

As Reported by the House Ways and Means Committee

127th General Assembly

Regular Session

2007-2008

Sub. H. B. No. 359

Representative Huffman

**Cosponsors: Representatives McGregor, J., Peterson, Healy, McGregor, R.,
Jones, Bacon, Adams, Lundy, Stebelton, Evans, Gibbs, Letson, Slesnick,
Patton**

—

A B I L L

To amend sections 321.261, 323.47, and 5302.30 and to 1
enact sections 5302.31 and 5321.041 of the Revised 2
Code to authorize the prosecutor and treasurer of 3
a county with a population greater than 100,000 to 4
utilize surplus delinquent tax collections to 5
facilitate nuisance abatement of deteriorated 6
residential buildings in foreclosure and to 7
prosecute criminal and civil real estate 8
transaction-related violations of the law, to 9
require all taxes, penalties, and assessments 10
known to be a lien against foreclosed property 11
when the deed is transferred to be discharged out 12
of the proceeds of judicial and partition sales, 13
and to require a seller or landlord of real 14
property to disclose whether the property was a 15
site for the manufacture of methamphetamine if the 16
seller or landlord has actual knowledge of that 17
use. 18

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

Section 1. That sections 321.261, 323.47, and 5302.30 be 19
amended and sections 5302.31 and 5321.041 of the Revised Code be 20
enacted to read as follows: 21

Sec. 321.261. (A) Five per cent of all delinquent real 22
property, personal property, and manufactured and mobile home 23
taxes and assessments collected by the county treasurer shall be 24
deposited in the delinquent tax and assessment collection fund, 25
which shall be created in the county treasury. The Except as 26
otherwise provided in division (B) of this section, the moneys in 27
the fund, one-half of which shall be appropriated by the board of 28
county commissioners to the treasurer and one-half of which shall 29
be appropriated to the county prosecuting attorney, shall be used 30
solely in connection with the collection of delinquent real 31
property, personal property, and manufactured and mobile home 32
taxes and assessments. 33

Annually by the first day of December, the treasurer and the 34
prosecuting attorney each shall submit a report to the board 35
regarding the use of the moneys appropriated to their respective 36
offices from the delinquent tax and assessment collection fund. 37
Each report shall specify the amount appropriated to the office 38
during the current calendar year, an estimate of the amount so 39
appropriated that will be expended by the end of the year, a 40
summary of how the amount appropriated has been expended in 41
connection with delinquent tax collection activities, and an 42
estimate of the amount that will be credited to the fund during 43
the ensuing calendar year. 44

(B) In a county having a population of more than one hundred 45
thousand according to the department of development's 2006 census 46
estimate, from money appropriated to each office from the county's 47
delinquent tax and assessment collection fund under division (A) 48
of this section, the county treasurer and prosecuting attorney may 49

expend a combined total of not more than three million dollars 50
each year to assist townships or municipal corporations located in 51
the county as provided in this division. Upon application for the 52
funds by a township or municipal corporation, the county treasurer 53
and prosecuting attorney may assist the township or municipal 54
corporation in abating foreclosed residential nuisances, including 55
paying the costs of securing such buildings, lot maintenance, and 56
demolition. At the prosecuting attorney's discretion, the 57
prosecuting attorney also may apply the funds to costs of 58
prosecuting alleged violations of criminal and civil laws 59
governing real estate and related transactions, including fraud, 60
abuse, and predatory lending. 61

For the purposes of this division, "predatory lending" 62
includes, but is not limited to: 63

(1) An act, conduct, or omission violating sections 1322.07, 64
1322.071, and 1322.075 of the Revised Code; 65

(2) Failing to provide a consumer with clear and balanced 66
information regarding mortgage loan terms, the level of risk, and 67
the severity of borrowing on terms that may result in a 68
significant increase in payment obligation or negative 69
amortization; 70

(3) Making unsubstantiated statements as to the future 71
direction of interest rates, or one-sided representations about 72
the cash savings or expanded buying power to be realized from a 73
loan that may result in a significant increase in payment 74
obligation or negative amortization; 75

(4) Any combination of factors caused by obscuring a 76
significant risk under the loan that results in unfavorable and 77
unjustifiable loan terms for a borrower. 78

