
DEPARTMENT OF COMMERCE

Division of Securities

- Creates the Ohio Investor Recovery Fund for victims of securities fraud that have not received restitution from the person that committed the violation.
- Allows a dealer or investment adviser to place a hold on a transaction when the dealer, investment adviser, or an employee believes the account holder is age 60 or older or eligible for adult protective services and may be the victim of financial exploitation.

Division of Industrial Compliance

Sale of second-hand bedding and toys

- Requires any person or entity wishing to sell second-hand bedding or used toys to register with the Superintendent of Industrial Compliance within the Department of Commerce.

Plumbing inspector certification

- Removes certification of plumbing inspectors from the Division of Industrial Compliance's responsibility and authority but retains the Board of Building Standard's plumbing inspector certification.
- Requires a board of health to employ a Board of Building Standards certified plumbing inspector, as opposed to a Division of Industrial Compliance certified plumbing inspector as under current law, or to contract with another health district or building department in order for a prohibition on Division inspections in the board's district to apply.
- Adds a requirement that a board of health notify the Division of Industrial Compliance of the board's intent to inspect plumbing in its district before the continuing prohibition against duplicative Division plumbing authority will apply.
- Eliminates prohibitions on boards of health that do not employ certified plumbing inspectors from inspecting plumbing, collecting fees for inspecting plumbing, and contracting with other boards of health to inspect plumbing on the other board's behalf.

Building inspection fees

- Transfers authority to establish fees for inspections carried out by the Division of Industrial Compliance from the Board of Building Standards to the Superintendent of Industrial Compliance.

Manufactured homes

- Makes several technical changes to replace references to the former Manufactured Homes Commission with references to the Division of Industrial Compliance.

Division of Real Estate and Professional Licensing

- Specifies that each licensed real estate broker and salesperson must notify the Superintendent of Real Estate and Professional Licensing of a change in personal residence address within 30 days after the change.

- Requires each licensee to maintain a valid email address on file with the Division and notify the Superintendent of any changes in email address within 30 days of the change.
- Expands the Superintendent’s authority to recommend ancillary trustees for brokers.
- Authorizes the Division to adopt rules with respect to the regulation of manufactured home dealers, brokers, and salespersons.
- Reduces the portion of triennial real estate broker’s and salesperson’s license fees to be credited to the Real Estate Education and Research Fund from \$3 to \$1.50 per fee.

Division of Unclaimed Funds

- Creates an affidavit to allow the heirs or next of kin of a decedent to claim the decedent’s unclaimed funds without requiring letters testamentary or letters of administration to be issued upon the estate.
- Revises the law holding a holder of unclaimed funds harmless after delivering funds to the state in terms of the notice the holder is required to send to the Director of Commerce of pending proceedings, the Director’s ability to intervene in proceedings against a holder, and the nature of each party’s liability.
- Prohibits a person from receiving compensation for, or engaging in any activity for the purpose of, recovering unclaimed funds or the contents of a safe deposit box without first having entered into an agreement with the owner or owner’s legal representative that complies with the Unclaimed Funds Law.

State Fire Marshal

- Specifies that when the State Fire Marshal or another authorized fire investigator is investigating a fire that has caused more than \$5,000 of property damage, to determine whether or not arson was involved, they must do so to the extent practicable and in a manner consistent with accepted standards of investigation.
- Permits the OBM Director, after certification of the Director of Commerce, to transfer funds from the State Fire Marshal’s Fund to the Small Government Fire Department Services Revolving Loan Fund, if additional resources are needed.
- Requires a self-service gas station to comply with the most recent version of National Fire Protection Association Standard Number 30A, as incorporated into the State Fire Code, instead of the outdated version 30A-1990, as required under current law.

Division of Liquor Control

- Prohibits a to-go cocktail sold by a specified liquor permit holder from containing more than two ounces of spirituous liquor.
- Eliminates the requirement that the following submissions required of a club applying for a D-4 liquor permit be done under oath:
 - A statement of the organization controlling the club certifying that the club is operated in the interests of a reputable organization; and

- The roster of the membership of the club.

