a permit for longer than five business days.
- Allows a retail establishment to obtain a temporary building permit lasting 14 days in the event the state or local building official is unavailable to conduct an inspection or issue a permit for longer than five business days.

Right-to-list home sale agreements

- Prohibits “right-to-list” home sale agreements that purport to run with the land, bind future owners, or create a lien, encumbrance, or other security interest in residential real estate.
- Specifies that right-to-list home sale agreements entered into, modified, or extended after the bill’s 90-day effective date are void and unenforceable.
- Requires county recorders to refuse to record right-to-list home sale agreements.
- Stipulates that a person, other than the property owner, who seeks to enter a right-to-list home sale agreement commits an unfair and deceptive practice under the Consumer Sales Practices Act (CSPA).

Landlord agent disclosure

- Requires a landlord that designates an agent for the purpose of providing services to tenants under a rental agreement for residential property to disclose the name and address of the agent within 30 days of appointment and within 30 days of any subsequent change to the agent's name or address.

Self-service storage facilities

- Establishes that if a rental agreement limits the value of property that may be stored in a self-service storage facility, that limit is the maximum value of the stored property.
- Prohibits a rental agreement from limiting the value of stored property to less than \$1,000.

Division of Liquor Control

B-1 liquor permit holders and craft beer exhibitions

- Allows the distributor of a beer manufacturer (B-1 permit holder) to supply the manufacturer's beer for a craft beer exhibition authorized by an F-11 liquor permit.

D-10 liquor permit

- Creates the D-10 liquor permit, which allows the owner or operator of a restaurant to sell beer, wine, or mixed beverages on a boat that is owned or operated by the permit holder and that is operated on a navigable body of water adjacent to the restaurant.
- Requires the owner or operator of the restaurant to hold a D class permit for the restaurant in order to qualify for the D-10 permit.
- Exempts from the Open Container Law a person who consumes beer, wine, or mixed beverages on a boat owned or operated by a D-10 permit holder.

Liquor permit premises: outdoor sales area

- Codifies and makes permanent a law that is set to expire December 31, 2023, that allows a qualified liquor permit holder to expand the area in which it may sell alcoholic beverages to the following areas (under certain circumstances):
 - In any area of the permit holder's property that is outdoors and where sales are not currently authorized, including the permit holder's parking area;
 - In any outdoor area of public property that is immediately adjacent to the permit holder's premises and that is owned by a municipal corporation or township, with the public property owner's permission;
 - In any outdoor area of private property that is immediately adjacent to the permit holder's premises, with the private property owner's permission.

Duplicate liquor permits

- Does both of the following regarding duplicate liquor permits issued by the Division of Liquor Control:

- Requires all liquor permit holders that may serve alcohol for on-premises consumption, rather than only certain permit holders as in current law, to obtain a duplicate permit in order to serve alcohol from an additional bar at the permit premises beyond the two bars authorized by the original permit; and
- Requires the duplicate permit fee for each added bar to be the higher of \$100 or 20% of the fee payable for the original permit issued for the premises, rather than specific fee amounts depending on the type of permit issued as in current law.

Micro-distillery surety bond

- Requires an A-3a liquor permit holder (micro-distillery) to execute a surety bond in an amount established by the Division that is conditioned on the faithful performance of the permit holder's duties.

Liquor permit cancellations

- Repeals the law that requires the Liquor Control Commission to cancel liquor permits for certain reasons, including the permit holder's death or bankruptcy.

Division of Real Estate and Professional Licensing

Real estate brokers

- Modifies the prerequisites to take the real estate broker's examination by:
 - Requiring that an applicant have worked as a licensed real estate broker or salesperson for at least two of the five years preceding the application; and
 - Removing the requirement that the applicant have worked as a licensed real estate broker or salesperson for an average of 30 hours per week.
- Requires the Superintendent of Real Estate and Professional Licensing to forward any identifying information to the Attorney General if a person fails to pay a civil penalty for certain unlicensed or unregistered activity.

Disciplinary actions

- Limits to state or federally chartered institutions where a person holding a real estate broker or salespersons license must, for the purpose of receiving escrow funds and security deposits, or for the purpose of depositing and maintaining funds in the course of real property management on the behalf of others, maintain a special or trust bank account.
- Permits the Superintendent to take disciplinary action against a license holder for having been judged incompetent in any capacity, as opposed to simply for the purpose of holding a real estate license.

Administration of funds

- Creates the Cemetery Registration Fund and requires burial permit fees to be deposited into the new fund, instead of to the Division generally, but with the same purpose.

- Eliminates the Cemetery Grant Fund and redirects deposits to the Cemetery Registration Fund and eliminates a restriction on the total value of grants permitted to be issued in a single fiscal year.
- Eliminates the Real Estate Education and Research Fund, Manufactured Homes Regulatory Fund, Home Inspectors Fund, and Real Estate Appraiser Operating Fund, and redirects deposits going to these funds under existing law to the existing Division of Real Estate Operating Fund.
- Expands the purposes for which the Real Estate Operating Fund may be used to include the purposes for which the eliminated funds may be used.
- Allows instead of requires, as in current law, the Ohio Real Estate Commission to use operating funds (instead of the Real Estate Education and Research Fund) for education and research.
- Allows the Superintendent to collect a service fee from the Real Estate Recovery Fund to defray the cost of administering the fund, rather than requiring the Superintendent to collect the service fee.

Confidentiality of investigatory information

- Expands the Division of Real Estate and Professional Licensing's ability to share investigatory information with the Division of Securities, Division of Industrial Compliance, and any law enforcement agency.
- Makes a technical correction.

