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Synopsis of Senate Committee Amendments

(This synopsis does not address amendments that may have been adopted on the Senate Floor.)

H.B. 229 of the 136th General Assembly

Senate Financial Institutions, Insurance and Technology

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As Passed by the House

As Reported by S. Financial Institutions, Insurance & Technology

Pharmacy benefit manager licensure

Requires a person seeking to become licensed as a pharmacy benefit manager (PBM) to file an application with the Superintendent of Insurance in the form and manner required by the Superintendent (*R.C. 3957.04*).

Permits the Superintendent to establish by rule and administer a process for licensing PBMs in Ohio (*R.C. 3957.02*).

Further requires the application to include all information the Superintendent considers necessary to process the application, including evidence satisfactory that the applicant meets the licensure requirements (*R.C. 3957.04*).

Additionally permits the Superintendent to adopt any other rules necessary for the administration, implementation, and enforcement of the bill (*R.C. 3957.02*).

As Passed by the House	As Reported by S. Financial Institutions, Insurance & Technology
No provision.	When adopting the rules, requires the Superintendent to consider standards and procedures that have been found to be best practices relative to the use and regulation of PBMs when adopting the rules <i>(R.C. 3957.02)</i> .
Requires the Superintendent to approve or deny a PBM license application within 30 days <i>(R.C. 3957.05)</i> .	Instead, requires the Superintendent to approve or deny the application within reasonable time after receipt <i>(R.C. 3957.05)</i> .
Requires the Superintendent, upon approving an application, to issue the applicant a PBM license and issue a certificate of authority to operate as a PBM <i>(R.C. 3957.07 and 3957.08(C))</i> .	Excludes the certificate of authority requirement <i>(R.C. 3957.07 and 3957.08(C))</i> .
Requires the Superintendent to notify an applicant of an application's denial with reasons for the denial, along with a statement that the applicant is entitled to an administrative hearing if the applicant requests one within 30 days <i>after the notice is sent (R.C. 3957.06)</i> .	Instead, provides that the hearing must be requested within 30 days <i>of receipt of the notice (R.C. 3957.06)</i> .
Provides that a PBM may renew its PBM license annually <i>(R.C. 3957.08)</i> .	Distinguishes an initial application from a license renewal; clarifies that a license expires on its expiration date if not renewed; and prohibits a PBM from applying for renewal more than 90 days before the license expires <i>(R.C. 3957.08)</i> .
Establishes a filing fee for reinstatement of an expired license equaling the product of \$250 times the number of months the reinstated license will be in effect <i>(R.C. 3957.08(C))</i> .	Instead, establishes a filing fee of one and one-half times the standard renewal fee <i>(i.e., \$3,000 x 1.5 = \$4,500) (R.C. 3957.08(C))</i> .

As Passed by the House	As Reported by S. Financial Institutions, Insurance & Technology
Prohibition on operating without a license	
<p>Prohibits a PBM from knowingly soliciting a plan or plan sponsor to act as a PBM or provide pharmacy benefit management services unless holding a PBM license (<i>R.C. 3957.03</i>).</p> <p>No provision.</p> <p>Specifies that whoever violates the bill’s prohibitions is guilty of a fourth degree misdemeanor (<i>R.C. 3957.99</i>).</p>	<p>Same, but expresses the standard of “knowingly” as part of the criminal penalty rather than the prohibition (<i>R.C. 3957.03 and 3957.99</i>).</p> <p>Prohibits a person from soliciting or acting as a PBM, or otherwise providing pharmacy benefit management services, while the person’s PBM license is expired (<i>R.C. 3957.03(C)</i>).</p> <p>Same, but as noted above, expresses the standard of <i>knowingly</i> within the penalty section of law (<i>R.C. 3957.99</i>).</p>
Exception – employer plans	
<p>Clarifies that the bill does not apply to an employer’s self-insurance plan to the extent that federal law supersedes, preempts, prohibits, or otherwise precludes its application to the plan (<i>R.C. 3957.15</i>).</p> <p>Clarifies that the bill’s licensure requirement does not apply to a [third-party] administrator (defined and regulated under continuing law) that provides pharmacy benefit management services or administration solely to insurers affiliated with the administrator or self-funded employee benefit plan, provided the services are not offered on a standalone basis (<i>R.C. 3957.17</i>).</p>	<p>Instead, clarifies that <i>for purposes of licensure</i>, the bill’s requirements do not apply to an employer’s self-insurance program <i>or fully insured plan</i> unless federal law supersedes, preempts, or prohibits its application to the plan (<i>R.C. 3957.15</i>).</p> <p>No provision.</p>

