

As Introduced

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H. B. No. 251

Representatives Miller, J., Russo

Cosponsors: Representatives Boggs, Brown, Crawley, Galonski, Leland, Lepore-Hagan, Lightbody, Miller, A., Robinson, Sheehy, Skindell, Sobecki, West

A BILL

To amend section 5302.30 and to enact section 1
3723.30 of the Revised Code to require the 2
Director of Health to establish an indoor mold 3
program. 4

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

Section 1. That section 5302.30 be amended and section 5
3723.30 of the Revised Code be enacted to read as follows: 6

Sec. 3723.30. (A) As used in this section, "mold" means 7
microscopic fungi, bacteria, mycobacteria, and actinomycetes 8
that can grow in damp conditions in the interior of a building. 9

(B) The director of health shall establish a mold 10
information and awareness program to assist the public in 11
understanding the threat of and eradicating mold in buildings. 12
As part of the program, the director shall do all of the 13
following: 14

(1) Require a person or public entity that sells, 15
transfers, or rents commercial or industrial real property and 16
that knows or has reasonable cause to believe that mold is 17

present to disclose that knowledge, on a form prescribed by the 18
director in rules adopted under this section, to a potential 19
buyer, tenant, or occupant of the real property; 20

(2) Every five years, review technology or treatment 21
techniques for mold identification and remediation that provide 22
additional protections to public health and safety. The review 23
shall be performed in accordance with rules adopted under this 24
section and include an examination of any new scientific 25
evidence that indicates that mold may present a greater health 26
risk to the public than previously determined. 27

(3) Establish a public awareness campaign on the dangers 28
of mold in accordance with rules adopted under this section. As 29
part of the campaign, the director shall disseminate information 30
via brochures and the department of health's web site. 31

(C) The director shall adopt rules in accordance with 32
Chapter 119. of the Revised Code establishing all of the 33
following: 34

(1) The disclosure form required under division (B)(1) of 35
this section; 36

(2) Requirements and procedures for the review required 37
under division (B)(2) of this section; 38

(3) Requirements and procedures for the public awareness 39
campaign established under division (B)(3) of this section. The 40
rules shall ensure that the campaign educates the public on the 41
health effects of mold in damp and water-damaged buildings, 42
methods of identification and remediation of mold, and contact 43
information for organizations or government agencies that can 44
assist the public with their concerns. 45

(4) Any other procedures or requirements necessary to 46

implement and administer this section. 47

Sec. 5302.30. (A) As used in this section: 48

(1) "Good faith" means honesty in fact in a transaction 49
involving the transfer of residential real property. 50

(2) "Land installment contract" has the same meaning as in 51
section 5313.01 of the Revised Code. 52

(3) "Political subdivision" and "state" have the same 53
meanings as in section 2744.01 of the Revised Code. 54

(4) "Residential real property" means real property that 55
is improved by a building or other structure that has one to 56
four dwelling units. 57

(B) (1) Except as provided in division (B) (2) of this 58
section, this section applies to any transfer of residential 59
real property that occurs on or after July 1, 1993, by sale, 60
land installment contract, lease with option to purchase, 61
exchange, or lease for a term of ninety-nine years and renewable 62
forever. For purposes of this section, a transfer occurs when 63
the initial contract for transfer is executed, regardless of 64
when legal title is transferred, and references in this section 65
to transfer offers and transfer agreements refer to offers and 66
agreements in respect of the initial contract for transfer. 67

(2) This section does not apply to any transfer of 68
residential real property that is any of the following: 69

(a) A transfer pursuant to court order, including, but not 70
limited to, a transfer ordered by a probate court during the 71
administration of a decedent's estate, a transfer pursuant to a 72
writ of execution, a transfer by a trustee in bankruptcy, a 73
transfer as a result of the exercise of the power of eminent 74