Sec. 323.47. If land held by tenants in common is sold upon 79

proceedings in partition, or taken by the election of any of the 80
parties to such proceedings, or real estate is sold at judicial 81
sale, or by administrators, executors, guardians, or trustees, the 82
court shall order that the taxes, penalties, ~~and~~ assessments ~~then~~ 83
~~due and payable~~, and interest thereon, that are or will be a lien 84
on such land or real estate at the time the deed is transferred 85
following the sale, be discharged out of the proceeds of such sale 86
or election. For purposes of determining such amount, the county 87
treasurer ~~may~~ shall estimate the amount of taxes, assessments, 88
interest, and penalties that will be ~~payable~~ a lien on the land or 89
real estate at the time the deed of the property is transferred to 90
the purchaser. If the county treasurer's estimate exceeds the 91
amount of taxes, assessments, interest, and penalties ~~actually~~ 92
~~payable~~ that are a lien when the deed is transferred to the 93
purchaser, the officer who conducted the sale shall refund to the 94
purchaser the difference between the estimate and the actual 95
amount ~~actually payable~~ of the lien. If the amount of taxes, 96
assessments, interest, and penalties ~~actually payable~~ that are a 97
lien when the deed is transferred to the purchaser exceeds the 98
county treasurer's estimate, the officer shall certify the amount 99
of the excess to the treasurer, who shall enter that amount on the 100
real and public utility property tax duplicate opposite the 101
property; the amount of the excess shall be payable at the next 102
succeeding date prescribed for payment of taxes in section 323.12 103
of the Revised Code. 104

Sec. 5302.30. (A) As used in this section and section 5302.31 105
of the Revised Code: 106

(1) "Good faith" means honesty in fact in a transaction 107
involving the transfer of residential real property. 108

(2) "Land installment contract" has the same meaning as in 109
section 5313.01 of the Revised Code. 110

(3) "Political subdivision" and "state" have the same 111
meanings as in section 2744.01 of the Revised Code. 112

(4) "Residential real property" means real property that is 113
improved by a building or other structure that has one to four 114
dwelling units. 115

(B)(1) Except as provided in division (B)(2) of this section, 116
this section applies to any transfer of residential real property 117
~~that occurs on or after July 1, 1993,~~ by sale, land installment 118
contract, lease with option to purchase, exchange, or lease for a 119
term of ninety-nine years and renewable forever. For purposes of 120
this section, a transfer occurs when the initial contract for 121
transfer is executed, regardless of when legal title is 122
transferred, and references in this section to transfer offers and 123
transfer agreements refer to offers and agreements in respect of 124
the initial contract for transfer. 125

(2) This section does not apply to any transfer of 126
residential real property that is any of the following: 127

(a) A transfer pursuant to court order, including, but not 128
limited to, a transfer ordered by a probate court during the 129
administration of a decedent's estate, a transfer pursuant to a 130
writ of execution, a transfer by a trustee in bankruptcy, a 131
transfer as a result of the exercise of the power of eminent 132
domain, and a transfer that results from a decree for specific 133
performance of a contract or other agreement between persons; 134

(b) A transfer to a mortgagee by a mortgagor by deed in lieu 135
of foreclosure or in satisfaction of the mortgage debt; 136

(c) A transfer to a beneficiary of a deed of trust by a 137
trustor in default; 138

(d) A transfer by a foreclosure sale that follows a default 139
in the satisfaction of an obligation secured by a mortgage; 140

(e) A transfer by a sale under a power of sale following a default in the satisfaction of an obligation that is secured by a deed of trust or another instrument containing a power of sale;	141 142 143
(f) A transfer by a mortgagee, or a beneficiary under a deed of trust, who has acquired the residential real property at a sale conducted pursuant to a power of sale under a mortgage or a deed of trust or who has acquired the residential real property by a deed in lieu of foreclosure;	144 145 146 147 148
(g) A transfer by a fiduciary in the course of the administration of a decedent's estate, a guardianship, a conservatorship, or a trust;	149 150 151
(h) A transfer from one co-owner to one or more other co-owners;	152 153
(i) A transfer made to the transferor's spouse or to one or more persons in the lineal line of consanguinity of one or more of the transferors;	154 155 156
(j) A transfer between spouses or former spouses as a result of a decree of divorce, dissolution of marriage, annulment, or legal separation or as a result of a property settlement agreement incidental to a decree of divorce, dissolution of marriage, annulment, or legal separation;	157 158 159 160 161
(k) A transfer to or from the state, a political subdivision of the state, or another governmental entity;	162 163
(l) A transfer that involves newly constructed residential real property that previously has not been inhabited;	164 165
(m) A transfer to a transferee who has occupied the property as a personal residence for one or more years immediately prior to the transfer;	166 167 168
(n) A transfer from a transferor who both has not occupied the property as a personal residence within one year immediately	169 170

prior to the transfer and has acquired the property through 171
inheritance or devise. 172

