



Ohio Legislative Service Commission

Bill Analysis

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(As Introduced)

Rep. Patmon

BILL SUMMARY

- Prohibits, beginning one year after the bill's effective date, any person from acting as a home improvement contractor or holding the person's self out as a home improvement contractor unless the person is registered as a home improvement contractor with the Ohio Construction Industry Licensing Board pursuant to the bill.
- Specifies criminal and civil sanctions for violating that prohibition.
- Requires a registered home improvement contractor to present a copy of the contractor's registration to a consumer before performing or offering to perform any home improvement services.
- Requires the Department of Commerce to implement a statewide public campaign to inform consumers of the requirement and includes an appropriation for the campaign.
- Creates a home improvement section within the Ohio Construction Industry Licensing Board to be responsible for the registration of home improvement contractors and specifies its membership.
- Allows the Home Improvement Section to suspend, revoke, or refuse to issue a registration or impose a fine on a registration holder for engaging in certain listed activities.
- Specifies other powers and duties of the Home Improvement Section.
- Lists requirements a person must satisfy to register as a home improvement contractor.
- Specifies that registration expires annually and is renewable.

- Requires a person who applies for registration as a home improvement contractor and who is employed by a business entity to assign the person's license to the business entity for whom the person is employed.
- Prohibits the Board from issuing more than one registration to a person who has a registration assigned to a business entity.
- Prohibits a person from assigning a registration to more than one business entity at the same time.
- Specifies that a registration assigned to a business entity is invalid if the person who assigned the registration to a business entity is no longer associated with the business entity, but allows the business entity to continue to operate if it is assigned a different registration.
- Requires a person who assigns a registration to a business entity to actively be engaged in home improvement contracting and be available for consultation with the business entity to which the person's registration is assigned.
- Specifies that any work a business entity conducts under an assigned registration is deemed to be conducted under the personal supervision of the person named in the registration and any violation of the registration is deemed to have been committed by the person named in the registration.

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CONTENT AND OPERATION

Registration of home improvement contractors

Registration requirement

The bill prohibits, beginning one year after the bill's effective date, any person from acting as a home improvement contractor or holding the person's self out as a home improvement contractor unless the person is registered as a home improvement contractor with the Ohio Construction Industry Licensing Board (OCILB) pursuant to the bill.¹ Currently these persons are not licensed at the state level, but a possibility exists that they could be required to be licensed by a municipal corporation to conduct business within that municipal corporation's jurisdiction.

The bill defines "home improvement contractor" as any individual who undertakes, offers to undertake, or agrees to perform any home improvement for an owner. Under the bill, "home improvement" includes the repair, replacement, remodeling, alteration, conversion, modernization, improvement, rehabilitation, or sandblasting of, or the addition to, any residential building. "Home improvement" does not include any of the following activities:

- The construction of a new residential building;
- The sale of appliances that are designed for installation in, and are easily removable from, a residential building without material alteration of the residential building;
- Any work performed without compensation.²

Penalties

Whoever knowingly violates the bill's prohibition against acting as a home improvement contractor or holding the person's self out as a home improvement contractor without registration with the OCILB is guilty of a first degree misdemeanor.³

Additionally, the bill allows the Attorney General, upon the request of the Home Improvement Section of the OCILB, which is created by the bill (see "**Home Improvement Section**," below), to sue a person operating as an unregistered home

¹ R.C. 4740.13 and Section 5.

² R.C. 4740.01(H) and (I).