domain, and a transfer that results from a decree for specific	75
performance of a contract or other agreement between persons;	76
(b) A transfer to a mortgagee by a mortgagor by deed in	77
lieu of foreclosure or in satisfaction of the mortgage debt;	78
(c) A transfer to a beneficiary of a deed of trust by a	79
trustor in default;	80
(d) A transfer by a foreclosure sale that follows a	81
default in the satisfaction of an obligation secured by a	82
mortgage;	83
(e) A transfer by a sale under a power of sale following a	84
default in the satisfaction of an obligation that is secured by	85
a deed of trust or another instrument containing a power of	86
sale;	87
(f) A transfer by a mortgagee, or a beneficiary under a	88
deed of trust, who has acquired the residential real property at	89
a sale conducted pursuant to a power of sale under a mortgage or	90
a deed of trust or who has acquired the residential real	91
property by a deed in lieu of foreclosure;	92
(g) A transfer by a fiduciary in the course of the	93
administration of a decedent's estate, a guardianship, a	94
conservatorship, or a trust;	95
(h) A transfer from one co-owner to one or more other co-	96
owners;	97
(i) A transfer made to the transferor's spouse or to one	98
or more persons in the lineal line of consanguinity of one or	99
more of the transferors;	100
(j) A transfer between spouses or former spouses as a	101
result of a decree of divorce, dissolution of marriage,	102

annulment, or legal separation or as a result of a property	103
settlement agreement incidental to a decree of divorce,	104
dissolution of marriage, annulment, or legal separation;	105
(k) A transfer to or from the state, a political	106
subdivision of the state, or another governmental entity;	107
(l) A transfer that involves newly constructed residential	108
real property that previously has not been inhabited;	109
(m) A transfer to a transferee who has occupied the	110
property as a personal residence for one or more years	111
immediately prior to the transfer;	112
(n) A transfer from a transferor who both has not occupied	113
the property as a personal residence within one year immediately	114
prior to the transfer and has acquired the property through	115
inheritance or devise.	116
(C) Except as provided in division (B) (2) of this section	117
and subject to divisions (E) and (F) of this section, every	118
person who intends to transfer any residential real property on	119
or after July 1, 1993, by sale, land installment contract, lease	120
with option to purchase, exchange, or lease for a term of	121
ninety-nine years and renewable forever shall complete all	122
applicable items in a property disclosure form prescribed under	123
division (D) of this section and shall deliver in accordance	124
with division (I) of this section a signed and dated copy of the	125
completed form to each prospective transferee or prospective	126
transferee's agent as soon as is practicable.	127
(D) (1) Prior to July 1, 1993, the <u>The</u> director of	128
commerce, by rule adopted in accordance with Chapter 119. of the	129
Revised Code, shall prescribe the disclosure form to be	130
completed by transferors. The form prescribed by the director	131

shall be designed to permit the transferor to disclose material 132
matters relating to the physical condition of the property to be 133
transferred, including, but not limited to, the source of water 134
supply to the property; the nature of the sewer system serving 135
the property; the condition of the structure of the property, 136
including the roof, foundation, walls, and floors; the presence 137
of hazardous materials or substances, including lead-based 138
paint, asbestos, urea-formaldehyde foam insulation, mold as 139
defined in section 3723.30 of the Revised Code, and radon gas; 140
and any material defects in the property that are within the 141
actual knowledge of the transferor. 142

The form also shall set forth a statement of the purpose 143
of the form, including statements substantially similar to the 144
following: that the form constitutes a statement of the 145
conditions of the property and of information concerning the 146
property actually known by the transferor; that, unless the 147
transferee is otherwise advised in writing, the transferor, 148
other than having lived at or owning the property, possesses no 149
greater knowledge than that which could be obtained by a careful 150
inspection of the property by a potential transferee; that the 151
statement is not a warranty of any kind by the transferor or by 152
any agent or subagent representing the transferor in this 153
transaction; that the statement is not a substitute for any 154
inspections; that the transferee is encouraged to obtain the 155
transferee's own professional inspection; that the 156
representations are made by the transferor and are not the 157
representations of the transferor's agent or subagent; and that 158
the form and the representations contained therein are provided 159
by the transferor exclusively to potential transferees in a 160
transfer made by the transferor, and are not made to transferees 161
in any subsequent transfers. 162

The form shall include instructions to the transferor for 163
completing the form, space in which the transferor or 164
transferors shall sign and date the form, and space in which the 165
transferee or transferees shall sign and date the form 166
acknowledging receipt of a copy of the form and stating that the 167
transferee or transferees understand the purpose of the form as 168
stated thereon. 169

