



Ohio Legislative Service Commission

Bill Analysis

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Reps. Slesnick and McGregor, Antonio, Brenner, Murray, Stebleton

BILL SUMMARY

- Prohibits a person from performing appraisal management services, or otherwise engaging in business as an appraisal management company, without an appraisal management company license.
- Authorizes, and establishes procedures and criteria relating to, an appraisal management company license.
- Prohibits certain acts relating to the appraisal management business.
- Changes the circumstances under which a lender can be excused from the general requirement that a person performing a real estate appraisal for a mortgage loan be licensed or certified as an appraiser.

TABLE OF CONTENTS

| | |
|---|----|
| The Appraisal Management Company Law..... | 2 |
| Licensure of appraisal management companies | 2 |
| Persons not subject to the bill..... | 3 |
| Real Estate Appraiser Board..... | 4 |
| Duties of the Superintendent of Real Estate and Professional Licensing..... | 5 |
| Orders and subpoenas of the Board and Superintendent..... | 7 |
| Application for licensure | 9 |
| Issuing a license..... | 11 |
| License renewal | 11 |
| Grounds for refusal to issue or renew a license..... | 12 |
| Prohibited acts | 13 |
| Sanctions against prohibited acts..... | 18 |
| Sanctions against unlicensed activity | 21 |
| Real Estate Appraiser Operating Fund..... | 23 |
| Definitions | 23 |
| Real estate appraisers | 26 |
| Definitions | 28 |
| Other..... | 28 |

CONTENT AND OPERATION

The Appraisal Management Company Law

Licensure of appraisal management companies

The bill prohibits a person from doing any of the following without an appraisal management license: (1) directly or indirectly engaging or attempting to engage in business as an appraisal management company, (2) directly or indirectly engaging in or attempting to perform appraisal management services, (3) advertising or holding the person's self out as engaging in or conducting business as an appraisal management company.¹ This provision goes into effect 90 days after the effective date of the bill.² An appraisal management company is defined under the bill as any person authorized either by a creditor of a consumer credit transaction secured by a consumer's principal dwelling, or by an underwriter of or other principal in the secondary mortgage markets, that directly or indirectly performs appraisal management services in connection with valuing properties collateralizing mortgage loans or valuing properties collateralizing mortgages incorporated in a securitization.³ The bill defines appraisal management services as directly or indirectly performing any of the following functions on behalf of a lender, financial institution, client, or any other person in conjunction with a consumer credit transaction that is secured by a consumer's primary dwelling:

- (1) Administer an appraiser panel;
- (2) Recruit, retain, or select appraisers;
- (3) Qualify, verify licensure or certification and negotiate fees and service level expectations with persons who are part of an appraiser panel;
- (4) Contract with appraisers to perform appraisal assignments;
- (5) Receive an order for an appraisal from one person, and deliver the order for the appraisal to an appraiser that is part of an appraiser panel for completion;
- (6) Manage the process of having an appraisal performed, including providing administrative duties, such as receiving appraisal orders and reports, submitting completed appraisal reports to creditors and underwriters, collecting fees from

¹ R.C. 4768.02(A).

² Section 4.

³ R.C. 4768.01(C).

creditors and underwriters for services provided, and reimbursing appraisers for services performed;

(7) Track and determine the status of orders for appraisals;

(8) Conduct quality control of a completed appraisal prior to the delivery of the appraisal to the person that ordered the appraisal;

(9) Provide a completed appraisal performed by an appraiser to one or more clients.⁴

The bill permits the Superintendent of Real Estate and Professional Licensing to investigate any alleged violation of this licensing requirement and permits the Real Estate Appraiser Board to assess a civil penalty if it finds that a violation has occurred (see "**Sanctions against unlicensed activity**" below).

Persons not subject to the bill

The bill does not require licensure of, and does not apply in any aspect to, any of the following:

(1) An appraisal management company that is a subsidiary owned and controlled by a financial institution regulated by a federal financial institution regulatory agency;

(2) Any person that exclusively employs appraisers on an employer and employee basis for the performance of appraisals;

(3) Any person engaged in appraisal services who, in the normal course of business, enters into an agreement with an independent appraiser for the performance of appraisal services that the hiring or contracting person is not completing for any reason, including competency, work load, schedule, or geographic location. This provision applies only to an appraiser and to that appraiser's business entity provided that entity is engaging in real estate appraisal services, not appraisal management services.

(4) Any person engaged in appraisal services who, in the normal course of business, enters into an agreement with an independent contractor appraiser for the performance of appraisal services and, upon the completion of the appraisal, the report of the independent contractor appraiser performing the appraisal services is cosigned by the person who subcontracted with the independent contractor appraiser for the

⁴ R.C. 4768.01(D).

performance of the appraisal services. An appraisal management company cannot avoid this provision by requiring an employee of the appraisal management company, who is an appraiser, to sign the appraisal that has been completed by an appraiser that is part of the appraisal panel for the appraisal management company.⁵

Real Estate Appraiser Board

Duties

The bill requires the Real Estate Appraiser Board to do all of the following:

(1) Adopt rules, within 210 days of the bill's effective date, in accordance with the Administrative Procedure Act, in furtherance of the Appraisal Management Company Law (proposed R.C. Chapter 4768.), including rules that establish (a) procedures for the criminal records checks that are required for initial licensure, (b) nonrefundable fees for the initial appraisal management company license (which cannot exceed \$2,000), the annual renewal of that license (which also cannot exceed \$2,000), and late filing (which cannot exceed \$1,000), (c) requirements for settlement agreements that the Superintendent of Real Estate and Professional Licensing and an appraisal management company or other person can enter into under the bill, (d) presumptions of compliance with regard to customary and reasonable fees that are required to be paid to each appraiser who performs appraisal services for an appraisal management company, with consideration for presumptions of compliance promulgated under the Federal Truth in Lending Act , and (e) rules regarding consent to service of process for appraisal management companies, which appraisal management companies are required to complete when applying for an appraisal management company license.

(2) Determine the appropriate disciplinary actions to be taken against a person for certain acts (see "**Sanctions against prohibited acts**" below);

(3) Hear appeals from decisions and orders that the Superintendent issues under the bill;

(4) Request that the Superintendent initiate an investigation of a violation of the Appraisal Management Company Law or the rules adopted under it.⁶

Additionally, the bill permits the Board to subpoena witnesses and to compel the production of any book, paper, or document pertaining to any matter over which the

⁵ R.C. 4768.02(B).