³ R.C. 4740.99(B).



improvement contractor for appropriate relief, including a temporary restraining order or permanent injunction.⁴ This authority is similar to the Attorney General's continuing law authority with respect to commercial electrical; plumbing; hydronics; refrigeration; and heating, ventilation, and air conditioning contractors under current law (referred to as "specialty contractors" by the bill).⁵

A person who acts as a home improvement contractor without registering also may be subject to an administrative penalty assessed by the Home Improvement Section. The penalty and assessment process are the same as the penalty and process currently used by the other OCILB sections with respect to specialty contractors. Under that process, with respect to a home improvement contractor, an investigator is appointed by the Director of Commerce, on behalf of the Home Improvement Section, to investigate any person allegedly operating as an unregistered home improvement contractor. If after the investigation, the Home Improvement Section determines that reasonable evidence exists that a violation occurred, the Home Improvement Section must send a written notice to the person who allegedly violated the registration requirement and hold a hearing. If a majority of the members of the Home Improvement Section determine that a violation has occurred, the Home Improvement Section may impose a fine of up to \$1,000 per violation per day and may file a complaint against the person with the appropriate local prosecutor for criminal prosecution. If a person fails to request a hearing within 30 days after written notice is sent by the Home Improvement Section, the Home Improvement Section, by a majority vote of a quorum of the Section's members, may take action against the person without holding a hearing. The bill requires the Home Improvement Section, similar to the current specialty sections, to forward the name of any person who fails to pay a civil penalty imposed by the Home Improvement Section to the Attorney General for the purpose of collecting the civil penalty. If the Attorney General must collect the penalty, the person must pay any fee assessed by the Attorney General for that collection.⁶

Presentation of registration to consumers

The bill requires a registered home improvement contractor to present a copy of the contractor's registration to a consumer before performing or offering to perform any home improvement services.⁷

⁴ R.C. 4740.13(D).

⁵ See R.C. 4740.01, 4740.04, 4740.05, 4740.06, 4740.08, 4740.12, 4740.13, and 4740.131.

⁶ R.C. 4740.16.

⁷ R.C. 4740.19.



The bill requires the Department of Commerce to implement a statewide public campaign to inform consumers of the presentation requirement by utilizing print and television public service announcements and by posting information on the Department's website. The bill also includes an appropriation of \$1 million for the campaign for fiscal year 2015 from the General Revenue Fund.⁸

The bill also specifies that a consumer does not have a basis for any claim or cause of action against the state, OCILB, or the OCILB's employees based on the relationship between a consumer and a registered home improvement contractor.⁹

The Ohio Construction Industry Licensing Board

The Home Improvement Section

The bill creates the Home Improvement Section within the OCILB to be responsible for the registration of home improvement contractors. The OCILB currently consists of three "specialty" sections: the Electrical Section, the Plumbing and Hydronics Section, and the Heating, Ventilation, Air Conditioning, and Refrigeration Section, each of which issues licenses to the respective type of specialty contractor. The OCILB also has an Administrative Section.

The Home Improvement Section consists of the following five members, who must be appointed by the Director of Commerce not later than 90 days after the bill's effective date:

- One member who is certified to inspect residential buildings by the Board of Building Standards;
- Two members who are home improvement contractors registered under the bill;
- Two members who are representatives of an association that represents the interests of home improvement contractors.

With respect to the initial membership, the appointed home improvement contractors are not required to be registered for the first term. The bill also staggers the initial member's terms.¹⁰

⁸ R.C. 4740.21 and Sections 3 and 4.

⁹ R.C. 4740.20.

¹⁰ R.C. 4740.02(A), (E), and (F) by reference to R.C. 3781.10, not in the bill, and Section 6.



Similar to the three existing specialty sections of the Board, after the initial members' terms, each term must be for three years, ending on the same day of the same month as the term that it succeeds. Members may be reappointed. Vacancies are filled in the same manner as other vacancies on the OCILB.

The Director may remove any member the Director appoints for malfeasance, misfeasance, or nonfeasance.

Similar to the existing specialty sections' members, members receive a per diem amount set under continuing law when actually attending to OCILB matters and for necessary travel time and are reimbursed for the member's actual and necessary expenses incurred in the discharge of their official duties.

Membership is not considered holding a public office, employment, or interest in a contract or expenditure of money by the state or a political subdivision. Membership does not disqualify a person from holding any public office or employment.