Home Inspector Board

- Requires the Ohio Home Inspector Board annually to elect a chair and vice chair from among its membership by majority vote.
- Requires the Board to meet at least once quarterly.
- Specifies that a quorum consists of a majority of the members of the Board and requires a quorum in order for the Board to conduct its business.
- Allows the Board to adopt any rules necessary to further the Home Inspector Law, in addition to the rule topics specified in the Revised Code.
- Authorizes the Board to request the Superintendent of Real Estate and Professional Licensing to initiate investigations of possible violations of the Home Inspector Law.
- Requires, rather than allows, the Board to impose a special assessment, not to exceed \$5 per year, on each person applying for a license to perform home inspections (or renewal of such a license) whenever the balance of the Home Inspection Recovery Fund is less than \$1 million.
- Eliminates the Board's authority to hear appeals from orders of the Superintendent regarding claims against the Home Inspector Recovery Fund.

Home inspectors

- Modifies the deadline by which a licensed home inspector must complete continuing education hours by requiring 42 hours to be completed every three years, rather than 14 hours annually during each three-year period the home inspector's license is valid as under current law.

Division of Securities

Securities registration

- Requires all securities registered under the federal Securities Act of 1933 to be registered in Ohio by coordination.
- Specifies that the registration procedures, evaluation standards, and general oversight provisions for a registration by description or registration by qualification do not apply to a registration by coordination.
- Requires business development companies (BDCs) to file a notice with the Division of Securities before conducting business in Ohio, and permits a BDC, after filing the notice, to sell an indefinite amount of securities in Ohio.

Securities Law – period of limitation

- Requires that prosecutions and acts by the Division of Securities or the Director of Commerce for a violation of Securities Law commence within six years after the commission of the alleged violation.
- Provides that, if the period of limitation has expired and an element of the offense is fraud or breach of fiduciary duty, prosecution commences within one year after the discovery of the offense by the aggrieved person or the aggrieved person's legal representative.
- Specifies that an offense is committed when every element of the offense occurs.
- Provides that the period of limitation does not run during any time when the *corpus delicti* (physical element of a crime) remains undiscovered.

Medical Marijuana

(R.C. 121.04, 121.08, 3796.02, 3796.03, 3796.032, 3796.04 (repealed), 3796.05, 3796.06, 3796.061, 3796.08, 3796.10, 3796.11, 3796.12, 3796.13, 3796.14, 3796.15, 3796.16, 3796.17, 3796.19, 3796.20, 3796.22, 3796.23, 3796.27, 3796.30, 3796.32, and 4776.01; Section 525.20; conforming changes in R.C. 109.572, 1321.37, 1321.53, 1321.64, 4735.143, 4763.05, 4764.06, 4764.07, 4768.03, and 4768.06)

Transfer to Division of Marijuana Control (DMC)

The bill consolidates oversight of the Medical Marijuana Control Program within the Division of Marijuana Control (DMC), which the bill creates within the Department of

Commerce (COM). To oversee DMC, the bill establishes a Superintendent of Marijuana Control who reports to the Director of Commerce. Currently, oversight of the Medical Marijuana Control Program is split between COM and the State Board of Pharmacy (PRX), with COM being responsible for licensing and oversight of cultivators, processors, and testing laboratories and PRX being responsible for licensing and oversight of medical marijuana patients, caregivers, and dispensaries. Accordingly, the bill transfers all assets, liabilities, and obligations of COM and PRX related to medical marijuana to DMC.

The bill requires the transfer to be complete no later than December 31, 2023. Until then, PRX and COM retain their respective marijuana licensing and oversight responsibilities. Persons seeking registration as a medical marijuana patient or caregiver must apply to PRX until the 180th day following the effective date of the bill's changes. After that date, such applications must be submitted to DMC. Consequently, it appears that PRX will continue to receive applications for patient and caregiver registrations for a least three months after the Medical Marijuana Control Program is fully transferred to DMC. Presumably, PRX would send those applications to DMC for processing.

The bill specifies that medical marijuana licenses and registrations issued by PRX and COM remain in effect for the remainder of their term. If a license or registration expires before the program transfer is complete, the original issuer (PRX or COM) may renew it under the law as it existed before the bill's effective date. Forms of medical marijuana previously approved by PRX remain approved unless DMC later revokes the approval.

Rules

DMC is required to adopt rules, standards, and procedures for the Medical Marijuana Control Program. The topics of those rules closely mirror those mandated for COM and PRX under current law. COM and PRX rules continue in effect unless they are repealed or amended by DMC. However, the bill requires DMC to review and propose revisions to the PRX rules concerning medical marijuana retail dispensaries no later than March 1, 2024.

Investigations

The bill allows DMC to initiate and conduct an investigation, and subpoena witnesses and documents, whenever there appears to be a violation of the Medical Marijuana Law, or when DMC otherwise believes it to be in the best interest of medical marijuana patients or the general public. A person that fails to comply with a DMC order or subpoena may be held in contempt by a court of common pleas of appropriate jurisdiction.

Drug database usage

The bill requires PRX to grant DMC access to the Ohio Automated Rx Reporting System (OARRS) as needed to ensure compliance with the Medical Marijuana Law. OARRS is a drug database used by PRX to prevent the misuse of controlled substances and other dangerous drugs.

Division of Financial Institutions

Criminal records checks

(R.C. 1121.23)

The bill replaces the requirement that the Superintendent of Financial Institutions obtain a criminal records check in relation to a person who directly or indirectly controls a bank, or has a substantial interest in or participates in the management of a bank, with a requirement that the Superintendent request a criminal records check of a person who exercises “control” of a bank. The bill defines “control” as the power to vote, directly or indirectly, at least 25% of outstanding voting shares or voting interests of a licensee or person in control of a licensee, or the power to elect or appoint a majority of executive officers or directors.