Division of Financial Institutions

- Increases initial registration, renewal, and late fees for mortgage brokers, lenders, and servicers, and increases original license, renewal, and late fees for mortgage loan originators.
- Authorizes the Superintendent of Financial Institutions to charge an additional assessment for renewal fees for mortgage brokers, lenders, servicers, and mortgage loan originators if the amount billed under the statute are less than the estimated expenditures for the following fiscal year.

Division of Securities

Ohio Investor Recovery Fund

(R.C. 1707.47 and 1707.471)

The bill creates the Ohio Investor Recovery Fund (OIRF) for a victim of securities fraud (a purchaser identified in a final order that has suffered a pecuniary loss as the result of an Ohio Securities Law violation or the surviving spouse or dependent children of such a purchaser who is deceased) that has not received restitution from the person that committed the violation pursuant to a final order (a final administrative order issued by the Division of Securities or a final court order in a civil or criminal proceeding initiated by the Division).

Obtaining a restitution assistance award

Under the bill, the following victims are eligible for restitution assistance from the OIRF, with the maximum award limited to the lesser of \$25,000 or 25% of the monetary injury suffered by the victim in the final order:

- A natural person who is an Ohio resident;
- A person, other than a natural person, that domiciled in Ohio.

To receive a restitution assistance award, a claimant must submit an application to the Division on a form prescribed by the Division within 180 days after the date of the final order. The Division may grant an extension for good cause shown, but in no case may the Division accept an application received more than two years following the date of the final order.

The bill prohibits the Division from awarding restitution assistance as follows:

- To more than one claimant per victim;
- To a claimant on behalf of a victim that has received the full amount of restitution owed from the person ordered to pay restitution to the victim in the final order before the application for restitution assistance from the OIRF is filed;
- To a claimant if the final order identifies no pecuniary loss to the victim on whose behalf the application is made;

- To a claimant on behalf of a victim that assisted in the commission of the violation of the Securities Law;
- If the portion of the final order giving rise to a restitution order or otherwise establishing a pecuniary loss to the victim is overturned on appeal.

If, after the Division has made a restitution assistance award from the OIRF, the restitution award in the final order is overturned on appeal and all legal remedies have been exhausted, the claimant must forfeit the restitution assistance award.

Violations

A claimant may not knowingly file or cause to be filed an application or documents supporting an application that contain false, incomplete, or misleading information in any material respect. A claimant that violates this prohibition forfeits all restitution assistance and will be fined not more than \$10,000 by the Division. The Division must commence a proceeding relating to a violation not later than two years after the Division discovered, or through reasonable diligence should have discovered, the violation, whichever is earlier.

Funding the OIRF

The OIRF consists of all cash transfers from the Division of Securities Fund, which may not exceed \$2.5 million in any fiscal year. The OIRF may only be used for paying awards of restitution assistance and any expenses incurred in administering the OIRF.

If the OIRF is reduced below \$250,000 due to payment in full of awards that become final during a month, the Division must suspend payment of further claims that become final during that month and the following two months. At the end of this suspension period, the Division must pay the suspended claims. If the OIRF would be exhausted by payment in full, the Division must prorate the amount paid to each claimant according to the amount remaining in the OIRF at the end of the suspension period.

Under the bill, the state is liable for a determination made by the Division only to the extent that money is available in the OIRF on the date the award is calculated. The bill subrogates the state to the rights of the person awarded restitution assistance to the extent of the award. The subrogation rights are against the person that committed the securities violation or a person liable for the pecuniary loss. The bill also permits the state to obtain a lien on the award in a separation action brought by the state or through state intervention in an action brought by or on behalf of the victim.

Rules

The Division must adopt rules as necessary to implement these provisions, including rules governing the processes for both:

- Reviewing applications for restitution assistance awards; and
- Suspending awards or making a prorated payment of awards when the OIRF balance approaches or reaches a balance below \$250,000.

Elder financial exploitation

(R.C. 1707.49)

The bill lays out procedures for dealers, investment advisers, and their employees to follow when they believe that an account holder who is an eligible adult may be the victim of financial exploitation.

An “eligible adult” is a person aged 60 or older or a person who is eligible to receive adult protective services (a person aged 60 or older who is handicapped by the infirmities of aging or who has a physical or mental impairment that prevents the person from providing for the person’s own care or protection, and who resides in an independent living arrangement).