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Felony conviction	
<p>Requires a person convicted of a felony while licensed as a PBM to report the conviction to the Superintendent and provide the Superintendent with documentation – within 30 days of the entry of the judgment of conviction (<i>R.C. 3957.11</i>).</p>	<p>Instead, requires a licensed PBM to notify the Superintendent if the PBM, or any owner of the PBM, is subject to an administrative action or a criminal prosecution (other than a misdemeanor traffic offense) – within 30 days after the entry date of final disposition on the administrative matter or initial appearance before a judge or magistrate in a criminal prosecution, along with supporting documentation (<i>R.C. 3957.11</i>).</p>
Penalties and remedies for violation of licensure requirement	
<p>Permits the Superintendent to (1) suspend for two years, revoke, or refuse to issue a PBM license, (2) impose a monetary fine, or (3) do both, if upon investigation and proof the Superintendent finds that the licensee has engaged in conduct enumerated in the bill (<i>R.C. 3957.10(A)</i>), including:</p> <ul style="list-style-type: none"> ▪ If the PBM made a material misstatement in the license or renewal application; ▪ If the PBM misappropriated, converted for the PBM’s own use, or improperly withheld insurance premiums or contributions held by the PBM; 	<p>Instead, permits the Superintendent to (1) assess a civil penalty (see “Administrative civil penalty” below), (2) assess administrative costs, (3) suspend the license, (4) permanently revoke the license, (5) refuse to issue or renew a license, (7) prohibit the licensee from engaging in the business of insurance, (8) order corrective action, or (9) accept a license surrender, if the Superintendent has information that a person has engaged in the enumerated prohibited conduct or believes it to be in the best interest of the public, insurers, and plan sponsors (<i>R.C. 3957.10(A) and (C)</i>).</p> <ul style="list-style-type: none"> ▪ In place of “misstatement,” describes the prohibited conduct as providing incorrect, misleading, incomplete, or materially false information in the license or renewal application; ▪ Excludes the qualifying phrases “for the PBM’s own use” and “held by the PBM”;

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<ul style="list-style-type: none"> ▪ If the PBM used fraudulent, coercive, or dishonest practices in the transaction of business under the license; ▪ If the PBM failed to appear without reasonable cause or excuse in response to a subpoena, examination, warrant, or other order lawfully issued by the Superintendent; ▪ If the PBM was convicted of a financially related felony; ▪ If the PBM failed to report a felony conviction as required under the bill (see “Felony conviction” above). <p>Disqualifies a person who has had a PBM license suspended or application for PBM licensure denied from eligibility to apply for another PBM license for two years after the date the license is revoked or application is denied (<i>R.C. 3957.10(C)</i>).</p> <p>No provision.</p>	<ul style="list-style-type: none"> ▪ Additionally includes if the PBM has demonstrated incompetence, untrustworthiness, or financial irresponsibility; clarifies that the conduct is prohibited whether it occurred in Ohio or another state; and specifies that the PBM must have been convicted in the case of fraudulent, coercive, or dishonest practices; ▪ Excludes the qualifying phrase “without reasonable cause or excuse”; ▪ Also includes an owner of a PBM; ▪ Instead, establishes the following as a form of prohibited conduct: if the PBM has been or has an owner that has been convicted of or pleaded guilty to or no contest to a felony, regardless of if a judgment of conviction was entered. <p>No provision.</p> <p>Provides that if (1) a person has engaged in any of the prohibited conduct and that has caused or is about to cause substantial and material harm or (2) the Superintendent believes it is in the best interests of the public, insurers, and plan sponsors, the Superintendent may issue an order requiring the person to cease and desist from engaging in the conduct (<i>R.C. 3957.10(E)</i>).</p>