The bill creates a presumption that a person exercises control when that person holds the power to vote, directly or indirectly, at least 10% of outstanding voting shares or voting interests of a licensee or a person in control of a licensee. However, this presumption can be rebutted by establishing that the person is a passive investor by a preponderance of the evidence. To determine the percentage of a person controlled by any person, that person’s interest is aggregated with any other immediate family member. This includes a spouse, parents, children, siblings, in-laws, and any other person who shares their home.

The bill also provides definitions for several terms that are not defined for purposes of this provision.

“**Director**” means an individual elected to serve as the director of a for-profit corporation or a nonprofit corporation.

“**Executive officer**” means president, treasurer, secretary, any individual at or above the senior vice-president level or its functional equivalent, any individual at the vice-president level or its functional equivalent if the organization does not have senior vice-presidents, and “manager” as that term is defined in the Ohio Revised Limited Liability Company Act (LLC Law) (a person designated by the LLC or its members with the authority to manage all or part of the activities or affairs of the LLC on its behalf, regardless of their title).

“**Incorporator**” has the same meaning as in Ohio’s General Corporation Law: a person who signed the original articles of incorporation.

“**Organizer**” has the same meaning as in the LLC Law: a person executing the initial articles of organization.²⁴

Because continuing law requires the Superintendent to request a criminal records check for someone to serve as an organizer, incorporator, director, or executive officer, the bills adds these definitions to clarify precisely who that includes in this context.

²⁴ R.C. 1701.01, 1701.55, 1702.26, and 1706.01, not in the bill.

State Fire Marshal

Underground Storage Tank Revolving Loan Program

(R.C. 3737.02, 3737.88, and 3737.882; repealed R.C. 3737.883)

The bill eliminates the Underground Storage Tank Revolving Loan Program and the accompanying Underground Storage Tank Revolving Loan Fund. Under the program, a political subdivision may apply for a loan from the State Fire Marshal to assist with the costs of removing underground storage tank systems that store petroleum and hazardous substances. The loans are for sites where a responsible party is unknown or unable to financially pay for the removal of the storage tank. The State Fire Marshal must adopt rules to administer and operate the program, including establishing qualifying criteria for loan recipients. The fund is used to make underground storage tank revolving loans. The fund currently has no cash balance.

Division of Industrial Compliance

Manufactured homes

(R.C. 4781.04)

The bill expands the scope of inspections relating to the installation of manufactured housing by requiring the Division of Industrial Compliance to adopt rules requiring the Division, local building departments, or certified private third parties to conduct such inspections anywhere in Ohio.

Current law requires the Division, local building departments, or certified private third party entities to conduct these inspections for manufactured housing located in manufactured home parks. Under current law, manufactured homes that are installed on any tract of land that is subdivided, even if those lots are sold for the purpose of installing a manufactured home, are beyond the scope of installation inspections. Similarly, manufactured homes installed on their own individual tracts of land are beyond the scope of these inspections.

Board of Building Standards

Grant program

(R.C. 3781.10 and 3781.102)

The bill requires the Board of Building Standards to establish a grant program for local building departments to increase recruitment, training, and retention of qualified personnel. Currently, the Board:

- Formulates, adopts, and amends relevant building standard law;
- Certifies municipal, county, and township building departments to exercise authority, approve plans, and conduct inspections; and
- Conducts hearings.

The bill specifies that the money for the grant program is to come from the Industrial Compliance Operating Fund. The Industrial Compliance Operating Fund receives a variety of fees collected by the Division of Industrial Compliance and is maintained by COM.²⁵

Real property

Ohio fire and building codes

Exterior patios

(R.C. 3737.83; Sections 110.20 and 110.21)

Continuing law requires that structures adhere to occupant load limits and other safety requirements in the Ohio Fire Code and the Ohio Building Code. Occupant load refers to the number of people permitted in a building at one time based on the building's floor space and function – the number of people for which the means of egress is designed.²⁶ The bill requires the State Fire Marshal to establish in the state Fire Code that the occupant load does not include an exterior patio that has a means of egress on at least three sides, or within 50 feet of an open side, and in which each means of egress is compliant with standards established by the Americans with Disabilities Act. To be compliant, each means of egress must provide a continuous and unobstructed way of travel to an area of refuge, a horizontal exit, or a public way.²⁷

Rules required by this provision of the bill are exempt from continuing law requirements concerning reductions in regulatory restrictions. State agencies are required to take actions to reduce regulatory restrictions in accordance with a statutory schedule. Such actions include removing two or more existing regulatory restrictions for each new restriction adopted (often referred to as the “two-for-one-rule”). A “regulatory restriction” is any part of an administrative rule that requires or prohibits an action.²⁸

Coordinated enforcement

(R.C. 3737.062)

The bill requires the Director of Commerce, in collaboration with the State Fire Marshal, the Board of Building Standards, and representatives of local building departments, to develop guidelines for the enforcement of the Ohio Building Code and state Fire Code in a coordinated manner, including the interaction of exemptions from one code with the requirements of the other code.

²⁵ R.C. 121.084.

²⁶ O.A.C. 1301:7-7-10 and 4101:1-10-01, not in the bill.

²⁷ International Building Code § 1007.1 (2003).

²⁸ R.C. 122.183(D); R.C. 121.95, unchanged by this provision; R.C. 122.951 to 121.953, not in the bill.

