



Sub. H.B. 359

127th General Assembly
(As Reported by H. Ways & Means)

Reps. Huffman, J. McGregor, Peterson, Healy, R. McGregor, Jones, Bacon, Adams, Lundy, Stebelton, Evans, Gibbs, Letson, Slesnick, Patton

BILL SUMMARY

- Grants permanent authority to the prosecuting attorney and county treasurer of a county with a population greater than 100,000 to use up to \$3 million of surplus delinquent tax collections to assist municipal corporations and townships to abate nuisances related to residential buildings in foreclosure.
- Authorizes the prosecuting attorney to use such funds to prosecute alleged violations of criminal and civil laws governing real estate and related transactions, including fraud, abuse, and predatory lending.
- Eliminates existing temporary authority of a county with a population exceeding 1.2 million to use surplus delinquent tax collections to prevent residential mortgage foreclosures in the county.
- Requires a seller or landlord of residential real property to disclose whether the property was a site for the manufacture of methamphetamine if the seller or landlord has actual knowledge of that use.

CONTENT AND OPERATION

Use of delinquent tax and assessment collection funds

(R.C. 321.261)

Continuing law requires 5% of all delinquent real property, personal property, and manufactured and mobile home taxes and assessments to be deposited in a county's delinquent tax and assessment collection (DTAC) fund, to be used solely in connection with the collection of those taxes and assessments. Recently enacted H.B. 119 temporarily permits a board of county commissioners

of a county with a population exceeding 1.2 million to authorize the prosecuting attorney and county treasurer to spend up to \$3 million in the DTAC fund to prevent residential mortgage foreclosures, including providing loans to borrowers in default on their mortgages, and to help municipal corporations abate nuisance residential buildings that are in foreclosure. (Section 757.30.)

The bill permanently authorizes the prosecuting attorney and county treasurer of a county with a population exceeding 100,000 (according to the Department of Development's 2006 census estimate) to expend a combined total of not more than \$3 million annually in DTAC funds to assist municipal corporations and townships in the nuisance abatement of residential buildings in foreclosure, including paying the costs of securing such buildings, lot maintenance, and demolition. The bill eliminates the temporary authority of a county with a population exceeding 1.2 million to use DTAC funds to provide financial assistance in the form of loans to borrowers in default on their home mortgages, including to pay late fees, clear arrearage balances, and augment monies in the county's "foreclosure prevention program."

The bill also authorizes the prosecuting attorney to use the DTAC funds to prosecute alleged violations of criminal and civil laws governing real estate and related transactions, including fraud, abuse, and predatory lending. The bill defines predatory lending to include violations of R.C. 1322.07, 1322.071, and 1322.075. In general, these sections collectively prohibit mortgage brokers and loan officers from engaging in fraudulent and dishonest dealings with respect to licensing and registration, mortgage documents, and business development; from retaining original documents, charging fees for services performed by a third party, and receiving kickbacks for referrals to a third party; and from referring persons to businesses in which the mortgage broker or loan officer has an ownership or investment interest without disclosing that fact. Predatory lending is further defined to include failing to provide clear and balanced information regarding mortgage loan terms, the level of risk, and the severity of borrowing on terms that may result in a significant increase in the payment obligation or in negative amortization; making unsubstantiated statements regarding future interest rates, or one-sided statements regarding the cash savings or expanded buying power to be realized from loan terms that may result in a significant increase in the payment obligation or in negative amortization; and obscuring a significant risk with respect to unfavorable or unjustifiable loan terms for a borrower.

Use of real estate sale proceeds to pay taxes

(R.C. 323.47)

Current law requires proceeds from the sale of real property sold through a partition action, judicial sale, or through a sale by an administrator, executor,

guardian, or trustee to be applied to taxes, penalties, and assessments "due and payable" when the deed is transferred.

The bill requires the sale proceeds to be applied to property taxes that are a lien on property when the deed is transferred. Since the lien attaches on January 1 for taxes that do not become payable until one year later, the bill would have the effect of generally requiring an additional year's taxes to be paid out of the sale proceeds. Current law authorizes but does not require the county treasurer to estimate the amount of taxes, assessments, interest, and penalties to which the proceeds from the sale will be applied. The bill requires the county treasurer to make this estimation.

Methamphetamine disclosure

(R.C. 5302.30, 5302.31, and 5321.041)

Generally

Current law generally requires a seller of residential real estate to deliver to a prospective buyer a property disclosure form, prescribed by the Director of Commerce, in which the seller must disclose material matters relating to the physical condition of the property. Material matters include, among other things, the presence of hazardous materials or substances, such as lead paint and asbestos. The disclosure form must be delivered to the prospective buyer "as soon as practicable."

The bill requires a particular additional disclosure: the seller's actual knowledge of the illegal manufacture of methamphetamine on the property. The Director of Commerce is directed to revise the disclosure form to permit a seller to make such a disclosure. The seller may not disclose the names of the persons involved in the illegal activity.

Applicability to all transfers

(R.C. 5302.30(B)(2) and 5302.31(A))

Continuing law does not require the delivery of a disclosure form in every residential property sale. Excepted sales include those effected through a foreclosure, bankruptcy, or probate proceeding, sales from one co-owner to another co-owner or from one spouse to another as a result of a divorce or similar proceeding, sales by the state, and other sales. The bill imposes the methamphetamine disclosure requirement in these excepted sales. The disclosure must be made in a written "Methamphetamine Disclosure Notice" and must be executed and delivered in the same manner as under the existing disclosure form requirement.

Rescission and civil remedies

(R.C. 5302.30(K))

Under certain circumstances, continuing law permits a prospective buyer to rescind a residential real estate sale contract if a disclosure form is not timely delivered. If the seller fails to deliver the disclosure form to the prospective buyer before a sale contract is executed, but delivers it before the earlier of the closing or 30 days after the seller's acceptance of the buyer's offer, the buyer may rescind the sale contract without incurring any legal liability to the seller. The prospective buyer must rescind in writing within three days after receiving the disclosure form. If no disclosure form is delivered to the prospective buyer, the buyer may rescind at any time before the earlier of the closing or 30 days after the seller's acceptance of the buyer's offer.

If the seller fails to comply with the disclosure requirement, but rescission is not permitted under the circumstances described above, and the transfer of the property is complete, current law does not prevent a buyer from bringing a civil action to invalidate the contract under other appropriate causes of action, such as fraud.

The bill applies these rescission provisions to the Methamphetamine Disclosure Notice requirement.

In addition to applying the provisions governing rescinding the sale contract or suing for its invalidation, the bill preserves any rights or remedies a buyer or prospective buyer might otherwise have against the seller under common law or other provisions of the Revised Code. With respect to the seller, the bill's disclosure requirement does not bar the application of any legal or equitable defense the seller may assert in a civil action brought against the seller.

Landlord-tenant transactions

(R.C. 5321.041)

Continuing landlord-tenant law imposes several obligations upon a landlord of residential property, such as complying with applicable building, housing, health, and safety codes that materially affect health and safety. The bill imposes an additional obligation of disclosing the landlord's actual knowledge of the illegal manufacture of methamphetamine on any part of the rental structure or the grounds, areas, and facilities for the use of tenants generally. The landlord may not disclose the names of the persons involved. If the landlord fails to comply with the disclosure requirement, the tenant may terminate the rental agreement and bring a civil action for damages for the recovery of any damages that result from

or are related to the former use of the residential premises in the illegal manufacture of methamphetamine.

HISTORY

ACTION	DATE
Introduced	10-18-07
Reported, H. Ways & Means	04-10-08

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