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No provision.	Provides that if the Superintendent has reasonable cause to believe that a person has violated an order issued by the Superintendent under the bill, the Superintendent can request that the Attorney General commence and prosecute an action in the name of the state against a person; accordingly, permits the court to impose a civil penalty of up to \$15,000, injunctive relief, restitution, and any other appropriate relief (<i>R.C. 3957.10(F)</i>).
Administrative civil penalty	
<p>Permits the Superintendent to impose a monetary fine (of an unspecified amount) against a PBM for engaging in conduct prohibited under the bill (<i>R.C. 3957.10(A)</i>).</p> <p>In a separate provision, permits the Superintendent to impose a monetary fine, of an unspecified amount, against a PBM if the Superintendent finds that the licensee has committed fraud, engaged in an illegal or dishonest activity connected to pharmacy benefit management services, or violated the bill's requirements regarding written agreements with plan sponsors (<i>R.C. 3957.10(D)</i>).</p>	<p>Instead, describes the fine as a civil penalty and limits the amount to not more than \$15,000 per violation (<i>R.C. 3957.10(C)</i>).</p> <p>No provision.</p>
Correction of violation	
Requires a PBM to correct, within 60 days after written notification by the Superintendent, a violation of the bill's requirements (<i>R.C. 3957.13(I)</i>).	Clarifies that this provision applies only to violations of the bill's books and records requirements (see " Books and records " below) (<i>R.C. 3957.13(J)</i>).

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Books and records	
<p>Requires each PBM to retain, for the duration of its service agreement with the plan sponsor, customary books and records of all transactions and information relative to covered persons or beneficiaries <i>(R.C. 3957.09(C))</i>.</p> <ul style="list-style-type: none"> ▪ Requires each PBM to maintain those books and records electronically or in physical form at its principal office or branch office <i>(R.C. 3957.09(C))</i>. <p>Requires each PBM to maintain detailed books and records that reflect all transactions administered by the PBM, specifically regarding (1) premiums or contributions received and deposited and (2) claims and authorized expenses paid; permits the Superintendent to examine the books and records as necessary <i>(R.C. 3957.13)</i>.</p> <ul style="list-style-type: none"> ▪ No provision. <p>Requires a PBM to pay all expenses associated with the examination functions authorized or required by the bill <i>(R.C. 3957.13(H))</i>.</p> <p>Provides that all information and data acquired by the Superintendent or the Ohio Department of Insurance (ODI) pursuant to the bill is proprietary and confidential and is not a public record under the Public Records Law <i>(R.C. 3957.14)</i>.</p>	<p>Clarifies that the books and records must be relevant <i>(R.C. 3957.09(C))</i>.</p> <ul style="list-style-type: none"> ▪ Also requires the PBM to make the books and records available to the Superintendent at any time upon request <i>(R.C. 3957.09(C))</i>. <p>Requires the books and records to be relevant, in place of “detailed” <i>(R.C. 3957.13(A)(1))</i>.</p> <ul style="list-style-type: none"> ▪ Permits the Superintendent to contract with a third party to examine the books and records <i>(R.C. 3957.13(H))</i>. <p>Clarifies that the PBM is also responsible for those expenses related to a contract with a third party to conduct that examination <i>(R.C. 3957.13(I))</i>.</p> <p>Also applies the requirements of continuing law governing the confidentiality of ODI records and other information <i>(R.C. 3957.14 and 3905.24)</i>.</p>

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State and federal privacy laws	
For the duration of each written agreement between a PBM and a plan sponsor, requires each PBM to maintain customary books and records of all transactions and information relative to covered persons or beneficiaries (<i>R.C. 3957.09(C)</i>).	Additionally requires a PBM to maintain any protected health information in the books and records in accordance with applicable federal and state privacy laws, including the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (<i>R.C. 3957.09(C)</i>).
Reimbursement rates	
Prohibits a PBM or its representatives from reimbursing a pharmacy or pharmacist in Ohio an amount less than the PBM reimburses a PBM affiliate for providing the same service (<i>R.C. 3957.14(B)(2)</i>).	No provision.
Continuing law organization	
Maintains portions of current law governing PBMs as part of the [third-party] administrator chapter of the Revised Code (<i>see R.C. Chapter 3959</i>).	Instead, makes corrective and conforming changes in the [third-party] administrator chapter of the Revised Code by eliminating references to PBMs and moving provisions regulating PBMs to the new PBM chapter created in the bill (<i>R.C. 3957.25, 3957.26, and 3957.27, with conforming changes in R.C. 1751.92, 3923.87, 3957.01, 3959.01, and 3959.12</i>).