Temporary fire and building permits

(R.C. 3737.833 and 3781.032)

Under current law, permits provided under the Ohio Fire Code must be granted by the State Fire Marshal or local fire code official, usually the fire chief for municipalities and townships that have fire departments. Similarly, the Ohio Building Code requires permits to be granted by the relevant building official from a department or agency of the state, or a political subdivision, which has jurisdiction to enforce state and local building codes. Building officials are responsible for administering and enforcing both the Ohio Building Code and any local building regulations adopted in accordance with the state law.²⁹

If the local fire code official or state or local building official is unable to conduct an inspection or issue a permit required by the state fire or building codes for more than five business days, the bill allows the owner, operator, or developer of a retail establishment to obtain a temporary fire or building permit from *any* fire or building code official authorized to conduct that inspection or issue that permit elsewhere in Ohio. In the event that a retail establishment does receive a temporary permit, that permit will last for only 14 days, after which time the establishment must obtain the permit in question from the local fire code or building official.

The bill defines a “retail establishment” as a place of business open to the general public for the sale of goods or services, including establishments currently under construction and not yet open to the public.

Right-to-list home sale agreements

(R.C. 317.13, 4735.01, 4735.18, and 5301.94)

The bill prohibits “right-to-list” home sale agreements, where the owner of residential real estate agrees to provide another person the exclusive right to list the real estate for sale at a future date, in exchange for monetary consideration, or something else of value. The prohibition applies to agreements entered into, modified, or extended after the bill’s 90-day effective date that meet one or both of the following criteria:

- The agreement states that it runs with the land, or otherwise purports to bind future owners of the residential real estate;
- The agreement purports to be a lien, encumbrance, or other real property security interest.

For example, a “right-to-list” agreement might give a real estate agent the exclusive right to list a particular property for the duration of the agreement, no matter who the owner of the property is or how many times the property changes hands.

²⁹ O.A.C. 1301:7-7-01, Sections 105.1.1, 104.1, and 104.2, not in the bill; O.A.C. 4101:1-1-01, Sections 105.1, 104.1, and 104.2, not in the bill; R.C. 3781.01, not in the bill.

Under the bill, right-to-list agreements are void and unenforceable. Furthermore, county recorders must refuse to record such an agreement. However, the bill clarifies that county recorders do not have a duty to evaluate every document presented to determine whether or not the document is a right-to-list agreement.

Persons other than the property owner that seek to enter a right-to-list agreement commit an unfair and deceptive practice under the Consumer Sales Practices Act (CSPA). Such persons would be subject to a lawsuit brought by either the Attorney General or the property owner.³⁰ Furthermore, real estate agents or brokers who are found to have entered into a right-to-list agreement would be subject to the following sanctions:

- Revocation of license;
- Suspension of license;
- A fine of no more than \$2,500;
- A public reprimand;
- Additional continuing education.³¹

Landlord agent disclosure

(R.C. 5321.18)

The bill explicitly authorizes a landlord to designate an agent for any purpose related to the provision of tenant services under a residential rental agreement. Such authority is implied throughout the Landlord Tenant Law, but not directly stated. Additionally, the bill requires a landlord that designates such an agent to disclose the agent's name and address to tenants within 30 days of the appointment, or any change to the agent's address or identity (e.g., if the landlord designates a new agent). Notice provided in the rental agreement, as described below, is sufficient to meet the bill's disclosure requirement. A landlord may also provide notice through other "reasonable" means such as posting the information in the leasing office or another conspicuous location on the residential property.

In effect, the bill creates an additional notice requirement when a residential landlord appoints an agent after commencement of a rental agreement and whenever there is a change to an agent's name or address.

Under continuing law, every rental agreement for residential property must contain the name and address of the owner and the name and address of the owner's agent, if any. If the owner or the owner's agent is a corporation, partnership, limited partnership, association, trust, or other entity, the agreement must include the address of the agent's principal place of business in the county in which the residential property is located. If the entity has no place of business in the county, the agreement must include the business's principal place of business in

³⁰ R.C. 1345.07 and 1345.09, not in the bill.

³¹ R.C. 4735.051, not in the bill.

Ohio, and the name of the person in charge. If the address is not included in the rental agreement, the landlord waives written notice, otherwise required by law, before the tenant pursues remedies such as paying rent to a municipal or county court to hold in escrow, applying for a court order for the landlord to remedy a breach in the rental agreement, or terminating the rental agreement altogether.³²

Self-service storage facilities

(R.C. 5322.06)

The bill specifies that if a rental agreement between an owner and occupant of a self-service storage space contains a provision that limits the value of personal property stored in the storage space, that limit is the maximum value of the stored property. In other words, the value recovered in an insurance claim or civil action against the owner or operator of the facility for loss of or damage to property stored inside that storage space cannot exceed the maximum value stated in the rental agreement. However, a rental agreement may not limit the value of property stored in a storage space to less than \$1,000.

The provision of the rental agreement that contains this maximum limit must be printed in bold type or underlined. The limit stated in the rental agreement may be increased with the written permission of the owner of the storage space.

Division of Liquor Control

B-1 liquor permit holders and craft beer exhibitions

(R.C. 4303.2011)

The bill allows the distributor of a brewery (B-1 permit holder) to supply the brewery's beer for a craft beer exhibition authorized by an F-11 liquor permit. Current law allows an F-11 permit holder to sell at an exhibition beer that it has purchased from breweries (A-1 and A-1c permit holders) that are participating in the exhibition.

