

As Introduced

136th General Assembly

Regular Session

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H. B. No. 287

Representatives John, Williams

To amend sections 4735.18 and 4735.24 and to enact
section 5301.95 of the Revised Code to amend the
law related to real estate wholesalers.

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

Section 1. That sections 4735.18 and 4735.24 be amended
and section 5301.95 of the Revised Code be enacted to read as
follows:

Sec. 4735.18. (A) Subject to section 4735.32 of the
Revised Code, the superintendent of real estate, upon the
superintendent's own motion, may investigate the conduct of any
licensee. Subject to division (E) of this section and section
4735.32 of the Revised Code, the Ohio real estate commission
shall impose disciplinary sanctions upon any licensee who,
whether or not acting in the licensee's capacity as a real
estate broker or salesperson, or in handling the licensee's own
property, is found to have been convicted of a felony or a crime
of moral turpitude, and may impose disciplinary sanctions upon
any licensee who, in the licensee's capacity as a real estate
broker or salesperson, or in handling the licensee's own
property, is found guilty of:

(1) Knowingly making any misrepresentation;

- (2) Making any false promises with intent to influence, 21
persuade, or induce; 22
- (3) A continued course of misrepresentation or the making 23
of false promises through agents, salespersons, advertising, or 24
otherwise; 25
- (4) Acting for more than one party in a transaction except 26
as permitted by and in compliance with section 4735.71 of the 27
Revised Code; 28
- (5) Failure within a reasonable time to account for or to 29
remit any money coming into the licensee's possession which 30
belongs to others; 31
- (6) Dishonest or illegal dealing, gross negligence, 32
incompetency, or misconduct; 33
- (7) (a) By final adjudication by a court, a violation of 34
any municipal or federal civil rights law relevant to the 35
protection of purchasers or sellers of real estate or, by final 36
adjudication by a court, any unlawful discriminatory practice 37
pertaining to the purchase or sale of real estate prohibited by 38
Chapter 4112. of the Revised Code, provided that such violation 39
arose out of a situation wherein parties were engaged in bona 40
fide efforts to purchase, sell, or lease real estate, in the 41
licensee's practice as a licensed real estate broker or 42
salesperson; 43
- (b) A second or subsequent violation of any unlawful 44
discriminatory practice pertaining to the purchase or sale of 45
real estate prohibited by Chapter 4112. of the Revised Code or 46
any second or subsequent violation of municipal or federal civil 47
rights laws relevant to purchasing or selling real estate 48
whether or not there has been a final adjudication by a court, 49

provided that such violation arose out of a situation wherein 50
parties were engaged in bona fide efforts to purchase, sell, or 51
lease real estate. For any second offense under this division, 52
the commission shall suspend for a minimum of two months or 53
revoke the license of the broker or salesperson. For any 54
subsequent offense, the commission shall revoke the license of 55
the broker or salesperson. 56

(8) Procuring a license under this chapter, for the 57
licensee or any salesperson by fraud, misrepresentation, or 58
deceit; 59

(9) Having violated or failed to comply with any provision 60
of sections 4735.51 to 4735.74 of the Revised Code or having 61
willfully disregarded or violated any other provisions of this 62
chapter; 63

(10) As a real estate broker, having demanded, without 64
reasonable cause, other than from a broker licensed under this 65
chapter, a commission to which the licensee is not entitled, or, 66
as a real estate salesperson, having demanded, without 67
reasonable cause, a commission to which the licensee is not 68
entitled; 69

(11) Except as permitted under section 4735.20 of the 70
Revised Code, having paid commissions or fees to, or divided 71
commissions or fees with, anyone not licensed as a real estate 72
broker or salesperson under this chapter or anyone not operating 73
as an out-of-state commercial real estate broker or salesperson 74
under section 4735.022 of the Revised Code; 75

(12) Having falsely represented membership in any real 76
estate professional association of which the licensee is not a 77
member; 78

(13) Having accepted, given, or charged any undisclosed	79
commission, rebate, or direct profit on expenditures made for a	80
principal;	81
(14) Having offered anything of value other than the	82
consideration recited in the sales contract as an inducement to	83
a person to enter into a contract for the purchase or sale of	84
real estate or having offered real estate or the improvements on	85
real estate as a prize in a lottery or scheme of chance;	86
(15) Having acted in the dual capacity of real estate	87
broker and undisclosed principal, or real estate salesperson and	88
undisclosed principal, in any transaction;	89
(16) Having guaranteed, authorized, or permitted any	90
person to guarantee future profits which may result from the	91
resale of real property;	92
(17) Having advertised or placed a sign on any property	93
offering it for sale or for rent without the consent of the	94
owner or the owner's authorized agent;	95
(18) Having induced any party to a contract of sale or	96
lease to break such contract for the purpose of substituting in	97
lieu of it a new contract with another principal;	98
(19) Having negotiated the sale, exchange, or lease of any	99
real property directly with a seller, purchaser, lessor, or	100
tenant knowing that such seller, purchaser, lessor, or tenant is	101
represented by another broker under a written exclusive agency	102
agreement, exclusive right to sell or lease listing agreement,	103
or exclusive purchaser agency agreement with respect to such	104
property except as provided for in section 4735.75 of the	105
Revised Code;	106
(20) Having offered real property for sale or for lease	107

without the knowledge and consent of the owner or the owner's 108
authorized agent, or on any terms other than those authorized by 109
the owner or the owner's authorized agent; 110