(C) Except as provided in division (B)(2) of this section and 173
subject to divisions (E) and (F) of this section, every person who 174
intends to transfer any residential real property ~~on or after July~~ 175
~~1, 1993,~~ by sale, land installment contract, lease with option to 176
purchase, exchange, or lease for a term of ninety-nine years and 177
renewable forever shall complete all applicable items in a 178
property disclosure form prescribed under division (D) of this 179
section and shall deliver in accordance with division (I) of this 180
section a signed and dated copy of the completed form to each 181
prospective transferee or prospective transferee's agent as soon 182
as is practicable. 183

(D)(1) ~~Prior to July 1, 1993,~~ the The director of commerce, 184
by rule adopted in accordance with Chapter 119. of the Revised 185
Code, shall prescribe the disclosure form to be completed by 186
transferors. The form prescribed by the director shall be designed 187
to permit the transferor to disclose material matters relating to 188
the physical condition of the property to be transferred, 189
including, but not limited to, the source of water supply to the 190
property; the nature of the sewer system serving the property; the 191
condition of the structure of the property, including the roof, 192
foundation, walls, and floors; the presence of hazardous materials 193
or substances, including lead-based paint, asbestos, 194
urea-formaldehyde foam insulation, and radon gas; and any material 195
defects in the property that are within the actual knowledge of 196
the transferor. 197

The form also shall set forth a statement of the purpose of 198
the form, including statements substantially similar to the 199
following: that the form constitutes a statement of the conditions 200
of the property and of information concerning the property 201
actually known by the transferor; that, unless the transferee is 202

otherwise advised in writing, the transferor, other than having
lived at or owning the property, possesses no greater knowledge
than that which could be obtained by a careful inspection of the
property by a potential transferee; that the statement is not a
warranty of any kind by the transferor or by any agent or subagent
representing the transferor in this transaction; that the
statement is not a substitute for any inspections; that the
transferee is encouraged to obtain the transferee's own
professional inspection; that the representations are made by the
transferor and are not the representations of the transferor's
agent or subagent; and that the form and the representations
contained therein are provided by the transferor exclusively to
potential transferees in a transfer made by the transferor, and
are not made to transferees in any subsequent transfers.

The form shall include instructions to the transferor for
completing the form, space in which the transferor or transferors
shall sign and date the form, and space in which the transferee or
transferees shall sign and date the form acknowledging receipt of
a copy of the form and stating that the transferee or transferees
understand the purpose of the form as stated thereon.

~~(2) Not later than January 1, 2006, the director shall revise~~
~~the~~ The disclosure form ~~to~~ shall include a statement that
information on the operation and maintenance of the type of sewage
treatment system serving the property is available from the
department of health or the board of health of the health district
in which the property is located.

As used in this section, "sewage treatment system" has the
same meaning as in section 3718.01 of the Revised Code.

(3) The director shall revise the disclosure form to permit a
transferor of residential real property who has actual knowledge
of the illegal manufacture of methamphetamine on the property to
disclose that knowledge on the form.

(E)(1) Each disclosure of an item of information that is required to be made in the property disclosure form prescribed under division (D) of this section in connection with particular residential real property and each act that may be performed in making any disclosure of an item of information shall be made or performed in good faith.

(2) If an item of information is unknown to the transferor of residential real property at the time the item is required to be disclosed in the property disclosure form and if the approximation is not used for the purpose of circumventing or otherwise evading divisions (C) and (D) of this section, the transferor may make a good faith approximation of the item of information.

(F)(1) A transferor of residential real property is not liable in damages in a civil action for injury, death, or loss to person or property that allegedly arises from any error in, inaccuracy of, or omission of any item of information required to be disclosed in the property disclosure form if the error, inaccuracy, or omission was not within the transferor's actual knowledge.