D-10 liquor permit

(R.C. 4301.62 and 4303.187)

The bill allows the Division of Liquor Control to issue a D-10 liquor permit to the owner or operator of a restaurant that meets all of the following:

1. The owner or operator holds a D class liquor permit (allows bars or restaurants to sell alcoholic beverages for on-premises consumption) for the restaurant;
2. The restaurant is located on, or immediately adjacent to, the shoreline of a navigable body of water;
3. The restaurant offers to its patrons boat rides on a boat that is owned or operated by the owner or operator of the restaurant and that is operated on the navigable body of water.

³² See R.C. 5321.07 and 5321.08, neither in the bill.

A D-10 permit holder may sell beer, wine, or mixed beverages as follows:

1. For consumption on the boat that is owned or operated by the permit holder and that is operated on the navigable body of water that the permit holder's restaurant is located on or immediately adjacent to; and

2. During the same hours as a D-5 permit holder is authorized under the liquor control laws or the rules of the Liquor Control Commission.

The bill establishes a \$100 permit fee for the D-10 permit. Finally, the bill exempts from the Open Container Law a person who consumes beer, wine, or mixed beverages on a boat owned or operated by a D-10 permit holder.

Liquor permit premises: outdoor sales area

(R.C. 4301.62 and 4303.188; Sections 610.70 and 803.20)

The bill codifies and makes permanent a law that is set to expire on December 31, 2023. The codification takes effect January 1, 2024. The law allows a qualified liquor permit holder to expand the area in which it may sell beer, wine, mixed beverages, or spirituous liquor (alcoholic beverages) by the individual drink for consumption to personal consumers in the following areas:

1. In any area of the permit holder's property that is outdoors and where sales are not currently authorized, including the permit holder's parking area;

2. In any outdoor area of public property that is immediately adjacent to the permit holder's premises and that is owned by a municipal corporation or township, with the public property owner's written permission in accordance with the bill;

3. In any outdoor area of private property that is immediately adjacent to the permit holder's premises, with the private property owner's permission.

A qualified permit holder is a large or small brewery (A-1 or A-1c liquor permit holder); a brewery, winery, or small distillery that operates a bar or restaurant (A-1-A permit holder); a winery (A-2 or A-2f permit holder); or a bar or restaurant (D class permit holder). A personal consumer is an individual who is at least 21 and who intends to use a purchased alcoholic beverage only for personal consumption and not for resale or other commercial purposes.

If a qualified permit holder sells alcoholic beverages in the outdoor area, the permit holder must clearly delineate the area where personal consumers may consume alcoholic beverages.

For the bill's purposes, a qualified permit holder must obtain the written consent of either of the following:

1. If the public property is located in a municipal corporation, the executive officer of the municipal corporation or the executive officer's designee. If the executive officer or designee denies consent, the permit holder may appeal to the municipal corporation's legislative authority. The legislative authority may adopt a resolution requesting the executive officer to reconsider the denial.

2. If the public property is located in the unincorporated area of a township, the township's legislative authority by adoption of a resolution consenting to the sale of alcoholic beverages in the outdoor area.

In addition, a qualified permit holder that intends to sell alcoholic beverages by the individual drink in an outdoor area must notify the Division of Liquor Control and the Department of Public Safety's Investigative Unit of the area in which the permit holder intends to sell the alcoholic beverages. The permit holder must provide the notice within ten days of the commencement of the sales.

A qualified permit holder or the holder's employee must deliver each alcoholic beverage sold to a personal consumer in an outdoor area authorized under the bill.

Duplicate liquor permits

(R.C. 4303.30)

Current law requires certain liquor permit holders that serve alcohol for on-premises consumption to obtain a duplicate permit if the permit holder wishes to add an additional bar at the permit premises beyond the two bars authorized by the original permit. The liquor permit holders subject to this requirement are the D-2, D-3, D-3a, D-4, D-4a, D-5, D-5a, D-5b, D-5e to D-5o, and D-6 permit holders. According to the Division of Liquor Control, a D-1, D-2x, or D-3x permit holder is not required to obtain a duplicate permit if the additional bar is exclusively used for the sale of beer. Further a D-3x permit holder is not required to obtain a duplicate permit if the additional bar is exclusively used for the sale of wine. An A-1-A permit holder must obtain a duplicate bar permit for an additional bar only if the permit holder obtains a D-6 permit (Sunday sales of alcohol).

The bill requires all liquor permit holders that serve alcohol for on-premises consumption to obtain a duplicate permit if the permit holder wishes to add more than two bars. It also revises the per bar permit fee for a duplicate permit as follows:

Permit	Current law	The bill
A-1-A with a D-6	\$781.20	\$781.20
A-1	Not authorized	\$781.20
A-1c	Not authorized	\$200
A-2/A-2f	Not authorized	\$100
A-5	Not authorized	\$200
B-1	Not authorized	\$625
B-2	Not authorized	\$100
B-2a	Not authorized	\$100

Permit	Current law	The bill
B-3	Not authorized	\$100
B-4	Not authorized	\$100
B-5	Not authorized	\$312.60
D-2	\$100	\$112.80
D-3	\$400	\$150
D-3a	\$400	\$187.60
D-4	\$200	\$100
D-4a	Not authorized	\$150
D-5	\$1,000	\$468.80
D-5a	\$1,000	\$468.80
D-5b	\$1,000	\$468.80
D-5c	\$400	\$312.60
D-5d	Not authorized	\$468.80
D-5e	\$650	\$243.80
D-5f	\$1,000	\$468.80
D-5g	\$375	\$375
D-5h	\$375	\$375
D-5i	\$468.80	\$468.80
D-5j	\$468.80	\$468.80
D-5k	\$375	\$375
D-5l	\$468.80	\$468.80
D-5m	\$468.80	\$468.80
D-5n	\$4,000	\$4,000

Permit	Current law	The bill
D-5o	\$1,000	\$468.80
E	Not authorized	\$100
F class	Not authorized	\$100 to \$340

Micro-distillery surety bond

(R.C. 4303.041)

The bill requires an A-3a liquor permit holder (micro-distillery) to execute a surety bond that is conditioned on the faithful performance of the permit holder's duties. Those duties include selling spirituous liquor in sealed containers for off-premises consumption on the Division's behalf. The bill requires the Division to establish the amount of the surety bond.