(21) Having published advertising, whether printed, radio, 111
display, or of any other nature, which was misleading or 112
inaccurate in any material particular, or in any way having 113
misrepresented any properties, terms, values, policies, or 114
services of the business conducted; 115

(22) Having knowingly withheld from or inserted in any 116
statement of account or invoice any statement that made it 117
inaccurate in any material particular; 118

(23) Having published or circulated unjustified or 119
unwarranted threats of legal proceedings which tended to or had 120
the effect of harassing competitors or intimidating their 121
customers; 122

(24) Having failed to keep complete and accurate records 123
of all transactions for a period of three years from the date of 124
the transaction, such records to include copies of listing 125
forms, earnest money receipts, offers to purchase and 126
acceptances of them, records of receipts and disbursements of 127
all funds received by the licensee as broker and incident to the 128
licensee's transactions as such, and records required pursuant 129
to divisions (C) (4) and (5) of section 4735.20 of the Revised 130
Code, and any other instruments or papers related to the 131
performance of any of the acts set forth in the definition of a 132
real estate broker; 133

(25) Failure of a real estate broker or salesperson to 134
furnish all parties involved in a real estate transaction true 135
copies of all listings and other agreements to which they are a 136

party, at the time each party signs them; 137

(26) Failure to maintain at all times a special or trust 138
bank account in a depository of a state or federally chartered 139
institution located in this state. The account shall be 140
noninterest-bearing, separate and distinct from any personal or 141
other account of the broker, and, except as provided in division 142
(A) (27) of this section, shall be used for the deposit and 143
maintenance of all escrow funds, security deposits, and other 144
moneys received by the broker in a fiduciary capacity. The name, 145
account number, if any, and location of the depository wherein 146
such special or trust account is maintained shall be submitted 147
in writing to the superintendent. Checks drawn on such special 148
or trust bank accounts are deemed to meet the conditions imposed 149
by section 1349.21 of the Revised Code. Funds deposited in the 150
trust or special account in connection with a purchase agreement 151
shall be maintained in accordance with section 4735.24 of the 152
Revised Code. 153

(27) Failure to maintain at all times a special or trust 154
bank account in a depository of a state or federally chartered 155
institution in this state, to be used exclusively for the 156
deposit and maintenance of all rents, security deposits, escrow 157
funds, and other moneys received by the broker in a fiduciary 158
capacity in the course of managing real property. This account 159
shall be separate and distinct from any other account maintained 160
by the broker. The name, account number, and location of the 161
depository shall be submitted in writing to the superintendent. 162
This account may earn interest, which shall be paid to the 163
property owners on a pro rata basis. 164

Division (A) (27) of this section does not apply to brokers 165
who are not engaged in the management of real property on behalf 166

of real property owners. 167

(28) Having failed to put definite expiration dates in all 168
written agency agreements to which the broker is a party; 169

(29) Having an unsatisfied final judgment or lien in any 170
court of record against the licensee arising out of the 171
licensee's conduct as a licensed broker or salesperson; 172

(30) Failing to render promptly upon demand a full and 173
complete statement of the expenditures by the broker or 174
salesperson of funds advanced by or on behalf of a party to a 175
real estate transaction to the broker or salesperson for the 176
purpose of performing duties as a licensee under this chapter in 177
conjunction with the real estate transaction; 178

(31) Failure within a reasonable time, after the receipt 179
of the commission by the broker, to render an accounting to and 180
pay a real estate salesperson the salesperson's earned share of 181
it; 182

(32) Performing any service for another constituting the 183
practice of law, as determined by any court of law; 184

(33) Having been adjudicated incompetent by a court, as 185
provided in section 5122.301 of the Revised Code. A license 186
revoked or suspended under this division shall be reactivated 187
upon proof to the commission of the removal of the disability. 188

(34) Having authorized or permitted a person to act as an 189
agent in the capacity of a real estate broker, or a real estate 190
salesperson, who was not then licensed as a real estate broker 191
or real estate salesperson under this chapter or who was not 192
then operating as an out-of-state commercial real estate broker 193
or salesperson under section 4735.022 of the Revised Code; 194

(35) Having knowingly inserted or participated in 195
inserting any materially inaccurate term in a document, 196
including naming a false consideration; 197