⁶ R.C. 4768.03 and Section 5.

Board has jurisdiction (see "**Orders and subpoenas of the Board and Superintendent**" below).⁷

The bill provides that any rule the Board adopts must meet or exceed the requirements specified in federal law or regulations. Current law requires the rules not to exceed the requirements specified in federal law or regulations.⁸

Composition

The bill requires that the Board include as a member a licensed appraisal management company owner or controlling person. Specifically, continuing law requires four members of the five-member Board to be persons certified or licensed under the Real Estate Appraiser Law, at least two of whom hold a state-certified general real estate appraiser certificate. The bill adds that one of the four certified or licensed members must also be an owner or controlling person of a licensed appraisal management company that is in good standing.

The bill specifies that the Director of Commerce is ex officio the executive officer of the Board, but permits the Director to designate any employee of the Department as Superintendent of Real Estate and Professional Licensing to act as the executive officer.

The bill extends the time that a member of the Board may remain in office if no successor is appointed. Current law requires that a member continue in office subsequent to the expiration date of the member's term until a successor takes office or until 60 days have elapsed, whichever occurs first. The bill requires a member to remain in office until a successor takes office or until 90 days have elapsed.⁹

The bill states that none of the bill's changes to the Board affect the term of any member of the Board serving on the effective date of the bill.¹⁰

Duties of the Superintendent of Real Estate and Professional Licensing

The bill requires the Superintendent of Real Estate and Professional Licensing to perform the functions assigned to it under the Appraisal Management Company Law and do all of the following:

- (1) Prescribe the form and content of all applications required under the bill;

⁷ R.C. 4768.05.

⁸ R.C. 4763.03(F).

⁹ R.C. 121.08(H) and 4763.02(A) and (D).

¹⁰ Section 3.

(2) Receive applications for appraisal management company licenses and license renewals and establish procedures for processing, approving, and disapproving those applications;

(3) Retain records and all application materials submitted to the Superintendent;

(4) Issue licenses and maintain a register of the names and addresses of all appraisal management companies issued an appraisal management company license;

(5) Perform any other functions and duties, including the employment of staff, necessary to administer the Appraisal Management Company Law;

(6) Administer the Appraisal Management Company Law;

(7) Issue all orders necessary to implement the Appraisal Management Company Law;

(8) Investigate complaints concerning any violation of the Appraisal Management Company Law or the conduct of any person holding an appraisal management company license;

(9) Establish and maintain an investigation and audit section to investigate complaints and conduct inspections, audits, and other inquiries as, in the judgment of the Superintendent, are appropriate to enforce the Appraisal Management Company Law;

(10) Appoint a hearing examiner for any proceeding involving prohibited acts or unlicensed activity;

(11) Make and transmit any reports and collect and transmit any fees that are required by the federal Financial Institutions, Reform, Recovery, and Enforcement Act.¹¹

Additionally, the bill permits the Superintendent to subpoena witnesses in accordance with its investigatory powers under the bill; to request the Bureau of Criminal Identification and Investigation to conduct a criminal records check of any owner or controlling person of a licensee that the Superintendent has reasonable cause to believe has committed a criminal offense; to compel the production of any book, paper, or document pertaining to any matter over which the Superintendent has jurisdiction; and to apply to the appropriate court to enjoin any violation of the Appraisal Management Company Law. The bill provides that, upon a showing by the Superintendent that any person has violated or is about to violate the Appraisal Management Company Law,

¹¹ R.C. 4768.04(A).

the court must grant appropriate relief. The bill requires the Bureau of Criminal Identification and Investigation to obtain information from the Federal Bureau of Investigation as part of the criminal records check of any owner or controlling person of a licensee that the Superintendent of Real Estate and Professional Licensing has reasonable cause to believe has committed a criminal offense and allows the Superintendent of Real Estate and Professional Licensing to assess the licensee that is the subject of such a criminal records check a fee equal to the fee assessed for the check.¹²

Investigations of the Board and Superintendent

Orders and subpoenas

The bill allows the Real Estate Appraiser Board and the Superintendent of Real Estate and Professional Licensing to compel, by order or subpoena, witnesses to testify in relation to any matter over which the Board or Superintendent have jurisdiction and that is the subject of inquiry and investigation and allows the Board and Superintendent to require the production of any book, paper, or document pertaining to a matter of investigation. The bill gives the Board and Superintendent the same power as judges of county courts to administer oaths, compel the attendance of witnesses, and punish witness for refusal to testify.

The bill establishes requirements for actions relating to the right of the Board and Superintendent to conduct inquiries and investigations. Service of a subpoena may be made by sheriffs or by certified mail, return receipt requested. The subpoena is deemed served on the date delivery is made or the date the recipient refuses to accept delivery. Sheriffs or constables must return the process and will receive the same fees for doing so as are allowed for like services if the sheriff or constable had served it. Witnesses will receive, after their appearance before the Board or Superintendent, the fees and mileage provided under the adjudication witness fees provision.¹³ If two or more witnesses travel together in the same vehicle, the mileage fee will be paid to only one of the witnesses, but the witnesses may agree to divide the fee amongst themselves in any manner.

Under the bill, if a person fails to file any statement or report, obey any subpoena, give testimony, answer questions, or produce books, records, or papers that the Board or Superintendent requires in the course of an inquiry or investigation, the Board or Superintendent may apply to the court of common pleas of any county in the state setting forth this failure. After receiving an application, the court may (1) make an

¹² R.C. 4768.04(B) and 4768.05.

¹³ R.C. 119.094, not in the bill.

order awarding process of subpoena or subpoena *duces tecum* for the person to appear and testify before the Board or Superintendent, (2) order any person to give testimony and answer questions, and (3) order any person to produce books, records, or papers, as required by the Board or Superintendent.

Under the bill, when the court files such an order in the office of the clerk of the court of common pleas, the clerk, under the seal of the court, must issue process or subpoena each day until the examination of the person is completed and issue other orders in reference to the examination, appearance, and production of books, records, or papers, as the court directs. The subpoena may contain a direction that the witness bring to the examination any books, records, or papers described in the subpoena.