(2) If any item of information that is disclosed in the property disclosure form is rendered inaccurate after the delivery of the form to the transferee of residential real property or the transferee's agent as a result of any act, occurrence, or agreement, the subsequent inaccuracy does not cause, and shall not be construed as causing, the transferor of the residential real property to be in noncompliance with the requirements of divisions (C) and (D) of this section.

(G) Any disclosure of an item of information in the property disclosure form prescribed under division (D) of this section may be amended in writing by the transferor of residential real property at any time following the delivery of the form in accordance with divisions (C) and (I) of this section. The

amendment shall be subject to this section. 267

(H) Except as provided in division (B)(2) of this section, 268
every prospective transferee of residential real property who 269
receives in accordance with division (C) of this section a signed 270
and dated copy of a completed property disclosure form as 271
prescribed under division (D) of this section shall acknowledge 272
receipt of the form by doing both of the following: 273

(1) Signing and dating a copy of the form; 274

(2) Delivering a signed and dated copy of the form to the 275
transferor or the transferor's agent or subagent. 276

(I) The transferor's delivery under division (C) of this 277
section of a property disclosure form as prescribed under division 278
(D) of this section and the prospective transferee's delivery 279
under division (H) of this section of an acknowledgment of receipt 280
of that form shall be made by personal delivery to the other party 281
or the other party's agent or subagent, by ordinary mail or 282
certified mail, return receipt requested, or by facsimile 283
transmission. For the purposes of the delivery requirements of 284
this section, the delivery of a property disclosure form to a 285
prospective co-transferee of residential real property or a 286
prospective co-transferee's agent shall be considered delivery to 287
the other prospective transferees unless otherwise provided by 288
contract. 289

(J) The specification of items of information that must be 290
disclosed in the property disclosure form as prescribed under 291
~~division~~ divisions (D)(1) and (2) of this section does not limit 292
or abridge, and shall not be construed as limiting or abridging, 293
any obligation to disclose an item of information that is created 294
by any other provision of the Revised Code or the common law of 295
this state or that may exist in order to preclude fraud, either by 296
misrepresentation, concealment, or nondisclosure in a transaction 297

involving the transfer of residential real property. The 298
disclosure requirements of this section do not bar, and shall not 299
be construed as barring, the application of any legal or equitable 300
defense that a transferor of residential real property may assert 301
in a civil action commenced against the transferor by a 302
prospective or actual transferee of that property. 303

(K)(1) Except as provided in division (K)(2) of this section, 304
but subject to divisions (J), (K)(5), and (L) of this section, a 305
transfer of residential real property that is subject to this 306
section shall not be invalidated because of the failure of the 307
transferor to provide to the transferee in accordance with 308
division (C) of this section a completed property disclosure form 309
as prescribed under division (D) of this section. 310

(2) Subject to division (K)(3)(c) of this section, if a 311
transferee of residential real property that is subject to this 312
section receives a property disclosure form or an amendment of 313
that form as described in division (G) of this section after the 314
transferee has entered into a transfer agreement with respect to 315
the property, the transferee, after receipt of the form or 316
amendment, may rescind the transfer agreement in a written, 317
signed, and dated document that is delivered to the transferor or 318
the transferor's agent or subagent in accordance with divisions 319
(K)(3)(a) and (b) of this section, without incurring any legal 320
liability to the transferor because of the rescission, including, 321
but not limited to, a civil action for specific performance of the 322
transfer agreement. Upon the rescission of the transfer agreement, 323
the transferee is entitled to the return of, and the transferor 324
shall return, any deposits made by the transferee in connection 325
with the proposed transfer of the residential real property. 326

(3)(a) Subject to division (K)(3)(b) of this section, a 327
rescission of a transfer agreement under division (K)(2) of this 328
section only may occur if the transferee's written, signed, and 329

dated document of rescission is delivered to the transferor or the 330
transferor's agent or subagent within three business days 331
following the date on which the transferee or the transferee's 332
agent receives the property disclosure form prescribed under 333
division (D) of this section or the amendment of that form as 334
described in division (G) of this section. 335