Liquor permit cancellations

(R.C. 4301.26)

The bill repeals the law that requires the Liquor Control Commission to cancel a liquor permit for any of the following reasons (except as provided in the rules of the Division of Liquor Control relative to transfers of a permit):

1. In the event of the permit holder's death or bankruptcy;
2. The making of an assignment for the benefit of the permit holder's creditors; or
3. The appointment of the permit holder's property.

According to the Division, the Commission has no authority to cancel liquor permits since the Division is the permitting authority.

Division of Real Estate and Professional Licensing

Real estate brokers

Licensure

(R.C. 4735.07)

The bill modifies the work requirements to take the real estate broker's examination. Current law requires an applicant to have been a licensed real estate broker or salesperson for at least two years. Additionally, the applicant must have worked as a licensed real estate broker or salesperson for an average of 30 hours per week during at least two of the five years preceding that person's application.

The bill changes the requirement that the applicant have been a licensed real estate broker or salesperson for at least two years by requiring that those two years take place during the five years preceding the application. This change means that applicants for the examination

must have two years of recent experience, but does not require that those two years be consecutive or immediately precede the application.

The bill also removes the requirement that an applicant have worked as a licensed real estate broker or salesperson for an average of at least 30 hours per week for two of the preceding five years. Under the bill, an applicant only has to have been a licensed real estate broker or salesperson for at least two of the preceding five years, and the number of hours worked each week during those two years is no longer a factor.

Civil penalty

(R.C. 4735.052)

If a person fails to pay a civil penalty the Ohio Real Estate Commission assessed for certain unlicensed or unregistered activity, the bill requires the Superintendent of Real Estate and Professional Licensing to forward to the Attorney General identifying information relating to the person. Under continuing law, the Superintendent also must forward to the Attorney General the person's name and the amount of the penalty, for purposes of collecting the penalty. The civil penalty is up to \$1,000 per violation, with each day constituting a separate violation.

Disciplinary actions

(R.C. 4735.18)

The bill limits where brokerage trust accounts may be maintained to state or federally chartered institutions located in Ohio. Current law requires that a real estate broker or salesperson license holder must maintain a special or trust bank account in a depository located in Ohio. This change applies to brokerage trust accounts for the purpose of receiving escrow funds and security deposits, as well as brokerage trust accounts for the purpose of depositing and maintaining funds in the course of real property management on behalf of others. Continuing law permits the Superintendent of Real Estate and Professional Licensing to take disciplinary actions against a license holder who fails to maintain these accounts.

The bill also permits the Superintendent to take disciplinary action against a license holder for having been judged incompetent by a court in any capacity. Current law allows for disciplinary action to be taken only when a license holder has been judged incompetent for the purpose of holding the license.

Administration of funds

(R.C. 3705.17, 4735.03, 4735.06, 4735.09, 4735.12, 4735.13, 4735.15, 4735.211, 4763.15, 4763.16, 4764.18, 4767.03, 4767.10, 4768.14, 4768.15, 4781.17, and 4781.54)

The bill makes several changes to the funds that hold fees collected by the Division of Real Estate and Professional Licensing by consolidating several funds. Under existing law, changed in part by the bill, when obtaining a burial permit, a funeral director or other person must pay the local registrar or sub-registrar a \$3 fee. From this fee, the registrar or sub-registrar keeps 50¢ and the rest, \$2.50, goes to the Division to be used for purposes of the Cemetery Law. Of the \$2.50 that goes to the Division, \$1 goes to the Cemetery Grant Fund to advance

grants to cemeteries registered with the Division to defray the costs of exceptional cemetery maintenance or training cemetery personnel in the maintenance and operation of cemeteries. The bill eliminates the Cemetery Grant Fund, creates the Cemetery Registration Fund, and requires burial permit fees to be deposited into the new fund. In addition, under existing law, the Division cannot advance grants totaling more than 80% of the appropriation to the fund for that fiscal year. The bill also eliminates this restriction.

The bill also eliminates several other funds managed by the Division. It eliminates the Real Estate Education and Research Fund, Manufactured Homes Regulatory Fund, Home Inspectors Fund, and Real Estate Appraiser Operating Fund. The bill redirects deposits going to these funds under existing law to the existing Division of Real Estate Operating Fund. The bill makes several conforming changes related to the redirection of these funds.

The bill authorizes, instead of requires as in current law, the Ohio Real Estate Commission to use operating funds for the purpose of education and research in the same manner it is authorized to use the funds in the Real Estate Education and Research Fund under current law.

Lastly, the bill authorizes, rather than requires, the Superintendent of Real Estate and Professional Licensing to collect a service fee from the Real Estate Recovery Fund to defray the cost of administering the fund. The amount collected must not exceed the annual interest earnings of the fund multiplied by the federal short-term interest rate (which is 5% for 2023). Under continuing law, the Real Estate Recovery Fund is maintained to satisfy judgments against real estate brokers and salespeople who engage in professional misconduct. To support the fund, continuing law requires the Real Estate Commission to impose special assessments on brokers and salespersons renewing their licenses.³³

Confidentiality of investigatory information

(R.C. 4735.05)

Under existing law, unchanged by the bill, when the Superintendent of Real Estate and Professional Licensing is conducting an investigation of a licensee or an applicant pursuant to a complaint, or otherwise pursuant to the Superintendent's enforcement duties, all information obtained as part of the investigation must be held confidentially by the Superintendent. Under existing law, changed in part by the bill, the Division of Real Estate and Professional Licensing is permitted to release information to the Superintendent of Financial Institutions, as it relates to nonbank consumer lending laws, to the Superintendent of Insurance, as it relates to Title Insurance Law, to the Attorney General, or to local law enforcement agencies and local prosecutors.