The bill allows a court, on motion supported by proof, to order an attachment for contempt to be issued against a person charged with disobeying the order. If the person is brought before the court by virtue of the attachment, and if upon a hearing the disobedience appears, the court may order the offender to be committed and kept in close custody.¹⁴

Time periods for investigations

The bill permits the Board or Superintendent to commence, at any time within five years from the date an appraisal report is submitted to a client, any investigation that relates to the conduct of a person licensed, registered, or certified under the Real Estate Appraisers Law to determine whether the person violated that Law. If, before the expiration of five years from the date an appraisal report is submitted to a client, a person is notified that the appraisal is the subject of or is otherwise involved in pending litigation, the Board or Superintendent may commence an investigation within two years from the date of final disposition of the litigation. The bill extends the time period in which a person licensed, registered, or certified under the Real Estate Appraisers Law must retain records for five years; currently, the five-year period begins on the date of final disposition of litigation in cases where the person is notified that the appraisal or report is the subject of or is otherwise involved in pending litigation while, under the bill the period begins two years after that date. If an investigation is not commenced within the applicable time period, an investigation is barred and the Board and Superintendent are prohibited from taking any disciplinary action related to the relevant appraisal. An investigation is considered to be commenced on the date on which a person files the complaint with the Division of Real Estate and Professional

¹⁴ R.C. 4768.05.

Licensing, and criminal and civil liability are not affected by the above provisions.¹⁵ This provision applies to the Real Estate Appraisers Law as well.

Application for licensure

To obtain a license to operate as an appraisal management company, an applicant must submit all of the following to the Superintendent of Real Estate and Professional Licensing:

- (1) A completed application on a form provided by the Superintendent;
- (2) The name of a controlling person who will be the main contact between the appraisal management company and the Division of Real Estate and Professional Licensing and the Real Estate Appraiser Board;
- (3) Payment of the required fee for initial licensure (the Superintendent sets the fee by rule, but the fee set may not exceed \$2,000 (R.C. 4768.03));
- (4) A list of all owners and controlling persons of the appraisal management company;
- (5) A completed consent to service of process in Ohio as prescribed by rule of the Real Estate Appraiser Board;
- (6) The name of each state in which the appraisal management company holds an appraisal management company license, certificate, or registration and affirmation that the applicant is in good standing in each state where the applicant holds a license, certificate, or registration;
- (7) Statements (a) that the applicant understands the grounds for any disciplinary action that can be initiated under the Appraisal Management Company Law, (b) that the applicant acknowledges that a system or process must be in place to verify that any appraiser added to the appraisal management company's appraiser panel is licensed or certified under the Real Estate Appraisers Law and is in good standing with the state, (c) that the applicant acknowledges that a system or process must be in place to review the work of appraisers who are performing real estate appraisal services for compliance with the uniform standards of professional appraisal practice, (d) that the applicant acknowledges that a system or process must be in place to verify that any employee of or independent contractor to the appraisal management company that performs an appraisal review must be an appraiser licensed or certified under the Real Estate Appraisers Law, (e) that the applicant acknowledges that a

¹⁵ R.C. 4763.14(A), (B), (C), and (D).

system or process must be in place to disclose to its client the actual fees paid to an appraiser for appraisal services separately from any other fees or charges for appraisal management services, (f) that the applicant acknowledges that a system or process must be in place to disclose the license, certificate, or registration number of the appraisal management company on each engagement letter used in assigning an appraisal request for real estate appraisal assignments in Ohio, (g) that the applicant acknowledges that the controlling person of the appraisal management company who will be the main contact between the appraisal management company and the Division of Real Estate and Professional Licensing and the Real Estate Appraiser Board has successfully completed 15 hours of uniform standards of professional appraisal practice and thereafter must complete seven hours of instruction in uniform standards of professional appraisal practice at least once every two years, and (h) that each owner and controlling person of the appraisal management company is at least 18 years of age, has graduated the twelfth grade or received a certificate of high school equivalence, is honest, truthful, and of good moral character, and has not had a license, certificate, or registration to act as an appraiser be refused, denied, canceled, surrendered, or revoked in Ohio or in any other state.¹⁶

Additionally, the bill requires that each owner and controlling person of an appraisal management company satisfy all of the criteria in clause (e) in the paragraph above and submit to a criminal records check.¹⁷

The bill requires that when the Superintendent of Real Estate and Professional Licensing receives an application for licensure, the Superintendent must request the Bureau of Criminal Identification and Investigation, or a vendor approved by the Bureau, to conduct a criminal records check based on the fingerprint impressions of each owner and controlling person of the applicant. The Superintendent of Real Estate and Professional Licensing must additionally request that information from the Federal Bureau of Investigation be obtained as part of the criminal records check. Upon that request, the Bureau of Criminal Identification and Investigation must conduct a criminal records check to determine whether any information exists indicating that the person who is the subject of the request has been convicted of or pleaded guilty to a felony in Ohio or in any other state. The bill requires the applicant to pay for any fee required for the criminal records check.¹⁸

¹⁶ R.C. 4768.06(A) and (B).

¹⁷ R.C. 4768.06(B).

¹⁸ R.C. 109.572(A)(13) and 4768.06(C).

Issuing a license

The bill requires the Superintendent of Real Estate and Professional Licensing to issue an appraisal management company license to an applicant if the applicant and each owner or controlling person of the applicant satisfies the requirements for licensure (see "**Application for licensure**" above) and no grounds for refusal exist (see "**Grounds for refusal to issue or renew a license**" below). However, the bill prohibits the Superintendent from issuing a license to an applicant if any owner or controlling person of the applicant has been convicted of or pleaded guilty to a felony unless the person has proven to the Superintendent, by a preponderance of the evidence, that the person's activities and employment record since the conviction or plea show that the person is honest, truthful, and of good reputation, and there is no basis in fact for believing that the person will commit a felony again. An appraisal management company license issued under the bill is valid for one year after the date of issue.¹⁹

License renewal

An appraisal management company license issued or renewed under the bill expires one year from the date of issue. To obtain a renewal license, the bill requires an appraisal management company to file a renewal application with the Superintendent of Real Estate and Professional Licensing and to pay the required renewal fee. The Superintendent sets the fee by rule, but the fee set may not exceed \$2,000. The renewal application must include a statement, signed by the licensee's controlling person, that states all of the following:

(1) The licensee has a system or process in place to verify that any appraiser added to the appraisal management company's appraiser panel for the purpose of performing real estate appraiser services is a licensed or certified appraiser who is in good standing with the state.

