



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

Erika Padgett

### **Am. H.B. 52**

132nd General Assembly  
(As Passed by the House)

**Reps.** Rezabek, Butler, Hughes, Manning, Anielski, Antonio, Arndt, Ashford, Blessing, Boggs, Boyd, Brenner, Conditt, Craig, Cupp, Dever, DeVitis, Duffey, Edwards, Ginter, Green, Greenspan, Hagan, Hambley, Holmes, Householder, Howse, Koehler, Leland, Lepore-Hagan, Miller, O'Brien, Patterson, Patton, Pelanda, Perales, Ramos, Reineke, Rogers, Ryan, Scherer, Schuring, R. Smith, Strahorn, Sweeney, Sykes, West, Young, Rosenberger

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## **BILL SUMMARY**

- Requires specified disclosures to be made to consumers when suppliers solicit a fee for real property deeds or a free copy of a deed in connection with another service or product.
- Prohibits a supplier from charging a fee of more than four times the fee charged by the county recorder for a copy of that deed.
- Requires that, if a supplier is soliciting a fee for providing a copy of a deed, the supplier must provide a copy of the solicitation document to the county recorder.
- Makes a violation under the bill a violation of the Ohio Consumer Sales Practices Act.
- Excludes specified persons from the bill's provisions.
- Imposes fines for reckless violations of the bill's requirements.
- Permits the Attorney General to adopt rules specifying the contents and form of the solicitation document.

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## CONTENT AND OPERATION

### Overview

The bill regulates the solicitation of real property deeds. Under continuing law, a person can obtain a copy of a real property deed by going to the local county recorder. Continuing law establishes the fees recorders may charge for a copy of the deed as well as other services related to the land records.<sup>1</sup> The bill establishes requirements for suppliers soliciting (1) a fee for providing a copy of a deed or (2) a free copy of a deed in connection with the solicitation for any other service or product. In other words, the bill sets requirements on copies of deeds that are obtained through a private party and not the local county recorder. "Solicit" here means to advertise or market to a person with whom the solicitor has no pre-existing business relationship.<sup>2</sup>

The bill requires a supplier to make certain disclosures and restricts the amount of money a supplier is permitted to charge a consumer for a copy of a deed. A violation of these requirements is an unconscionable consumer sales act or practice under the Ohio Consumer Sales Practices Act (CSPA).<sup>3</sup> The violator may also be subject to fines. The bill does not apply to (1) an Ohio title insurance company or agent, (2) an Ohio or federal mortgage loan originator, mortgage broker, lender, or servicer or a depository financial institution, or (3) a licensed Ohio real estate broker or salesperson.<sup>4</sup>

### Deed disclosures

The bill requires a **supplier**, defined under continuing law as *a seller, lessor, assignor, franchisor, or other person engaged in the business of effecting or soliciting consumer transactions, whether or not the person deals directly with the consumer*, to state on the top of the document used for the solicitation of the deed, in at least 24-point type, all of the following:

- That the solicitation is not from a public body;
- That no action is legally required by the person being solicited;
- The statutory fee for, or the cost of, obtaining a copy of the deed from the county recorder who has custody of the deed;

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<sup>1</sup> R.C. 317.32.

<sup>2</sup> R.C. 1345.032(A)(3).

<sup>3</sup> R.C. 1345.032(F) and R.C. 1345.03, not in the bill.

<sup>4</sup> R.C. 1345.032(D).



- The information necessary to contact that county recorder;
- The name and physical address of the person soliciting the fee.<sup>5</sup>

The document cannot use deadline dates or other language that makes it appear to be issued by a public body or that appears to impose a legal duty on the person being solicited. In addition to these requirements, the bill permits the Attorney General to adopt rules specifying the contents and form of the solicitation document.<sup>6</sup>

## **Allowable fees**

The bill prohibits a supplier from charging a fee of more than four times the fee charged by the county recorder for a copy of that deed.<sup>7</sup> Under continuing law, a county recorder's office must charge, for a certified copy of a recorded deed or a photocopy of a deed, \$2 for the first page and \$1 for each additional page.<sup>8</sup> The bill requires that if a supplier is soliciting a fee for providing a copy of a deed, the supplier must provide a copy of the document that will be used for those solicitations to the office of the county recorder of each county where the solicitations are to be distributed not less than 15 days before distributing the solicitations.<sup>9</sup>

## **Enforcement**

### **Penalty**

A supplier who recklessly violates the bill's provisions will be subject to the following penalties:

- For the first violation, not more than \$100 for each solicitation document distributed;
- For any subsequent violation, not more than \$200 for each solicitation document distributed.<sup>10</sup>

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<sup>5</sup> R.C. 1345.032(B)(1) and R.C. 1345.01(C), not in the bill.

<sup>6</sup> R.C. 1345.032(B)(2) and (E).

<sup>7</sup> R.C. 1345.032(B)(3).

<sup>8</sup> R.C. 317.32(B) and (G), not in the bill.

<sup>9</sup> R.C. 1345.032(C).

<sup>10</sup> R.C. 1345.99(D).



## Attorney General remedies

A violation of the bill's requirements is also a violation of the CSPA. Under continuing law, if the Attorney General has reasonable cause to believe that a supplier has engaged or is engaging in an act or practice that violates the CSPA, the Attorney General may do any of the following:

- Sue for a declaratory judgment that the act or practice is an unconscionable consumer sales act or practice under the CSPA.
- Sue for an injunction to restrain the act or practice. In this type of suit, the court may also impose a civil penalty of not more than \$5,000 for each day of violation of the injunction, if the supplier received notice of the lawsuit.
- Commence a class action for damages on behalf of consumers who have engaged in consumer transactions in Ohio.<sup>11</sup>

## Individual remedies

The injured consumer also may sue.

- The consumer may, in an individual action, rescind the transaction or recover the consumer's actual economic damages plus up to \$5,000 in noneconomic damages.
- If the violation was an act or practice that had previously been determined to be an unconscionable consumer sales act or practice by Attorney General rule or a court determination, the consumer may rescind the transaction or recover the greater of three times the consumer's economic damages or \$200, plus up to \$5,000 in noneconomic damages. Alternatively, the consumer can recover damages or obtain other appropriate relief in a class action.
- The consumer may seek a declaratory judgment, an injunction, or other appropriate relief.<sup>12</sup>

## Definitions

The bill adopts the following definitions:

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<sup>11</sup> R.C. 1345.07, not in the bill.

<sup>12</sup> R.C. 1345.09, not in the bill.



"**Deed**" means a written instrument entitled to be recorded in the office of the county recorder of the county in which the property is situated that purports to convey or transfer title in fee simple of real property in Ohio. "Deed" includes a leasehold interest for 99 years or more. "Deed" does not include instruments providing for any of the following:

- (1) Common driveways;
- (2) Exchanges of easements or rights-of-way;
- (3) Revocable licenses to use, adjust, or clear defects of or clouds on title;
- (4) Utility service lines;
- (5) Quitclaim of possible outstanding interests.

"**Public body**" means any township, county, municipal corporation, commission, district, authority, other subdivision, or public body of Ohio.<sup>13</sup>

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## HISTORY

ACTION	DATE
Introduced	02-13-17
Reported, H. Civil Justice	03-16-17
Passed House (96-0)	03-22-17

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<sup>13</sup> R.C. 1345.032(A)(1) and (2).