The term “financial exploitation” means either:

- The wrongful or unauthorized taking, withholding, directing, appropriation, or use of an eligible adult’s money, assets, or property (assets); or
- Any act or omission by a person, including through the use of a power of attorney or guardianship, to do either of the following:
 - Through deception, intimidation, or undue influence, obtain control of an eligible adult’s assets and thereby deprive the eligible adult of the ownership, use, benefit, or possession of the assets;
 - Convert (a civil tort) an eligible adult’s assets and thereby deprive the eligible adult of the ownership, use, benefit, or possession of the assets.

Under the bill, if an employee of a dealer or investment adviser has reasonable cause to believe that an eligible adult who is an account holder may be subject to past, current, or attempted financial exploitation, the employee must follow the employing dealer’s or investment advisor’s internal procedures for reporting past, current, or attempted financial exploitation.

In addition, the dealer or investment adviser may place a hold on any transaction impacted by the suspected exploitation for up to 15 business days. The dealer or investment adviser must report the transactional hold, along with a summary of the facts and circumstances leading up to the hold, in writing immediately to the Division of Securities and to the county department of job and family services for the county where the eligible adult resides. The dealer or investment adviser may continue the hold for up to another 15 business days (1) at the request of an investigating federal or state agency or (2) if the dealer or investment adviser has not heard from either the Division or the county department within the initial 15-day hold period.

The bill specifies that these provisions are not to be construed as limiting a dealer’s or investment adviser’s ability to seek injunctive relief from a court of competent jurisdiction at any time for any past, current, or attempted financial exploitation. It further provides that any person participating in good faith in making a report or placing a transactional hold is immune from any civil or administrative liability arising from the report or hold.

Any record made available to a state agency under these provisions is considered an investigative record and must therefore be retained by the Division and may not be available to

inspection by persons other than those having a direct economic interest in the information or the transaction under investigation, or by law enforcement agencies, state agencies, federal agencies, and other entities as set forth by rules adopted by the Division. The dealer or investment adviser must maintain, for not less than five years, any record of a transactional hold, any report relating to the hold, and any notification of the hold.

Division of Industrial Compliance

Sale of second-hand bedding and toys

(R.C. 3713.02)

The bill requires any person or entity wishing to sell or offer for sale second-hand bedding or used toys to register with the Superintendent of Industrial Compliance. Under current law, only persons or entities seeking to import, manufacture, renovate, wholesale, or reupholster stuffed toys or articles of bedding are required to register.

Plumbing inspector certification

(R.C. 3703.01; conforming change in R.C. 3703.03)

Under current law, boards of health in city and general health districts are authorized to inspect plumbing in nonresidential buildings, provided they employ a plumbing inspector certified by the Division of Industrial Compliance. Health districts may also contract with other health districts or county building departments to inspect plumbing on their behalf, so long as the other health district or county building department employs a Division of Industrial Compliance certified inspector. If a board of health employs a plumbing inspector or contracts for plumbing inspections, the Division of Industrial Compliance is barred from conducting plumbing inspections in that board's territory.

The bill eliminates the Division of Industrial Compliance's authority and responsibility to certify plumbing inspectors. In its place, it relies on the existing plumbing inspector certification offered by the Board of Building Standards. The bill also eliminates previous prohibitions on health districts inspecting plumbing, collecting fees for inspecting plumbing, or contracting with other health districts to inspect plumbing on the other health district's behalf, without employing a Division of Industrial Compliance certified inspector. It does not put in place a similar requirement mandating a Board of Building Standards certified inspector.

The bill also changes the prohibition on the Division of Industrial Compliance inspecting plumbing in health districts where the board of health employs, or has contracted for the services of, a plumbing inspector. Under the bill, the board of health must notify the Division of its intent to inspect plumbing in the district, in writing, and either employ a plumbing inspector or contract for the services of one. Under current law, the prohibition applies so long as the board of health employs, or contracts for the services of, a plumbing inspector.

Building inspection fees

(R.C. 3791.07)

Under continuing law, the Division of Industrial Compliance completes various inspections of plans, industrialized units, and buildings. Current law allows the Board of Building

Standards to adopt a fee schedule for those inspections. The bill transfers that authority to the Superintendent of Industrial Compliance. It also makes adoption of the fee schedule mandatory, rather than permissive, and requires it to be adopted in rules pursuant to the Administrative Procedure Act.