(b) A transferee may not rescind a transfer agreement under 336
division (K)(2) of this section unless the transferee rescinds the 337
transfer agreement by the earlier of the date that is thirty days 338
after the date upon which the transferor accepted the transferee's 339
transfer offer or the date of the closing of the transfer of the 340
residential real property. 341

(c) A transferee of residential real property may waive the 342
right of rescission of a transfer agreement described in division 343
(K)(2) of this section. 344

(d) A rescission of a transfer agreement is not permissible 345
under division (K)(2) of this section if a transferee of 346
residential real property that is subject to this section receives 347
a property disclosure form as prescribed under division (D) of 348
this section or an amendment of that form as described in division 349
(G) of this section prior to the transferee's submission to the 350
transferor or the transferor's agent or subagent of a transfer 351
offer and the transferee's entry into a transfer agreement with 352
respect to the property. 353

(4) If a transferee of residential real property subject to 354
this section does not receive a property disclosure form from the 355
transferor after the transferee has submitted to the transferor or 356
the transferor's agent or subagent a transfer offer and has 357
entered into a transfer agreement with respect to the property, 358
the transferee may rescind the transfer agreement in a written, 359
signed, and dated document that is delivered to the transferor or 360
the transferor's agent or subagent in accordance with division 361

(K)(4) of this section without incurring any legal liability to 362
the transferor because of the rescission, including, but not 363
limited to, a civil action for specific performance of the 364
transfer agreement. Upon the rescission of the transfer agreement, 365
the transferee is entitled to the return of, and the transferor 366
shall return, any deposits made by the transferee in connection 367
with the proposed transfer of the residential real property. A 368
transferee may not rescind a transfer agreement under division 369
(K)(4) of this section unless the transferee rescinds the transfer 370
agreement by the earlier of the date that is thirty days after the 371
date upon which the transferor accepted the transferee's transfer 372
offer or the date of the closing of the transfer of the 373
residential real property. 374

(5) If a transferor of residential real property has actual 375
knowledge of the illegal manufacture of methamphetamine on the 376
property that is to be transferred, the transferor shall disclose 377
that knowledge on the property disclosure form. The disclosure 378
shall not include the names of the persons involved in the illegal 379
manufacture of methamphetamine. If the transferor fails to comply 380
with this required disclosure and the transfer is not yet 381
complete, the transfer of the residential real property may be 382
invalidated by rescission as provided in division (K)(2) of this 383
section if the required disclosure is included on a disclosure 384
form or an amendment of a property disclosure form but the 385
transferee does not receive the disclosure form or amendment until 386
the time described in that division, or may be invalidated by 387
rescission as provided in division (K)(4) of this section if the 388
transferee does not receive a property disclosure form in the 389
circumstances described in that division. If the transferor fails 390
to comply with this required disclosure and the transfer of 391
property is complete, the transferee may bring a civil action in 392
an appropriate court for invalidation of the contract on the basis 393
of fraud or another appropriate cause of action. In addition to 394

the procedure or civil action for invalidating the transfer, the 395
transferee may bring a civil action for the recovery of any 396
damages that the transferee suffers that result from or are 397
related to the former use of the property in the illegal 398
manufacture of methamphetamine. 399

(L) The right of rescission of a transfer agreement described 400
in division (K)(2) of this section or the absence of that right 401
does not affect, and shall not be construed as affecting, any 402
other legal causes of action or other remedies that a transferee 403
or prospective transferee of residential real property may possess 404
against the transferor of that property. 405

Sec. 5302.31. (A) This section applies to any transfer of 406
residential real property that occurs on or after the effective 407
date of this section by sale, land installment contract, lease 408
with option to purchase, exchange, or lease for a term of 409
ninety-nine years and renewable forever. For purposes of this 410
section, a transfer occurs when the initial contract for transfer 411
is executed, regardless of when legal title is transferred. 412
References in this section to transfer offers and transfer 413
agreements refer to offers and agreements in respect of the 414
initial contract for transfer. 415