³³ ["In the matter of the Determination of the Interest Rates Pursuant to Section 5703.47 of the Ohio Revised Code \(PDF\),"](#) Ohio Department of Taxation, October 14, 2022, available on the Department of Taxation's website: tax.ohio.gov.

In addition to not preventing the release of this information to these entities, the bill clarifies that the release of information is permissive – the confidentiality requirement does not *require* the release of this information. In addition, the bill expands this provision to permit the release of information to the Division of Securities, the Division of Industrial Compliance, and in general to any law enforcement agency or prosecutor, not just a local law enforcement agency or prosecutor.

The bill also makes a technical correction by removing a legacy reference to a repealed statutory provision.

Home Inspector Board

(R.C. 4764.04, 4764.05, and 4764.21)

Under continuing law, a seven-member Home Inspector Board administers the licensure process for home inspectors. The Board’s duties include:

- Establishing standards for the issuance, renewal, suspension, and revocation of licenses;
- Establishing license and renewal fees;
- Prescribing standards for continuing education; and
- Establishing requirements for conducting home inspections, standards of practice for home inspectors, and conflict of interest prohibitions.

The bill modifies the law governing Board meetings and procedures, expands its rulemaking authority, allows it to request an investigation of an alleged violation of the Home Inspector Law, and modifies its duties respecting the Home Inspection Recovery Fund.

Meetings and procedure

The bill requires that the Board elect a chair and vice chair from among its members by majority vote annually at the first regularly scheduled Board meeting after September 1. The Board must meet at least once per quarter each year. Finally, the bill specifies that (1) a majority of the members of the Board constitutes a quorum and (2) a quorum is necessary in order for the Board to conduct its regular business.

Rulemaking

The bill allows the Board to adopt any rules necessary to further the Home Inspector Law, in addition to the rule topics explicitly addressed in the Revised Code. Currently, the Board is authorized to adopt rules related to standards for conducting home inspections, licensure and renewal fees necessary to defray expenses, education and experience requirements, prohibitions against conflicts of interest, and several other topics related to the licensure and practice of home inspectors. The bill broadens the Board’s rulemaking authority to uphold and maintain the Home Inspector Law.

Investigations

The bill authorizes the Board to request the Superintendent of Real Estate and Professional Licensing to initiate investigations of possible violations of the Home Inspector

Law. Under continuing law, the Superintendent is authorized to investigate any person who conducts a home inspection without a license or otherwise violates the Home Inspector Law. Furthermore, the Superintendent is required to establish and maintain an investigation and audit section to investigate complaints and conduct inspections, audits, and other inquiries.³⁴ However, current law does not directly allow the Board to request that the Superintendent initiate an investigation.

Home Inspection Recovery Fund

The Home Inspection Recovery Fund is administered by the Superintendent of Real Estate and Professional Licensing for payment of judgments related to home inspectors, when the judgment creditor has exhausted other avenues for recovery. The Board, in accordance with rules it adopts, must impose a special assessment for the fund on each person applying for a license and each licensee applying for renewal.

The bill requires, rather than allows, the Board to impose that special assessment, not to exceed \$5 per year, whenever the balance of the fund is less than \$1 million as of the preceding July 1. The Board must not impose the assessment if the fund balance equals (added by the bill) or exceeds \$1 million as of the preceding July 1. Under current law, the Board is permitted to impose the \$5 special assessment when the balance of the fund is less than \$250,000, and permits the Board to impose a special assessment of up to \$3 if the balance is \$500,000 to \$1 million.

The bill also eliminates the Board's authority to hear appeals from orders of the Superintendent regarding claims against the fund. A person who obtains a final judgment against a home inspector for violating the Home Inspector Law may apply to the Franklin County Court of Common Pleas for payment from the fund if the home inspector fails to pay the judgment.³⁵ The Superintendent may defend any action on the fund's behalf or settle the claim.

The Court must order the Superintendent to make a payment from the fund when the applicant proves all the following:

- The applicant obtained a judgment;
- All appeals from the judgment have been exhausted and the person has given notice to the Superintendent;
- The applicant is not a judgment debtor's spouse or the spouse's personal representative;
- The applicant has diligently pursued the applicant's remedies against all the judgment debtors and all other persons liable to the applicant in the transaction for which the applicant seeks recovery from the fund;

³⁴ R.C. 4764.06(A)(11) and 4764.16; R.C. 4764.12 to 4764.15, not in the bill.

³⁵ R.C. 4764.21(B)(1).

- The application was filed not more than one year after termination of all proceedings connected to the judgment, including appeals.

Since the bill eliminates the Board's authority to hear appeals on such matters, it appears that the Court's order is final.

Home inspectors

(R.C. 4764.08)

The bill modifies the deadline by which a licensed home inspector must complete continuing education hours by requiring 42 hours to be completed every three years. Under current law, a licensed home inspector must complete at least 14 hours annually during each three-year period the home inspector's license is valid.