The Home Improvement Section must meet only after adequate advance notice of the meeting has been given to each member.¹¹

Home Improvement Section – powers and duties

The bill requires the Home Improvement Section to do all of the following (these duties are the same as many, but not all, of the current specialty sections' duties):

- Adopt rules for deciding whether to suspend, revoke, or refuse to issue or renew a registration and to establish a list of disqualifying offenses;
- Investigate allegations in reference to violations of the law that governs the registration of home improvement contractors and rules adopted pursuant to it;
- Determine by rule a procedure to conduct investigations on allegations of those violations;
- Maintain a record of its proceedings;
- Do all things necessary to carry out the law that governs the registration of home improvement contractors.¹²

¹¹ R.C. 4740.02, by reference to R.C. 124.15, not in the bill.

¹² R.C. 4740.05.



Other changes to the OCILB

The bill requires the Administrative Section of the OCILB to have the concurrence of four rather than three of its members to take any action.¹³

Currently, the Administrative Section consists of one representative from each specialty section, the Director of Commerce or the Director's designee, and one member to represent the public who is not a member of any group certified by any section of the Board. The bill adds a member from the Home Improvement Section to the Administrative Section. The Administrative Section is responsible for the administration of the law that governs the licensure of specialty contractors under continuing law, and as added by the bill the registration of home improvement contractors, including issuing and renewing licenses and registrations.¹⁴

Home improvement contractor registration

Requirements

The bill requires the OCILB to issue a registration as a home improvement contractor to a person who submits an application prescribed by the OCILB and who meets all of the following requirements:

- Is at least 18;
- Pays any required fees to be determined by the Home Improvement Section;
- Has a permanent place of business in Ohio and submits to the OCILB the business's address;
- Has liability insurance or a surety bond in an amount specified in rules adopted by the Administrative Section of the OCILB;
- Is determined eligible for registration by the OCILB after submitting to a criminal records check.

¹³ R.C. 4740.02(A) and 4740.03(A).

¹⁴ R.C. 4740.02 to 4740.04.



The bill specifies that a registration expires annually and is renewable. To renew, a registered home improvement contractor must satisfy the initial requirements for registration and demonstrate compliance with the OCILB Law.¹⁵

Each registration must include the home improvement contractor's name, registration number, the registration's expiration date, and the name of the business entity with which the contractor is employed, as applicable.¹⁶

Assignment of registration

Under continuing law, a specialty contractor has to assign the specialty contractor's license to the contracting company with which the contractor is employed. The bill includes a similar requirement with respect to a registration held by a home improvement contractor. The requirements and restrictions regarding the assignment of a registration are very similar to the assignment of a license under continuing law. Thus, under the bill, a person who applies for registration as a home improvement contractor and who is employed by a business entity must assign the person's registration to the business entity for whom the person is employed. The OCILB is prohibited from issuing more than one registration to a person who has a registration assigned to a business entity. The bill also prohibits a registration from being assigned to more than one business entity at the same time.

If a home improvement contractor is no longer associated with the business entity for any reason, the contractor or business entity is required to immediately notify the Home Improvement Section of the date on which the contractor stopped association with the business entity. As with specialty contractors, the assignment of a registration to a business entity is invalid under the bill as follows:

- 90 days after the contractor's death;
- 90 days after the contractor completes a change of company form;
- At an earlier time agreed upon by the business entity and contractor.

The bill allows a business entity to continue to operate after a registration assigned to it becomes invalid if the business entity is assigned a different registration.

A person who assigns a registration to a business entity is required under the bill to actively be engaged in home improvement contracting and be available for

¹⁵ R.C. 4740.18, 4740.04(C)(3), 4740.061, and 4740.09.

¹⁶ R.C. 4740.18(B).



consultation with the business entity to which the person's registration is assigned. Additionally, the bill specifies that any work a business entity conducts under an assigned registration is deemed to be conducted under the personal supervision of the person named in the registration and any violation of the registration is deemed to have been committed by the person named in the registration.