(B) Subject to division (D) of this section, every person who 416
intends to transfer any residential real property on or after the 417
effective date of this section by sale, land installment contract, 418
lease with option to purchase, exchange, or lease for a term of 419
ninety-nine years and renewable forever, who pursuant to an 420
exemption provided in division (B) of section 5302.30 of the 421
Revised Code is not required to deliver to each prospective 422
transferee or prospective transferee's agent a completed property 423
disclosure form pursuant to that section relative to the 424
residential real property that is to be transferred, and who has 425

actual knowledge of the illegal manufacture of methamphetamine on 426
the residential real property that is to be transferred shall 427
disclose that knowledge to each prospective transferee or 428
prospective transferee's agent. The disclosure shall be in a 429
written "methamphetamine disclosure notice," shall be signed and 430
dated, shall be provided to the transferee or agent as soon as is 431
practicable, and shall be provided in the manner specified in 432
division (I) of section 5302.30 of the Revised Code. The 433
methamphetamine disclosure notice shall not include the names of 434
the persons involved in the illegal manufacture of the 435
methamphetamine. 436

(C) If a transferor of residential real property to whom 437
division (B) of this section applies fails to comply with the 438
disclosure required by that division and the transfer is not yet 439
complete, the transfer of the residential real property may be 440
invalidated by rescission as provided in division (K)(2) of 441
section 5302.30 of the Revised Code if the required disclosure is 442
included on a methamphetamine disclosure notice but the transferee 443
does not receive the notice until the time described in that 444
division, or may be invalidated by rescission as provided in 445
division (K)(4) of that section if the transferee does not receive 446
a methamphetamine disclosure notice after the transferee has 447
submitted to the transferor or the transferor's agent or subagent 448
a transfer offer and has entered into a transfer agreement with 449
respect to the property. If the transferor fails to comply with 450
this required disclosure and the transfer of the property is 451
complete, the transferee may bring a civil action in an 452
appropriate court for the invalidation of the contract on the 453
basis of fraud or another appropriate cause of action. In addition 454
to the procedure or civil action for invalidating the transfer, 455
the transferee may bring a civil action for the recovery of any 456
damages that the transferee suffers that result from or are 457
related to the former use of the property in the illegal 458

manufacture of methamphetamine. 459

(D) A transferor of residential real property is not liable 460
in damages in a civil action for injury, death, or loss to person 461
or property that allegedly arises from any error in, inaccuracy 462
of, or omission of any item of information required to be 463
disclosed under division (B) of this section if the error, 464
inaccuracy, or omission was not within the transferor's actual 465
knowledge. 466

(E) Every prospective transferee of residential real property 467
who receives in accordance with division (B) of this section a 468
signed and dated copy of a methamphetamine disclosure notice shall 469
acknowledge receipt of the notice by doing both of the following: 470

(1) Signing and dating a copy of the notice; 471

(2) Delivering in the manner specified in division (I) of 472
section 5302.30 of the Revised Code a signed and dated copy of the 473
notice to the transferor or the transferor's agent or subagent. 474

(F) The specification of the item of information that must be 475
disclosed in the methamphetamine disclosure notice under division 476
(B) of this section does not limit or abridge any obligation to 477
disclose an item of information that is created by any other 478
provision of the Revised Code or the common law of this state or 479
that may exist in order to preclude fraud, either by 480
misrepresentation, concealment, or nondisclosure, in a transaction 481
involving the transfer of residential real property. The 482
disclosure requirements of this section do not bar, and shall not 483
be construed as barring, the application of any legal or equitable 484
defense that a transferor of residential real property may assert 485
in a civil action commenced against the transferor by a 486
prospective or actual transferee of that property. 487

(G) The right of rescission of a transfer agreement described 488
in division (C) of this section or the absence of that right does 489

not affect any other legal causes of action or other remedies that 490
a transferee or prospective transferee of residential real 491
property may possess against the transferor of that property. 492

Sec. 5321.041. If a landlord of residential premises has 493
actual knowledge of the illegal manufacture of methamphetamine on 494
those premises, the landlord shall disclose that knowledge to any 495
prospective or current tenant of those premises. The disclosure 496
shall not include the names of the persons involved in the illegal 497
manufacture of methamphetamine. If a landlord fails to comply with 498
the disclosure required by this section, the tenant may terminate 499
the rental agreement for the residential premises and may bring a 500
civil action for the recovery of any damages for injury, death, or 501
loss to person or property that the tenant suffers that result 502
from or are related to the former use of the residential premises 503
in the illegal manufacture of methamphetamine. 504

Section 2. That existing sections 321.261, 323.47, and 505
5302.30 of the Revised Code are hereby repealed. 506