(2) The licensee has a system or process in place to review the work of appraisers who are performing real estate appraisal services for compliance with the uniform standards of professional appraisal practice.

(3) The controlling person of the licensee who is the main contact between the appraisal management company and the Division of Real Estate and Professional Licensing and the Real Estate Appraiser Board has successfully completed an initial 15 hours of uniform standards of professional appraisal practice and thereafter completes

¹⁹ R.C. 4768.06(D) and (E).

seven hours of instruction in uniform standards of professional appraisal practice at least once every two years.

(4) The licensee has a system or process in place to disclose to its client the actual fees paid to an appraiser for appraisal services separately from any other fees or charges for appraisal management services.

(5) The licensee has a system or process in place to disclose the license, certificate, or registration number of the appraisal management company on each engagement letter used in assigning an appraisal request for real estate appraisal assignments within the state.

(6) Each owner and controlling person of the licensee continues to satisfy the requirements for initial licensure described in clause (h) of paragraph (7) under "**Application for licensure**," above.²⁰

The bill requires that the renewal application be filed at least 30 days, but not earlier than 120 days, prior to expiration of the license. If a licensee fails to renew its license prior to its expiration, the licensee is ineligible to obtain a renewal license and must instead go through the process for initial licensure to regain licensure (see "**Application for licensure**" above). However, a licensee can, within three months after the expiration of the license, renew the license without having to comply with the requirements for initial licensure if the licensee pays the requisite renewal fees and late filing fee. The Superintendent sets the fee by rule, but the fee set may not exceed \$1,000. The bill provides that a licensee who applies for late renewal of the licensee's license cannot engage in any activities permitted by the license during the three-month period following the license's normal expiration date until all renewal fees and the late filing fee are paid.²¹

The bill requires the Superintendent to renew the license if the applicant satisfies the above requirements and there exist no grounds for the Superintendent to refuse renewal (see "**Grounds for refusal to issue or renew a license**" below).²²

Grounds for refusal to issue or renew a license

The bill permits the Superintendent of Real Estate and Professional Licensing to refuse to issue to an applicant an appraisal management company license based upon

²⁰ R.C. 4768.03 and 4768.07(A).

²¹ R.C. 4768.03 and 4768.07(B) and (C).

²² R.C. 4768.07(B).

any prohibited act for which a person, including a licensee, can be disciplined (see "**Prohibited acts**" below). Also, the bill permits the Superintendent to refuse to renew a license if the licensee has failed to comply with the Appraisal Management Company Law. If the Superintendent refuses to issue or renew a license, the bill requires that the Superintendent notify the applicant or the licensee of the basis for the refusal, by certified mail, return receipt requested, and the bill states that the hearing must be conducted in accordance with the Administrative Procedure Act.

The bill allows an applicant or licensee to appeal the Superintendent's decision to the Real Estate Appraiser Board, which must provide the applicant or licensee with the opportunity to be heard in person or by counsel, or both. The decision and order of the Board is final, subject to review in the manner provided in the Administrative Procedure Act and appeal to the court of common pleas of Franklin County.²³

Prohibited acts

The bill prohibits any person, including licensed and unlicensed appraisal management companies, from doing any of the following:

(1) Procuring or attempting to procure an appraisal management company license by knowingly making a false statement, submitting false information, refusing to provide complete information in response to a question in an application for licensure, or by any means of fraud or misrepresentation;

(2) Paying, or attempting to pay, anything of value, other than the required fees or assessments, to any member or employee of the Real Estate Appraiser Board for the purpose of procuring an appraisal management company license;

(3) Failing to provide copies of records to the Superintendent of Real Estate and Professional Licensing or to include certain information in the appraisal assignment file as required under the bill;

(4) Failing to assist the Superintendent in the Superintendent's investigation of complaints, including failure to comply with a subpoena issued in connection with the Superintendent's audits or investigations;

(5) Offering, performing, or otherwise providing appraisal management services without a license under a business structure that was designed to circumvent the requirements and prohibitions of the bill.²⁴

²³ R.C. 4768.08.

²⁴ R.C. 4768.13(K)(1), (2), (3), (7), and (10).

The bill prohibits any appraisal management company, regardless of whether the appraisal management company is licensed or unlicensed, from doing any of the following:

(1) Removing an independent appraiser from the appraisal management company's appraiser panel, or otherwise refusing to assign requests for real estate appraisal services to the appraiser, without first notifying the appraiser and the Division of Real Estate and Professional Licensing in writing of the reasons the appraiser is being removed from the appraiser panel and providing the appraiser with an opportunity to respond to that notification, in writing, within 30 days after the appraisal management company mails the removal notification, if the removal occurs after the appraiser has been on the panel for at least 30 days. Under the bill, a violation of this prohibition is a first degree misdemeanor.²⁵

(2) Altering, modifying, or otherwise changing a completed appraisal report submitted by an appraiser except the format of the appraisal report may be modified solely for the purpose of transmission.²⁶ (Under the bill, a person who violates this prohibition is guilty of a fifth degree felony.)²⁷

(3) Having a license, certificate, or registration that was issued by another state revoked or surrendered;²⁸

(4) Having an owner or controlling person that is convicted of or pleaded guilty to a felony.²⁹

The bill prohibits only those appraisal management companies that are licensed under the bill from doing any of the following:

(1) Failing to maintain the original or true copy of every request relating to the report that the appraisal management company receives from a client; the original or true copy of each request sent to an appraiser who is considered for the assignment; and copies of the appraisal report and all versions of that report, for a period of at least five years from the date the appraisal report is submitted to the client.³⁰ (The failure of a

²⁵ R.C. 4768.11(A)(10), 4768.13(K)(4), 4768.09, and 4768.99.

²⁶ R.C. 4768.13(K)(5) and 4768.11(C).

²⁷ R.C. 4768.99(A).

²⁸ R.C. 4768.13(K)(11).

²⁹ R.C. 4768.13(K)(16).