Manufactured homes

(R.C. 4781.07, 4781.281, 4781.56, and 4781.57)

The bill makes several technical changes by replacing outdated references to the former Manufactured Homes Commission with the reference to the Division of Industrial Compliance, the agency currently holding the responsibility for manufactured homes (other than their sale). The Commission was abolished in 2018 by H.B. 49 of the 132nd General Assembly, the main budget act for the FY 2018-FY 2019 biennium.

Real estate education and research fund

Real estate broker and salesperson contact information

(R.C. 4735.14)

The bill sets a deadline for a licensed real estate broker and salesperson to notify the Superintendent of Real Estate and Professional Licensing of a change in personal residence address: 30 days after the change. Existing law requires the notification, but does not specify a deadline.

The bill also requires each licensee to maintain a valid email address on file with the Division and to notify the Superintendent of any changes in email address within 30 days after the change.

Ancillary trustees for brokers

(R.C. 4735.05)

The bill expands the Superintendent's authority to recommend an ancillary trustee when there has been an incapacitation or incarceration of a licensed broker, if there is no other licensed broker within the brokerage, to continue the business transactions of the brokerage for a period of time not to exceed the period of incapacitation or incarceration. Under existing law, the Superintendent may recommend an ancillary trustee upon the death of a licensed broker or the revocation or suspension of the broker's license.

Rulemaking relating to manufactured home sales

(R.C. 4781.04)

The bill explicitly authorizes the Division of Real Estate and Professional Licensing to adopt rules pursuant to the Administrative Procedure Act necessary for the administration of its regulatory authority for the licensing of manufactured home dealers, brokers, and salespersons.

Disposition of license fees

(R.C. 4735.15)

The bill reduces the portion of triennial real estate broker's and salesperson's license fees to be credited to the Real Estate Education and Research Fund from \$3 per fee to \$1.50 per fee.

Division of Unclaimed Funds

Small estate affidavit

(R.C. 169.18)

The bill creates an affidavit to allow the heirs or next of kin of a decedent to claim the decedent's unclaimed funds without requiring letters testamentary or letters of administration to be issued upon the estate. Under continuing law, when an estate goes through the probate process, a letter testamentary or letter of administration is issued by a probate court that grants powers to an executor or administrator. The executor or administrator appears to be discharged upon the closing of the estate.

Standard for distribution

Under the bill, if an item of unclaimed funds belonging to a decedent is reported to the Director of Commerce, the Director must distribute the funds without requiring a letter testamentary or letter of administration when all of the following conditions are met:

- At least 210 days have passed since the owner died;
- All unclaimed funds together are valued at \$5,000 or less;
- The person claiming the item is the surviving spouse, any one or more of the deceased owner's natural born or adopted children age 18 or older, or the parent of the deceased owner, with preference given in that order.

Procedure

To claim the item, a person must provide the Director all of the following:

- An unredacted certified death certificate of the deceased owner;
- Other information or documentary evidence the Director determines necessary to pay funds to the proper person, including personal identification and proof of tax identification number for the claimant, deceased owner, or both;
- A list of all individual beneficiaries in the decedent's will or individuals who would inherit pursuant to Ohio's intestacy law if the decedent died intestate;
- A sworn affidavit under penalty of perjury requesting the Director to release the item. The affidavit must include the following information:
 - The deceased owner's name;
 - The date and place of the deceased owner's death;
 - A statement that more than 210 days have passed since the deceased owner's death;