Continuing law allows a specialty contractor licensee to place a license in inactive status if the license is not assigned to a contracting company. The bill does not include inactive status of a home improvement contractor registration.¹⁷

Disciplinary action

The bill allows the Home Improvement Section to impose any of the following, or any combination of the following, disciplinary actions against an applicant for or holder of a home improvement registration:

- Suspend a registration;
- Revoke a registration;
- Refuse to issue a registration;
- Issue a fine.

Under the bill, an applicant for or holder of a home improvement registration may be subject to any of the disciplinary actions described above for any of the following actions:

- Having been convicted or pleading guilty to a crime of moral turpitude or disqualifying offense;
- Violating any provision of the OCILB Law;
- Obtaining or attempting to obtain a registration or renewal of registration by means of fraud, deception, or misrepresentation;
- Obtaining an order, ruling, or authorization from any section of the OCILB by means of fraud, deception, or misrepresentation;
- Engaging in fraud, misrepresentation, or deception in the conduct of business;

¹⁷ R.C. 4740.07.

- Transferring the person's registration to another person without the Home Improvement Section's approval;
- Allowing a person's registration to be used by an unregistered person or entity that has not been assigned a registration;
- Failing to comply with a disciplinary action imposed by the Home Improvement Section;
- Failing to maintain liability insurance or a surety bond as required by the OCILB.

Under the bill the Home Improvement Section may also take disciplinary action against an applicant or registration holder upon receiving notice that a municipal corporation or any other governmental agency has suspended or revoked the local registration of an individual, contracting company, or business entity that also holds a registration issued by the OCILB.

The bill allows the Home Improvement Section, by a majority vote of a quorum of its members, to impose a disciplinary action as described above without holding a hearing if an applicant for or holder of a home improvement registration fails to request a hearing within 30 days after the date the Home Improvement Section notifies the person of the OCILB's intent to impose a disciplinary action.

Under current law, each specialty section of the OCILB may impose the same disciplinary actions for the same reasons as listed above, but the specialty sections have additional duties related specifically to licensure that do not apply to the Home Improvement Section and registration under the bill.¹⁸

Child support orders

On receipt of a notice that a registered home improvement contractor is in default under a child support order under the procedures established under existing law, the bill requires the OCILB to comply with the requirements of that law or rules adopted pursuant to it with respect to a registration issued under the bill.¹⁹

¹⁸ R.C. 4740.10.

¹⁹ R.C. 4740.101.

Penalty for instruments returned for insufficient funds

A home improvement contractor registered under the bill is subject to the same procedures and penalty for an instrument returned to the OCILB for insufficient funds as licensees licensed under the OCILB Law.²⁰

Human trafficking

On receipt of a notice that a registered home improvement contractor has been convicted of, pleaded guilty to, or a judicial finding of guilt of or judicial finding of guilt resulting from a plea of no contest was made to the offense of trafficking in persons, the bill requires the OCILB, similar to the specialty contractors currently licensed by the OCILB, to immediately suspend the home improvement contractor's registration in accordance with continuing law requirements.²¹

Additional definitions

Under continuing law, a "residential building" is a one-family, two-family, or three-family dwelling house, and any accessory structure incidental to that dwelling house and includes a one-family, two-family, or three-family dwelling house that is used as a model to promote the sale of a similar dwelling house. "Residential building" does not include an industrialized unit, a manufactured home, or a mobile home.²²

Under the bill, "owner" means the person who contracts with a home improvement contractor for a home improvement. "Owner" may include the owner of a residential building or a person the owner authorizes to act on the owner's behalf to contract for a home improvement.²³

HISTORY

ACTION	DATE
Introduced	02-19-15

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²⁰ R.C. 4740.15.

²¹ R.C. 4740.17 and 4776.20, not in the bill.

²² R.C. 4740.01(K), by reference to R.C. 3781.06, not in the bill.

²³ R.C. 4740.01(J).