³⁰ R.C. 4768.13(K)(7) and 4768.10(A).

person to comply with a subpoena related to these records is prima facie evidence of a violation.)³¹

(2) Failing to include in each appraisal assignment file the name and contact information of both the appraisal management company and the individual from the appraisal management company involved in ordering the appraisal; the amount of any fee paid to the appraiser for each assignment included in the assignment file and the time and method of payment; and details of all communications between the appraisal management company, the appraiser, and the client for each appraisal assignment included in the assignment file;³²

(3) Having entered against the licensee a final judgment on the grounds of fraud, deceit, misrepresentation, or coercion in the making of any real estate appraisal;³³

(4) Failing to notify the Board within 15 days of any state agency's issuance of an order revoking or permanently surrendering any professional appraisal management company license, certificate, or registration issued by any public entity other than the Division of Real Estate and Professional Licensing;³⁴

(5) Failing to provide written notice to the Division within 15 days of changing the controlling person who was designated in the application for licensure as the appraisal management company's main contact;³⁵

(6) Entering into contracts or agreements with an appraiser who is not licensed or certified under the Real Estate Appraisers Law for the performance of real estate appraisal services;³⁶

(7) Failing to pay an appraiser for the completion of an appraisal within 60 days of the date on which the appraiser transmits or otherwise provides the completed appraisal to the appraisal management company or its assignees, except in cases of breach of contract or substandard performance of services;³⁷

³¹ R.C. 4768.13(L).

³² R.C. 4768.13(K)(7) and 4768.10(B).

³³ R.C. 4768.13(K)(8).

³⁴ R.C. 4768.13(K)(9) and (M).

³⁵ R.C. 4768.13(K)(12).

³⁶ R.C. 4768.13(K)(13).

³⁷ R.C. 4768.12 and 4768.13(K)(6).

(8) Failing to compensate each appraiser who performs appraisal services for the appraisal management company at a rate that is customary and reasonable, in accordance with the federal Truth in Lending Act, and taking into account the increased time, difficulty, and scope of the work for a complex assignment, for appraisal services performed as required by the bill;³⁸

(9) Failing to verify that an appraiser added to the appraisal management company's appraiser panel is licensed under the Appraisal Management Company Law;³⁹

(10) Failing to require appraisals coordinated by the appraisal management company to comply with the uniform standards of professional practice.⁴⁰

The bill specifically prohibits an employee, director, officer, or agent of a licensed appraisal management company from influencing or attempting to influence the development, reporting, or review of an appraisal through coercion, extortion, collusion, compensation, instruction, inducement, intimidation, bribery, or in any other manner, including the following:

(1) Withholding or threatening to withhold timely payment for appraisal services rendered when the appraisal report or services rendered are provided in accordance with a contract between the parties;

(2) Withholding or threatening to withhold future business for an appraiser, or demoting or terminating, or threatening to demote or terminate, an appraiser;

(3) Expressly or impliedly promising future business, promotions, or increased compensation for an appraiser;

(4) Conditioning the assignment of an appraisal or the payment of an appraisal fee, salary, or bonus, on the opinion, conclusion, or valuation to be reached by, or on a preliminary estimate or opinion requested from, an appraiser;

(5) Requesting that an appraiser provide an estimated, predetermined, or desired valuation in an appraisal report, or provide estimated values or comparable sales at any time prior to the independent appraiser's completion of an appraisal;

³⁸ R.C. 4768.12 and 4768.13(K)(6).

³⁹ R.C. 4768.13(K)(14).

⁴⁰ R.C. 4768.13(K)(15).

(6) Providing to an appraiser an anticipated, estimated, encouraged, or desired value for a subject property or a proposed or target amount to be loaned to the borrower, except that the employee, director, officer, or agent of an appraisal management company can provide the appraiser with a copy of the sales contract for purchase transactions;

(7) Providing stock or other financial or nonfinancial benefits to an appraiser or any person related to the appraiser;

(8) Any other act or practice that impairs, or attempts to impair, an appraiser's independence, objectivity, or impartiality;

(9) Obtaining, using, or paying for a second or subsequent appraisal or ordering an automated valuation model in connection with a mortgage financing transaction, unless there is a reasonable basis to believe that the initial appraisal was flawed or tainted and such basis is clearly and appropriately noted in the loan file; the appraisal or automated valuation model is done pursuant to a bona fide pre- or post-funding appraisal review or quality control process; or a second appraisal is required under state or federal law;

(10) Allowing the removal of an independent appraiser from the appraisal management company's appraiser panel, after the first 30 days of being added to the panel, without prior written notice and an opportunity to respond as required under the bill;

(11) Requiring an appraiser to indemnify the appraisal management company against liability, damages, losses, or claims other than those liabilities, damages, losses, or claims arising out of the services performed by the appraiser, including performance or nonperformance of the appraiser's duties and obligation, whether as a result of negligence or willful misconduct. This provision applies only to contracts entered into on or after the effective date of the bill.

(12) Requiring an appraiser to perform an appraisal assignment if the appraiser informs the appraisal management company that the appraiser is not competent to perform the appraisal assignment and the appraiser declines to acquire the necessary competency to perform the assignment;

(13) Requiring an appraiser who has notified the appraisal management company and declined the assignment to prepare an appraisal under a time frame that the appraiser, in the appraiser's own professional judgment, believes does not afford the appraiser the ability to meet all the relevant legal and professional obligations.

In addition to the sanctions to which an employee, director, officer, or agent of a licensed appraisal management company may be subject under the bill for influencing or attempting to influence the development, reporting, or review of an appraisal through coercion, extortion, or similar tactics (see "**Sanctions against prohibited acts**" below), such a person who engages in the acts specified in items (1) through (9) above is guilty of a fifth degree felony and such a person who engages in the acts specified in (10) through (13) is guilty of a first degree misdemeanor.

The bill specifies that this prohibition against coercive and intimidating acts does not prohibit an appraisal management company from requesting that an appraiser consider additional, appropriate property information, including the consideration of additional comparable properties to make or support an appraisal, provide further detail, substantiation, or explanation for the appraiser's value conclusion, or correct objective factual errors in an appraisal report.⁴¹

The bill requires that each appraisal management company require that appraisals are conducted independently and free from inappropriate influence and coercion pursuant to the appraisal independence standards established by the federal Truth in Lending Act.⁴²

Sanctions against prohibited acts

The bill states that within ten business days after a person files with the Division of Real Estate and Professional Licensing a written complaint against a person licensed under the Appraisal Management Company Law or any other person, the Superintendent of Real Estate and Professional Licensing must acknowledge receipt of the complaint by sending notice to the person against whom the complaint is filed that includes a copy of the complaint. That notice and the acknowledgment to the complainant can additionally state that an informal mediation meeting will be held with the complainant, the person against whom the complaint is filed, and an investigator from the investigation and audit section of the Division, if the complainant and person both file a request for such a meeting within 20 calendar days after the acknowledgment and notice are mailed.⁴³

If the complainant and the person against whom the complaint is filed both file requests for an informal mediation meeting, the bill requires the Superintendent to notify the complainant and the person of the date, time, and place of the meeting by

⁴¹ R.C. 4768.11(A) and (B), 4768.13(K), 4768.99, and Section 6.