(36) Having failed to inform the licensee's client of the 198
existence of an offer or counteroffer or having failed to 199
present an offer or counteroffer in a timely manner, unless 200
otherwise instructed by the client, provided the instruction of 201
the client does not conflict with any state or federal law; 202

(37) Having failed to comply with section 4735.24 of the 203
Revised Code; 204

(38) Having acted as a broker without authority, impeded 205
the ability of a principal broker to perform any of the duties 206
described in section 4735.081 of the Revised Code, or impeded 207
the ability a management level licensee to perform the 208
licensee's duties; 209

(39) Entering into a right-to-list home sale agreement; 210

(40) Having failed to comply with section 5301.95 of the 211
Revised Code while acting as a wholesaler of residential real 212
property, as those terms are defined in that section. 213

(B) Whenever the commission, pursuant to section 4735.051 214
of the Revised Code, imposes disciplinary sanctions for any 215
violation of this section, the commission also may impose such 216
sanctions upon the broker with whom the salesperson is 217
affiliated if the commission finds that the broker had knowledge 218
of the salesperson's actions that violated this section. 219

(C) The commission shall, pursuant to section 4735.051 of 220
the Revised Code, impose disciplinary sanctions upon any foreign 221
real estate dealer or salesperson who, in that capacity or in 222
handling the dealer's or salesperson's own property, is found 223

guilty of any of the acts or omissions specified or comprehended 224
in division (A) of this section insofar as the acts or omissions 225
pertain to foreign real estate. If the commission imposes such 226
sanctions upon a foreign real estate salesperson for a violation 227
of this section, the commission also may suspend or revoke the 228
license of the foreign real estate dealer with whom the 229
salesperson is affiliated if the commission finds that the 230
dealer had knowledge of the salesperson's actions that violated 231
this section. 232

(D) The commission may suspend, in whole or in part, the 233
imposition of the penalty of suspension of a license under this 234
section. 235

(E) A person licensed under this chapter who represents a 236
party to a transaction or a proposed transaction involving the 237
sale, purchase, exchange, lease, or management of real property 238
that is or will be used in the cultivation, processing, 239
dispensing, or testing of medical marijuana under Chapter 3796. 240
of the Revised Code, or who receives, holds, or disburses funds 241
from a real estate brokerage trust account in connection with 242
such a transaction, shall not be subject to disciplinary 243
sanctions under this chapter solely because the licensed person 244
engaged in activities permitted under this chapter and related 245
to activities under Chapter 3796. of the Revised Code. 246

Sec. 4735.24. (A) Except as otherwise provided in this 247
section, when earnest money connected to a real estate purchase 248
agreement is deposited in a real estate broker's trust or 249
special account, the broker shall maintain that money in the 250
account in accordance with the terms of the purchase agreement 251
until one of the following occurs: 252

(1) The transaction closes and the broker disburses the 253

earnest money to the closing or escrow agent or otherwise 254
disburses the money pursuant to the terms of the purchase 255
agreement. 256

(2) The parties provide the broker with separate written 257
instructions that both parties have signed that specify how the 258
broker is to disburse the earnest money and the broker acts 259
pursuant to those instructions. 260

(3) The broker receives a copy of a final court order that 261
specifies to whom the earnest money is to be awarded and the 262
broker acts pursuant to the court order. 263

(4) The transaction is canceled by the record owner of 264
residential property under division (C) (1) of section 5301.95 of 265
the Revised Code, and the broker disburses the earnest money to 266
the record owner pursuant to that division. 267

(5) The earnest money becomes unclaimed funds as defined 268
in division (M) (2) of section 169.02 of the Revised Code and, 269
after providing the notice that division (E) of section 169.03 270
of the Revised Code requires, the broker has reported the 271
unclaimed funds to the director of commerce pursuant to section 272
169.03 of the Revised Code and has remitted all of the earnest 273
money to the director. 274

(B) A purchase agreement may provide that in the event of 275
a dispute regarding the disbursement of the earnest money, the 276
broker will return the money to the purchaser without notice to 277
the parties unless, within two years from the date the earnest 278
money was deposited in the broker's trust or special account, 279
the broker has received one of the following: 280

(1) Written instructions signed by both parties specifying 281
how the money is to be disbursed; 282

(2) Written notice that a court action to resolve the 283
dispute has been filed. 284

(C) (1) If the parties dispute the disbursement of the 285
earnest money and the purchase agreement contains the provision 286
described in division (B) of this section, not later than the 287
first day of September following the two year anniversary date 288
of the deposit of the earnest money in the broker's account, the 289
broker shall return the earnest money to the purchaser unless 290
the parties provided the broker with written instructions or a 291
notice of a court action as described in division (B) of this 292
section. 293