Division of Securities

Securities registration

(R.C. 1707.01, 1707.09, 1707.091, and 1707.092)

General background

The Ohio Securities Act regulates the sale of securities (e.g., stocks, bonds, options, promissory notes, and investment contracts) in Ohio. The Act delegates the administration of the law to the Division of Securities in the Department of Commerce.³⁶ If a device or transaction constitutes a security under the Act, it cannot be sold in Ohio without first registering it with the Division or properly exempting it from registration. Additionally, persons who carry out the sale of securities in Ohio must be licensed by the Division or properly exempted from licensure.

Existing law, unchanged by the bill, provides three ways to register securities with the Division, each of which requires a filing with the Division that includes fees, exhibits, and other specified documents:

- An issuer that is registering securities with the U.S. Securities and Exchange Commission (SEC) under the Securities Act of 1933 can file a **registration by coordination** with the Division.
- An issuer that is making an offering that involves a limited number of purchasers or limited selling efforts can file a **registration by description** with the Division.
- Issuers that are not eligible for registration by coordination or registration by description can pursue **registration by qualification** with the Division.³⁷

³⁶ R.C. Chapter 1707.

³⁷ R.C. 1707.09 and 1707.091; R.C. 1707.08, not in the bill.

Registration by coordination – oversight by the Division

Under existing law, changed in part by the bill, the Division of Securities can subject securities registered by coordination to the same application rules and evaluation standards that apply to those registered by qualification. These registration by qualification rules and standards are more robust than the baseline requirements for registration by coordination, and allow the Division greater discretion to decline registration if, for example, the Division determines registration is not in the public interest. The bill changes this, so that the registration by coordination is mutually exclusive from a registration by qualification, limiting the Division’s review discretion. Furthermore, the bill requires all federally registered securities to be registered by coordination. Currently, a federally registered security may be registered in Ohio by either coordination or qualification.³⁸

Under existing law, changed in part by the bill, the Division may suspend a security offering under any type of registration or a security subject to an exemption if it finds the proposed offer or disposition is on grossly unfair terms, or the plan of issuance and sale of securities would (or would tend to) defraud or deceive purchasers. The bill seems to exclude securities registered by coordination from this oversight.³⁹

Timing of effectiveness

Under existing law, subject to full payment of a registration fee and certain other requirements, a registration statement under the coordination procedure is effective either at the moment the federal registration statement becomes effective or at the time the offering may otherwise be commenced in accordance with the rules, regulations, or orders of the SEC. The bill retains the same application fee and other requirements, but also specifies that the effectiveness of the statement is not subject to delay or waiver of any condition by the Division of Securities or the issuer.⁴⁰

Notice filings

Under existing law, investment companies, as defined under the federal Investment Company Act of 1940, that are registered or have filed a registration statement with the SEC must also file a notice with the Division of Securities. The notice filing consists of a fee, based on the aggregate price of securities to be sold in Ohio, and a copy of the investment company’s federal registration statement or form U-1 (Uniform Application to Register Securities) or form

³⁸ R.C. 1707.01(Q), 1707.09, and 1707.091; O.A.C. 1301:6-3-09.1(E), not in the bill.

³⁹ R.C. 1707.01(Q)(3); R.C. 1707.13, not in the bill, explicitly applies to registration by description and registration by qualification, and also incorporates by reference registration by coordination. The bill’s change to the definition of “registration by coordination” negates that reference. However, R.C. 1707.091(C)(1), unchanged by the bill, provides that a registration by coordination cannot be effective if a stop order under R.C. 1707.13 applies. See also, “[Merit Standards for Securities Offerings](#),” Ohio Department of Commerce, which can be found on the Department of Commerce, Division of Securities website: <https://com.ohio.gov/divisions-and-programs/securities>.

⁴⁰ R.C. 1707.091(C).

NF (Uniform Investment Company Notice Filing) of the North American Securities Administrators Association.

The bill extends the notice filing requirement to business development companies (BDCs) that elect to be subject to federal SEC requirements. A BDC is a closed-end fund that invests in private companies and small public firms that have low trading volumes or are in financial distress. BDCs raise capital through public offerings, corporate bonds, and hybrid investment instruments. The bill authorizes a BDC to sell an indefinite amount of securities in Ohio after filing notice with the Division. Under continuing law, securities sold to a BDC are exempt from the general registration requirements.⁴¹

Securities Law – period of limitation

(R.C. 1707.28)

Under continuing law, a prosecution or action by the Division of Securities or the Director of Commerce for a violation of Securities Law must not bar a prosecution or action by the Division or the Director, or be barred by any prosecution or other action, for the violation of any other provision of the Securities Law or for the violation of any other statute.

The bill requires that prosecutions and actions by the Division or the Director for a violation of Securities Law commence within six years after the commission of the alleged violation, rather than five years under current law.

The bill requires that, if the period of limitation has expired and an element of the offense is fraud or breach of fiduciary duty, prosecution commences within one year after the discovery of the offense either by an aggrieved person, or by the aggrieved person's legal representative who is not a party to the offense.

The bill specifies that an offense is committed when every element of the offense occurs. In the case of an offense of which an element is not a continuing course of conduct, the period of limitation does not begin to run until such a course of conduct or the accused's accountability for it terminates, whichever occurs first.

The bill provides that the period of limitation does not run during any time when the *corpus delicti* (physical evidence of a crime) remains undiscovered.

⁴¹ R.C. 1707.092(A) and (B), 1707.01(S)(11); R.C. 1707.03(D), not in the bill; See also, "[Business Development Company \(BDC\): Definition and How to Invest](#)," James Chen, August 11, 2022, which is available by conducting a keyword "Business Development Company" search on Investopedia's website: [Investopedia.com](https://www.investopedia.com).