- A statement that either:
 - ❖ An executor, administrator, or commissioner has not been appointed to administer the estate and no application to relieve an estate from administration is pending in any jurisdiction; or
 - ❖ The executor, administrator, or commissioner has been discharged.
- A description and dollar value of each item, not exceeding an aggregate amount of \$5,000 to be paid, transferred, or delivered to the claimant;
- A statement that the deceased owner’s funeral and burial expenses have been paid, that the claimant will pay them, or that the unclaimed funds will be used to pay them;
- If the statement described above indicates that the unclaimed funds will be used to pay the expenses, an additional statement that if the unclaimed funds are sufficient to cover all unpaid funeral and burial expenses, they will be used to cover all the expenses. If the unclaimed funds are insufficient to cover all such expenses, a statement that all the unclaimed funds will go toward the expenses;
- A statement that the claimant is entitled to inherit from the deceased owner either by virtue of being a beneficiary in the decedent’s will or under Ohio’s intestacy law if the decedent died intestate;
- The following statement: “No other person has a superior right to the interest of the decedent in the described unclaimed funds”;
- A statement that the claimant requests that the item be paid, delivered, or transferred to the claimant;
- A statement that the claimant will distribute the unclaimed funds pursuant to the deceased owner’s will or Ohio’s intestacy law if the decedent died intestate;
- The claimant’s affirmation under penalty of perjury that the foregoing affidavit is true and correct.

If the Director determines that the claimant is entitled to claim the item, the Director must distribute the item or pay the amount being held.

Effect of distribution

Distributing funds in response to the affidavit releases the Director to the same extent as by an entry granting release from administration or as if the distribution had been made to a duly appointed executor, administrator, or commissioner. The bill does not require the Director to oversee the application of the payment, delivery, or transfer made.

The bill provides that the payment, delivery, or transfer of the unclaimed funds due to the deceased owner constitutes a full discharge and release to the Director from any claim for the funds or property paid, delivered, or transferred. Instead, a claimant to whom payment is made is liable to anyone prejudiced by an improper payment.

Holder of unclaimed funds held harmless

(R.C. 169.07 and Section 701.30)

Under current law, upon the payment of unclaimed funds to the Director of Commerce, the holder is relieved of further responsibility for the funds and is held harmless by the state from any liability arising out of the transfer of the funds to the state. The bill requires the holder to act in good faith and in compliance with the Unclaimed Funds Law to receive this protection from liability. It also specifies that the holder is held harmless to the extent of the value of the funds determined as of the time of payment to the state.

Current law provides that if legal proceedings are instituted against a holder that has paid unclaimed funds to the state or has entered into an agreement with the state to retain the funds for investment, the holder must notify the Director in writing. Failure to give this notice absolves the state from any liability it may have with regard to these funds. The bill imposes a 14-day deadline for this notice and, if the holder fails to give timely notice, absolves the state from any liability it may otherwise have with regard to the funds beyond the value of the property paid or delivered to the state.

Also under current law, the Director is required to intervene and assume the defense of the proceedings against the holder. The bill instead permits the Director, upon notice of the proceedings, to take any action the Director considers necessary or expedient to protect the interests of the state. Under the bill, if the Director elects not to intervene, and judgment is entered against the holder, the Director must reimburse the holder for the amount paid under the judgment or, if the holder retained any funds, enter into an agreement modified to reflect the satisfaction of the judgment to the extent of the value of the funds paid to the state.

Under the bill, no person has a claim against the state, the holder, or a transfer agent, registrar, or other person acting for or on behalf of a holder for any change in the market value of unclaimed funds occurring after delivery by the holder to the Division of Unclaimed Funds, or after sale of the property by the Division.

Lastly, the bill states that the amendments described above are intended to clarify that the Director is not required to hold the holder harmless or intervene on behalf of a holder if the holder failed to act in good faith or in compliance with the Unclaimed Funds Law. It is not meant to insure or indemnify the holder against the holder's own acts or omissions, bad faith, or breach of a duty owed the unclaimed funds owner or the Director.

Unclaimed funds finder agreements

(R.C. 169.13)

Continuing law permits agreements between the unclaimed funds owner and another person under which the person finds or assists in recovering unclaimed funds in exchange for compensation, so long as certain requirements are met. One requirement is that the agreement must disclose that the Auditor of State will pay the unclaimed funds directly to the owner. The bill instead requires disclosure that the OBM Director will do so.

Current law also states that no person may receive compensation for recovering another person's unclaimed funds under an agreement that is invalid. The bill rewords this to state

instead that a person cannot receive compensation without having first entered into a compliant agreement with the owner or owner’s legal representative.