(2) Not later than January 1, 2006, the director shall 170
revise the disclosure form to include a statement that 171
information on the operation and maintenance of the type of 172
sewage treatment system serving the property is available from 173
the department of health or the board of health of the health 174
district in which the property is located. 175

As used in this section, "sewage treatment system" has the 176
same meaning as in section 3718.01 of the Revised Code. 177

(E) (1) Each disclosure of an item of information that is 178
required to be made in the property disclosure form prescribed 179
under division (D) of this section in connection with particular 180
residential real property and each act that may be performed in 181
making any disclosure of an item of information shall be made or 182
performed in good faith. 183

(2) If an item of information is unknown to the transferor 184
of residential real property at the time the item is required to 185
be disclosed in the property disclosure form and if the 186
approximation is not used for the purpose of circumventing or 187
otherwise evading divisions (C) and (D) of this section, the 188
transferor may make a good faith approximation of the item of 189
information. 190

(F) (1) A transferor of residential real property is not 191

liable in damages in a civil action for injury, death, or loss 192
to person or property that allegedly arises from any error in, 193
inaccuracy of, or omission of any item of information required 194
to be disclosed in the property disclosure form if the error, 195
inaccuracy, or omission was not within the transferor's actual 196
knowledge. 197

(2) If any item of information that is disclosed in the 198
property disclosure form is rendered inaccurate after the 199
delivery of the form to the transferee of residential real 200
property or the transferee's agent as a result of any act, 201
occurrence, or agreement, the subsequent inaccuracy does not 202
cause, and shall not be construed as causing, the transferor of 203
the residential real property to be in noncompliance with the 204
requirements of divisions (C) and (D) of this section. 205

(G) Any disclosure of an item of information in the 206
property disclosure form prescribed under division (D) of this 207
section may be amended in writing by the transferor of 208
residential real property at any time following the delivery of 209
the form in accordance with divisions (C) and (I) of this 210
section. The amendment shall be subject to this section. 211

(H) Except as provided in division (B) (2) of this section, 212
every prospective transferee of residential real property who 213
receives in accordance with division (C) of this section a 214
signed and dated copy of a completed property disclosure form as 215
prescribed under division (D) of this section shall acknowledge 216
receipt of the form by doing both of the following: 217

(1) Signing and dating a copy of the form; 218

(2) Delivering a signed and dated copy of the form to the 219
transferor or the transferor's agent or subagent. 220

(I) The transferor's delivery under division (C) of this 221
section of a property disclosure form as prescribed under 222
division (D) of this section and the prospective transferee's 223
delivery under division (H) of this section of an acknowledgment 224
of receipt of that form shall be made by personal delivery to 225
the other party or the other party's agent or subagent, by 226
ordinary mail or certified mail, return receipt requested, or by 227
facsimile transmission. For the purposes of the delivery 228
requirements of this section, the delivery of a property 229
disclosure form to a prospective co-transferee of residential 230
real property or a prospective co-transferee's agent shall be 231
considered delivery to the other prospective transferees unless 232
otherwise provided by contract. 233

(J) The specification of items of information that must be 234
disclosed in the property disclosure form as prescribed under 235
division (D)(1) of this section does not limit or abridge, and 236
shall not be construed as limiting or abridging, any obligation 237
to disclose an item of information that is created by any other 238
provision of the Revised Code or the common law of this state or 239
that may exist in order to preclude fraud, either by 240
misrepresentation, concealment, or nondisclosure in a 241
transaction involving the transfer of residential real property. 242
The disclosure requirements of this section do not bar, and 243
shall not be construed as barring, the application of any legal 244
or equitable defense that a transferor of residential real 245
property may assert in a civil action commenced against the 246
transferor by a prospective or actual transferee of that 247
property. 248

(K) (1) Except as provided in division (K) (2) of this 249
section, but subject to divisions (J) and (L) of this section, a 250
transfer of residential real property that is subject to this 251

section shall not be invalidated because of the failure of the 252
transferor to provide to the transferee in accordance with 253
division (C) of this section a completed property disclosure 254
form as prescribed under division (D) of this section. 255