(2) If the broker cannot locate the purchaser at the time 294
the disbursement is due, after providing the notice that 295
division (E) of section 169.03 of the Revised Code requires, the 296
broker shall report the earnest money as unclaimed funds to the 297
director of commerce pursuant to section 169.03 of the Revised 298
Code and remit all of the earnest money to the director. 299

Sec. 5301.95. (A) For the purposes of this section: 300

(1) "Residential real property" means real property that 301
is improved by a building or other structure that has one to 302
four dwelling units. 303

(2) (a) "Wholesaler" means a person or entity that for a 304
fee, commission, or other valuable consideration, or with the 305
intention, in the expectation, or upon the promise of receiving 306
or collecting a fee, commission, or other valuable 307
consideration, enters into a purchase contract for residential 308
real property either: 309

(i) As the grantee, and assigns or novates that contract 310
to another person or entity; 311

(ii) As the grantor, and, without holding legal title to 312
that real property, assigns or novates that contract to another 313
person or entity. 314

(b) "Wholesaler" does not include either of the following: 315

(i) An individual who assigns or novates a contract 316
described in division (A) (2) (a) of this section to another 317
individual who is related by blood. 318

(ii) A person or entity that assigns or novates such a 319
contract to a parent, affiliate, subsidiary, or affiliated group 320
under common control with the person or entity. 321

(B) (1) Before entering into a binding contract that 322
transfers an interest in residential real property, a wholesaler 323
acting as the grantee or the wholesaler's representative, if 324
applicable, shall provide to the record owner a conspicuous 325
written disclosure statement, separate from the purchase 326
contract or agreement, printed in boldface type in a font size 327
not less than twelve points, and in substantially the following 328
form: 329

"Ohio law requires a wholesaler acting as a grantee, 330
before entering into a contract or agreement that conveys an 331
interest in residential real property, to provide certain 332
information to the record owner in a conspicuous manner printed 333
in boldface type in a font size not less than twelve points. 334
Failure by a wholesaler to present or complete this form is an 335
unfair or deceptive act or practice. Any person who enters into 336
an agreement that conveys an interest in residential real 337
property to a wholesaler acting as a grantee without receiving 338
this disclosure has a cause of action against the wholesaler. A 339
wholesaler acting as a grantee is prohibited from entering into 340

a binding contract to acquire an interest in residential real 341
property unless this statement is signed and dated by the record 342
owner of the property. 343

The owner acknowledges that the person presenting this 344
document is a wholesaler, as defined by section 5301.95 of the 345
Revised Code, and that the owner is advised to seek legal advice 346
before entering into any agreement or contract with the 347
wholesaler. A wholesaler is acting on the wholesaler's own 348
behalf and does not represent the owner in this transaction. A 349
wholesaler enters assignable contracts with owners and seeks to 350
sell or assign the wholesaler's interest for a profit. The 351
wholesaler may assign the wholesaler's interest in the purchase 352
contract to a third party without the owner's consent before 353
closing. The wholesaler may charge a fee to the third-party 354
buyer separately for profit. The agreed purchase price between 355
the owner and wholesaler may be below market value and is 356
conveyed voluntarily. 357

The owner acknowledges disclosure of the information 358

provided in this form by signing and dating below: 359

(Property owner signature) (date) 360

(Wholesaler signature) (date)" 361

(2) A wholesaler acting as the grantee shall not enter 362
into a binding contract that transfers an interest in 363
residential real property until both the wholesaler and the 364
record owner of the property sign and date the disclosure 365
statement required by this section. 366

(C) (1) If a wholesaler acting as the grantee fails to make 367
the disclosures required by this section before entering into a 368
binding contract that transfers an interest in residential real 369

property, the record owner of the residential real property may 370
cancel the contract at any time prior to the close of escrow 371
without penalty and the escrow or closing agent, as defined in 372
section 1349.20 of the Revised Code, shall disburse any earnest 373
money paid by the wholesaler to the record owner within thirty 374
days after such cancelation. 375

(2) No provision of this section shall be modified or 376
waived by any oral or written agreement. Any portion of an 377
agreement that is executed, modified, or extended after the 378
effective date of this section that modifies or waives a duty 379
under division (B) of this section or a remedy under division 380
(C) of this section is void ab initio and unenforceable. 381

(3) Any violation of this section is an unfair or 382
deceptive act or practice in violation of section 1345.02 of the 383
Revised Code. A party that enters into an agreement without 384
receiving the disclosures required in this section has a cause 385
of action against a wholesaler and is entitled to the same 386
relief available to a consumer under section 1345.09 of the 387
Revised Code. All powers and remedies available to the attorney 388
general to enforce sections 1345.01 to 1345.13 of the Revised 389
Code are available to the attorney general to enforce this 390
section. 391

Section 2. That existing sections 4735.18 and 4735.24 of 392
the Revised Code are hereby repealed. 393