Note that the Unclaimed Funds Law is unclear as to who pays unclaimed funds, and the law likely is inconsistent with actual practice. While, under the bill, the finder’s agreement must say that the OBM Director pays the funds in R.C. 169.13(B)(2)(f), continuing law directs unclaimed funds found under these agreements be paid by the Auditor of State (R.C. 169.13(E)). This directive, in turn, appears to be contradicted by R.C. 169.08 (and in the bill R.C. 169.18), which indicates that the Director of Commerce pays the unclaimed funds. Moreover, R.C. 169.08 merely refers to “Director” without specifying which department, but the reference likely is intended to mean the Director of Commerce. Amendments to these provisions could clarify who has the responsibility and authority to pay unclaimed funds.

State Fire Marshal

Fire investigation

(R.C. 3929.87)

Under existing law, 90 days after a fire that has caused a loss of more than \$5,000 of property damage, the State Fire Marshal or another authorized person must investigate the fire to determine whether the property loss was caused by arson. The bill specifies that the State Fire Marshal or the authorized person must investigate to the extent practicable and in a manner consistent with accepted standards of investigation.

Revolving loan program

(R.C. 3737.17)

Under the bill, if the Director of Commerce determines that the balance in the Small Government Fire Department Services Revolving Loan Fund is insufficient to implement the Small Government Fire Department Services Revolving Loan Program, the Director may certify the amount needed to the OBM Director. This amount cannot exceed the amount appropriated to the program for the biennium. Once certified, the OBM Director may transfer from the State Fire Marshal’s Fund to the Revolving Loan Fund any amount up to, but not exceeding, the amount certified by the Director of Commerce.

The State Fire Marshal administers the Revolving Loan Program and the fund to make loans to qualifying small governments to expedite major equipment purchases and the construction or renovation of fire department buildings.

Self-service gas stations

(R.C. 3741.14)

The bill requires a self-service gas station to comply with the most recent version of National Fire Protection Association Standard Number 30A, as incorporated into the State Fire Code. Existing law requires a self-service gas station to comply with the National Fire Protection Association standard number 30A-1990, which is not the most recent edition.

Division of Liquor Control

To-go cocktails

(R.C. 4303.185)

The bill prohibits a to-go cocktail sold by a liquor permit holder from containing more than two ounces of spirituous liquor. Current law allows bars, restaurants, breweries, wineries, and microdisilleries to sell to-go cocktails to a personal consumer for off-premises consumption, including via delivery to the location of the personal consumer. The to-go cocktails are sold by the individual drink in sealed, closed containers.

D-4 liquor permit – club oaths

(R.C. 4303.17)

The bill eliminates the requirement that the following submissions required of a club applying for a D-4 liquor permit be done under oath:

- A statement of the organization controlling the club certifying that the club is operated in the interests of a reputable organization; and
- The roster of the membership of the club.

The D-4 permit allows a club to sell beer and intoxicating liquor to its members for on-premises consumption.

Division of Financial Institutions

Residential Mortgage Lending Act fee increase

(R.C. 1322.09, 1322.10, 1322.20, and 1322.21)

The bill increases the licensing and registration fees under the Residential Mortgage Lending Act paid to the Superintendent of Financial Institutions as follows:

Type of fee	Current fee	New fee
Initial registration and renewal fee for mortgage brokers, lenders, and servicers for each office maintained by the registrant	\$500	\$750
Late fee for renewal for each registered office maintained by a mortgage broker, lender, and servicer	\$100	\$150
Initial license and renewal fee for mortgage loan originators	\$150	\$250
Late renewal fee for mortgage loan originators	\$100	\$150

The bill also authorizes the Superintendent to charge an additional assessment for renewal fees for mortgage brokers, lenders, servicers, and mortgage loan originators if the amount billed under the statute are less than the estimated expenditures for the following fiscal year. If the renewal fees billed by the Superintendent are less than the estimated expenditures

of the consumer finance section of the Division of Financial Institutions for the following fiscal year, the Superintendent may assess each registrant at a rate sufficient to equal in the aggregate of the difference between the renewal fees billed and the estimated expenditures. The assessment cannot exceed 1¢ per \$100 of Ohio transaction volume for a 12-month period, as defined by the Superintendent. If an assessment is imposed, it must be between \$500 to \$30,000 for any registrant.