(2) Subject to division (K) (3) (c) of this section, if a 256
transferee of residential real property that is subject to this 257
section receives a property disclosure form or an amendment of 258
that form as described in division (G) of this section after the 259
transferee has entered into a transfer agreement with respect to 260
the property, the transferee, after receipt of the form or 261
amendment, may rescind the transfer agreement in a written, 262
signed, and dated document that is delivered to the transferor 263
or the transferor's agent or subagent in accordance with 264
divisions (K) (3) (a) and (b) of this section, without incurring 265
any legal liability to the transferor because of the rescission, 266
including, but not limited to, a civil action for specific 267
performance of the transfer agreement. Upon the rescission of 268
the transfer agreement, the transferee is entitled to the return 269
of, and the transferor shall return, any deposits made by the 270
transferee in connection with the proposed transfer of the 271
residential real property. 272

(3) (a) Subject to division (K) (3) (b) of this section, a 273
rescission of a transfer agreement under division (K) (2) of this 274
section only may occur if the transferee's written, signed, and 275
dated document of rescission is delivered to the transferor or 276
the transferor's agent or subagent within three business days 277
following the date on which the transferee or the transferee's 278
agent receives the property disclosure form prescribed under 279
division (D) of this section or the amendment of that form as 280
described in division (G) of this section. 281

(b) A transferee may not rescind a transfer agreement 282
under division (K) (2) of this section unless the transferee 283
rescinds the transfer agreement by the earlier of the date that 284
is thirty days after the date upon which the transferor accepted 285
the transferee's transfer offer or the date of the closing of 286
the transfer of the residential real property. 287

(c) A transferee of residential real property may waive 288
the right of rescission of a transfer agreement described in 289
division (K) (2) of this section. 290

(d) A rescission of a transfer agreement is not 291
permissible under division (K) (2) of this section if a 292
transferee of residential real property that is subject to this 293
section receives a property disclosure form as prescribed under 294
division (D) of this section or an amendment of that form as 295
described in division (G) of this section prior to the 296
transferee's submission to the transferor or the transferor's 297
agent or subagent of a transfer offer and the transferee's entry 298
into a transfer agreement with respect to the property. 299

(4) If a transferee of residential real property subject 300
to this section does not receive a property disclosure form from 301
the transferor after the transferee has submitted to the 302
transferor or the transferor's agent or subagent a transfer 303
offer and has entered into a transfer agreement with respect to 304
the property, the transferee may rescind the transfer agreement 305
in a written, signed, and dated document that is delivered to 306
the transferor or the transferor's agent or subagent in 307
accordance with division (K) (4) of this section without 308
incurring any legal liability to the transferor because of the 309
rescission, including, but not limited to, a civil action for 310
specific performance of the transfer agreement. Upon the 311

rescission of the transfer agreement, the transferee is entitled 312
to the return of, and the transferor shall return, any deposits 313
made by the transferee in connection with the proposed transfer 314
of the residential real property. A transferee may not rescind a 315
transfer agreement under division (K) (4) of this section unless 316
the transferee rescinds the transfer agreement by the earlier of 317
the date that is thirty days after the date upon which the 318
transferor accepted the transferee's transfer offer or the date 319
of the closing of the transfer of the residential real property. 320

(L) The right of rescission of a transfer agreement 321
described in division (K) (2) of this section or the absence of 322
that right does not affect, and shall not be construed as 323
affecting, any other legal causes of action or other remedies 324
that a transferee or prospective transferee of residential real 325
property may possess against the transferor of that property. 326

Section 2. That existing section 5302.30 of the Revised 327
Code is hereby repealed. 328

Section 3. (A) As used in this section, "mold" has the 329
same meaning as in section 3723.30 of the Revised Code. 330

(B) The Department of Health shall study any adverse 331
effects to humans from exposure to mold in damp and water- 332
damaged buildings. The Department may consult with any medical 333
research institution that has staff who are knowledgeable on 334
mold. 335

(C) Not later than one year after the effective date of 336
this section, the Department shall submit its findings to the 337
General Assembly. 338