⁴² R.C. 4768.11(D).

⁴³ R.C. 4768.13(A).

regular mail. If the complainant and the person reach an accommodation at an informal mediation meeting, the investigator must report the accommodation to the Superintendent, the complainant, and the person against whom the complaint is filed and the file must be closed upon the Superintendent receiving satisfactory notice that the accommodation agreement has been fulfilled.⁴⁴

If the complainant and the person against whom the complaint is filed fail to agree to an informal mediation meeting, fail to reach an accommodation agreement, or fail to fulfill an accommodation agreement, the Superintendent must assign the complaint to an investigator for an investigation into the conduct of the person against whom the complaint is filed. During these investigations, and at any time that the Superintendent feels it is necessary to enforce the Appraisal Management Company Law, the investigators and auditors employed by the Division of Real Estate and Professional Licensing can review and audit the business records of licensees during normal business hours. Under the bill, any information that is obtained during these investigations and audits, and all reports, documents, and other work products that arise from that information and that are prepared by personnel of the Department of Commerce, is confidential and is not a public record under the Public Records Law. However, the bill allows the Division to release information relating to licensees to other governmental agencies for certain specified purposes.⁴⁵

At the end of the investigation, the bill requires the investigator to file a written report of the results of the investigation with the Superintendent. The Superintendent must review the report and determine whether there exists reasonable and substantial evidence to justify disciplinary action against the person for committing a prohibited act (see "**Prohibited acts**" above). Regardless of the Superintendent's determination, the bill requires the Superintendent to notify the complainant and the person against whom the complaint was made of that determination. If the Superintendent determines that the necessary level of evidence does not exist, the Superintendent must also inform the parties of the basis for the determination.⁴⁶

If the Superintendent finds the evidence to justify disciplinary action does not exist, the complainant has 15 days after notification from the Superintendent of the Superintendent's decision to file with the Division a request for review by the Real Estate Appraiser Board. That review must be conducted at the next regularly scheduled meeting held at least 15 business days after the request is filed but not longer than six

⁴⁴ R.C. 4768.13(B).

⁴⁵ R.C. 4768.04(A)(9) and (C) and 4768.13(C).

⁴⁶ R.C. 4768.13(D), (E), and (F).

months after the request is filed. If the Board affirms the determination of the Superintendent, the bill requires the Superintendent to notify the complainant and the person against whom the complaint is filed within ten business days. If the Board reverses the Superintendent's determination, a hearing before a hearing examiner must be held, and the complainant and the person against whom the complaint is filed must be notified.⁴⁷

Under the bill, except as otherwise provided, all notices, written reports, and determinations relating to sanctions for prohibited acts must be mailed via certified mail, return receipt requested. If the notice, written report, or determination is returned because of failure of delivery or was unclaimed, the notice, written report, or determination must be deemed served if the Superintendent sends the notice, written report, or determination via regular mail and obtains a certificate of mailing of the notice, written report, or determination. Refusal of delivery by personal service or by mail is not failure of delivery and service is deemed to be complete.⁴⁸

If the Superintendent finds that reasonable and substantial evidence to justify disciplinary action against the person does exist, the bill allows the person against whom the complaint was filed to request a hearing before a hearing examiner pursuant to the Administrative Procedure Act. The bill also allows the person to apply to the Superintendent to enter into a settlement agreement regarding the alleged violation. If this is done, any hearing before a hearing examiner must be postponed and the Board must review the settlement agreement at its next regularly scheduled meeting. If the Board disapproves the settlement agreement, the hearing before the hearing examiner must be rescheduled.⁴⁹

Under the bill, any hearing officer who conducts a hearing regarding prohibited acts must, upon completion of that hearing, submit a report of findings of fact and conclusions of law with the Superintendent, the Board, the complainant, and the person against whom the complaint is filed. The bill provides the person against whom the complaint was filed and the Division with the opportunity to file with the Board objections to that report within ten calendar days of receiving a copy of the report. The bill requires that the Board consider these objections before approving, modifying, or rejecting the hearing examiner's report.⁵⁰

⁴⁷ R.C. 4768.13(E).

⁴⁸ R.C. 4768.13(N).

⁴⁹ R.C. 4768.13(F) and (H).

⁵⁰ R.C. 4768.13(G).

If, after review of the hearing examiner's report or the settlement agreement, the Board determines that a person engaged in a prohibited act (see "**Prohibited acts**" above), the bill requires the Board to order the disciplinary action it considers appropriate, except that the order cannot be inconsistent with a settlement agreement in the matter if the agreement was approved by the Board. Otherwise, the disciplinary action allowed under the bill can include any of the following:

(1) Reprimand of the person, if the person is licensed as an appraisal management company;

(2) Imposition of a fine, not exceeding \$25,000 per violation;

(3) Suspension of the appraisal management company license for a specific period of time, if the person is licensed as an appraisal management company;

(4) Revocation of the appraisal management company license, if the person is licensed as an appraisal management company.

Under the bill, the decision and order of the Board is final, subject to review in the manner provided for in the Administrative Procedure Act and appeal to the court of common pleas of Franklin County.⁵¹

Sanctions against unlicensed activity

The bill allows the Superintendent of Real Estate and Professional Licensing, upon written complaint or upon the Superintendent's own motion, to investigate any person that allegedly operates as an appraisal management company in violation of the prohibitions against operating without a license described in "**Licensure of appraisal management companies**" above in the Appraisal Management Company Law.⁵² During any investigation that the Superintendent conducts under the bill, the investigators and auditors employed by the Division of Real Estate and Professional Licensing can review and audit the business records of licensees during normal business hours.⁵³ Any information that is obtained during those investigations and audits, and all reports, documents, and other work products that arise from that information and that are prepared by personnel of the Department of Commerce, is confidential and is not a public record under the Public Records Law, although the bill allows the Division of Real Estate to release information relating to licensees to other

⁵¹ R.C. 4768.13(I) and (J).

⁵² R.C. 4768.02(A) and 4768.14(A).

⁵³ R.C. 4768.04(A)(9).

governmental agencies for certain purposes.⁵⁴ If, after investigation, the Superintendent determines that there exists reasonable evidence of a violation, the bill requires the Superintendent to send the party who is the subject of the investigation a written notice, by regular mail, within 14 business days after that determination. The written notice must include all of the following information:

(1) A description of the activity in which the party allegedly is engaging or has engaged that constitutes the violation;

(2) The applicable law allegedly violated;

(3) A statement informing the party that a hearing concerning the alleged violation will be held before a hearing examiner, and a statement giving the date and place of that hearing;

(4) A statement informing the party that the party or the party's attorney can appear in person at the hearing and present evidence and examine witnesses appearing for and against the party, or the party can submit written testimony stating any positions, arguments, or contentions.⁵⁵

Before the hearing is held, the person who is the subject of the investigation is permitted under the bill to apply to the Superintendent to enter into a settlement agreement regarding the alleged violation. If a settlement agreement is reached, the bill requires that the hearing be postponed and that the Real Estate Appraiser Board review the settlement agreement at its next regularly scheduled meeting. If the Board disapproves the settlement agreement, the bill requires that the hearing be rescheduled.⁵⁶

The bill requires that, at the hearing, the hearing examiner must hear the testimony of all parties present at the hearing and consider any written testimony submitted by the party or the party's attorney. At the end of the hearing, the hearing examiner must determine if there has been a violation of the licensure requirement and file with the Superintendent, the Board, the complainant, and the parties a written report setting forth the examiner's findings of fact and conclusions of law and a recommendation of the action to be taken by the Superintendent. The bill allows ten days after receiving the report for the parties and the Division of Real Estate and Professional Licensing to file with the Board written objections to the report. The Board

⁵⁴ R.C. 4768.04(C).

⁵⁵ R.C. 4768.14(B).

⁵⁶ R.C. 4768.14(C).

must review the hearing examiner's report at the next regularly scheduled Board meeting held at least 15 business days after receiving the hearing examiner's report and it must consider the objections before approving, modifying, or disapproving the report.⁵⁷

Under the bill, the Board must decide whether to impose sanctions after reviewing the hearing examiner's report or the settlement agreement. The Board can assess a civil penalty under the bill in an amount it determines, not to exceed \$1,000 per violation, but the civil penalty must be consistent with any Board-approved settlement agreement that exists in the matter. Each day a violation occurs or continues is a separate violation. The Board must determine the terms of payment and it must maintain a transcript of the proceedings of the hearing and issue a written opinion to all parties, citing its findings and grounds for any action taken.⁵⁸

Under the bill, if a party fails to timely pay a civil penalty assessed for unlicensed activity, the Superintendent must forward to the Attorney General the name of the party and the amount of the civil penalty, for the purpose of collecting that civil penalty. The bill requires that the party pay any fee assessed by the Attorney General for collection of the civil penalty in addition to the civil penalty assessed.⁵⁹

Real Estate Appraiser Operating Fund

The bill directs the Superintendent of Real Estate and Professional Licensing to deposit all money from fines relating to prohibited acts and unlicensed activity, and all other money collected under the Appraisal Management Company Law, into the existing Real Estate Appraiser Operating Fund.⁶⁰ The bill expands the purposes for which the Fund may be used to include expenses of the Superintendent relating to the administration and enforcement of the Appraisal Management Company Law.⁶¹

Definitions

The bill provides the following definitions:

⁵⁷ R.C. 4768.14(D) and (E).

⁵⁸ R.C. 4768.14(F).

⁵⁹ R.C. 4768.14(H).

⁶⁰ R.C. 4768.14 and 4768.15.

⁶¹ R.C. 4763.15.

(1) "Real estate appraisal" or "appraisal" means the act or process of developing an opinion of value of real property in conformity with the uniform standards of professional appraisal practice.

(2) "Appraisal consulting" means the act or process of developing an analysis, recommendation, or opinion to solve a problem related to real estate.

(3) "Appraisal management company" means any person authorized either by a creditor of a consumer credit transaction secured by a consumer's principal dwelling, or by an underwriter of or other principal in the secondary mortgage markets, that directly or indirectly performs appraisal management services in connection with valuing properties collateralizing mortgage loans or valuing properties collateralizing mortgages incorporated in a securitization.

(4) "Appraisal management services" means to directly or indirectly perform any of the following functions on behalf of a lender, financial institution, client, or any other person in conjunction with a consumer credit transaction that is secured by a consumer's primary dwelling:

(a) Administer an appraiser panel;

(b) Recruit, retain, or select appraisers;

(c) Qualify, verify licensure or certification and negotiate fees and service level expectations with persons who are part of an appraiser panel;

(d) Contract with appraisers to perform appraisal assignments;

(e) Receive an order for an appraisal from one person, and deliver the order for the appraisal to an appraiser that is part of an appraiser panel for completion;

(f) Manage the process of having an appraisal performed, including providing administrative duties, such as receiving appraisal orders and reports, submitting completed appraisal reports to creditors and underwriters, collecting fees from creditors and underwriters for services provided, and reimbursing appraisers for services performed;

(g) Track and determine the status of orders for appraisals;

(h) Conduct quality control of a completed appraisal prior to the delivery of the appraisal to the person that ordered the appraisal;

(i) Provide a completed appraisal performed by an appraiser to one or more clients.

(5) "Appraisal report" has the same meaning in the Appraisal Management Licensing Law as it does in the Real Estate Appraiser Law: a written communication of a real estate appraisal, appraisal review, or appraisal consulting service or an oral communication of a real estate appraisal, appraisal review, or appraisal consulting service that is documented by a writing that supports the oral communication.

(6) "Appraisal review" means the act or process of developing and communicating an opinion about the quality of another appraiser's work that was performed as part of an appraisal, appraisal review, or appraisal consulting assignment. "Appraisal review" does not include an examination of an appraisal for grammatical or typographical errors.

(7) "Appraisal services" or "real estate appraisal services" means a real estate appraisal, appraisal review, or appraisal consulting service.

(8) "Appraiser" means a person licensed or certified under the Real Estate Appraisers Law.

(9) "Appraiser panel" means a network of appraisers who are independent contractors to the appraisal management company who have been approved by the appraisal management company, after responding to an invitation or request from the appraisal management company, to perform appraisals for any client of the appraisal management company or for the company directly, on a periodic basis, as assigned by the company.

(10) "Client" means any person that contracts with, or otherwise enters into an agreement with, an appraisal management company for residential or commercial real estate appraisal services.

(11) "Controlling person" means any of the following:

(a) An owner, officer, or director of a business entity seeking to offer appraisal management services in Ohio;

(b) An individual employed, appointed, or authorized by an appraisal management company, who has the authority to enter into contractual relationships with clients for the performance of appraisal management services and the authority to enter into agreements with independent appraisers for the performance of residential or commercial real estate appraisal services;

(c) An individual who possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of an appraisal management company.

(12) "Owner" means a person who owns or controls 10% or more of an appraisal management company.

(13) "Person" means an individual, corporation, partnership, sole proprietorship, subsidiary, unit, or other business entity.

(14) "Real estate" includes leaseholds as well as any and every interest or estate in land situated in Ohio, whether corporeal or incorporeal, whether freehold or nonfreehold, and the improvements on the land, but does not include cemetery interment rights.⁶²

Real estate appraisers

Under continuing law, real estate appraisers are governed by the Real Estate Appraisers Law (R.C. Chapter 4763.).

Exemptions

In addition to continuing law's prohibition of a person performing a real estate appraisal for a mortgage loan without a license or certification under the Real Estate Appraisers Law, the bill also prohibits a person from performing an appraisal review and preparing or reviewing an appraisal report for an appraisal for a mortgage loan without licensure or certification.⁶³

The bill changes the exemptions to the licensure requirements. The bill exempts from the licensing/certification requirement a lender who uses (1) a market analysis or price opinion, (2) an internal valuation analysis, or (3) an automated valuation model or report based on a model, and any person providing that report to the lender to validate or support the value conclusion provided by the person licensed or certified under the Real Estate Appraisers Law to do the appraisal.

The bill removes current law's requirements that the lender, in performing a valuation for purposes of a loan application, (1) give the consumer loan applicant a copy of any written market analysis or price opinion or valuation report based on an automated valuation model and (2) include a disclaimer on the consumer's copy specifying that the valuation used for purposes of the application was obtained from a

⁶² R.C. 4768.01.

⁶³ R.C. 4763.19(A).

market analysis or price opinion or automated valuation model report and not from a person licensed or certified under the Real Estate Appraiser Law.⁶⁴

Requirements for written reports

The bill requires that, in addition to including all the information required by continuing law, every written report rendered by a certificate holder or licensee in conjunction with an appraisal assignment or specialized service performed must include the license, certificate, or registration number of the appraisal management company that has engaged the appraiser for the assignment within the body of the appraisal report and the actual fees paid to the appraiser within the body of the appraisal report.⁶⁵

Time periods for investigations

The bill permits the Board or Superintendent to commence, at any time within five years from the date an appraisal report is submitted to a client, any investigation that relates to the conduct of a person licensed, registered, or certified under the Real Estate Appraisers Law to determine whether the person violated that Law. If, before the expiration of five years from the date an appraisal report is submitted to a client, a person is notified that the appraisal is the subject of or is otherwise involved in pending litigation, the Board or Superintendent may commence an investigation within two years from the date of final disposition of the litigation. The bill extends the time period in which a person licensed, registered, or certified under the Real Estate Appraisers Law must retain records for five years; currently, the five-year period begins on the date of final disposition of litigation in cases where the person is notified that the appraisal or report is the subject of or is otherwise involved in pending litigation while, under the bill the period begins two years after that date. If an investigation is not commenced within the applicable time period, an investigation is barred and the Board and Superintendent are prohibited from taking any disciplinary action related to the relevant appraisal. An investigation is considered to be commenced on the date on which a person files the complaint with the Division of Real Estate and Professional Licensing, and criminal and civil liability are not affected by the above provisions.⁶⁶ This provision applies to the Appraisal Management Company Law as well.

⁶⁴ R.C. 4763.19(B).

⁶⁵ R.C. 4763.12(C).

⁶⁶ R.C. 4763.14(A), (B), (C), and (D).

Definitions

The bill changes the definition of "real estate appraisal" or "appraisal" to match the definition for those same terms in the Appraisal Management Company Law. Currently, the law defines "real estate appraisal" or "appraisal" as an analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of identified real estate that is classified as either a valuation or an analysis. The bill changes the terms to mean the act or process of developing an opinion of value of real property in conformity with the uniform standards of professional appraisal practice.⁶⁷

The bill changes the definition of "state-registered real estate appraiser assistant" to reflect the changes to the definition of "real estate appraisal" or "appraisal." The bill provides that such an assistant is a person, other than a state-certified general or residential or state-licensed residential real estate appraiser, who satisfies the registration requirements of the Real Estate Appraiser Law for participating in real estate appraisals and who holds a current and valid registration or renewal registration issued to the person. Current law contains a similar definition for a state-registered real estate appraiser assistant, except that it specifies that an assistant is a person who satisfies the registration requirement of the Law for participating in the development and preparation of real estate appraisals.⁶⁸

Similarly, in order to match the definition provided in the Appraisal Management Company Law, the definition of "appraisal review" specifies that "appraisal review" does not include an examination of an appraisal for grammatical or typographical errors.⁶⁹

The bill's definition of "prepare" is to develop and communicate, whether through a personal physical inspection or through the act or process of critically studying a report prepared by another who made the physical inspection, an appraisal report or specialized service report. This differs from the current law definition, which includes the study of an analysis or opinion.⁷⁰

Other

The bill makes the following technical changes:

⁶⁷ R.C. 4763.01(A).

⁶⁸ R.C. 4763.01(O).

⁶⁹ R.C. 4763.01(S).

⁷⁰ R.C. 4763.01(I).

(1) The bill adds cross references to R.C. 109.572 to indicate that criminal records checks in relation to the Appraisal Management Company Law are conducted in accordance with existing requirements.

(2) The bill makes gender neutralization changes in R.C. 4763.02.

(3) Due to the bill's changes to the definition of "real estate appraisal" or "appraisal" (see the first paragraph in "**Definitions**") from a thing to an act, several conforming changes are made.⁷¹

HISTORY

| ACTION | DATE |
|------------|----------|
| Introduced | 05-15-12 |

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⁷¹ R.C. 4763.02, 4763.05, 4763.08, 4763.11, 4763.12, 4763.13, 4763.14, and 4763.17.

