



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

Paul Luzzi

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(As Introduced)

Reps. Hughes, Antani, Edwards, Leland, Cera, Bocchieri, Clyde, K. Smith

BILL SUMMARY

- Establishes the Home Inspector Law and requires individuals wishing to perform home inspections to obtain a license in order to perform those inspections.
- Establishes criminal penalties for performing home inspections without a license and knowingly making, or causing to be made, a false representation concerning a material and relevant fact relating to a person's licensure as a home inspector.
- Creates the Ohio Home Inspector Board to regulate the licensure and performance of home inspectors and requires the Superintendent of Real Estate and Professional Licensing to administer the Home Inspector Law.
- Prohibits a home inspection from being performed unless it is performed pursuant to a written contract entered into between a licensed home inspector and a client.
- Requires a licensed home inspector to include a written report of the visual examination performed by a licensed home inspector during a home inspection.
- Requires a licensed home inspector to retain documents related to home inspection work and license applications for a five-year period.
- Prohibits any person from performing a home inspection unless the inspection conforms to requirements for conducting home inspections, standards of practice, and prohibitions against conflicts of interest specified in rules adopted by the Board.
- Allows the Superintendent, in accordance with the bill's requirements, to investigate a complaint of unlicensed activity or of performing a home inspection in a manner that does not conform to Board rules or without having entered into a contract.

- Requires the Board to hold a hearing regarding an alleged violation of the bill's prohibited activities in accordance with the bill's requirements and, if the Board finds that a violation has occurred, allows the Board to impose a fine on the person, not to exceed \$500 per violation.
- Establishes requirements an individual must satisfy to obtain a license under the bill and requires the Superintendent to have criminal records checks conducted on applicants for licensure.
- Requires the Board to adopt specified rules for the bill's administration and to approve the education and experience curricula specified in the bill and the examination an applicant must pass for initial licensure.
- Specifies duties for the Superintendent that include approving continuing education providers, courses, and programs in accordance with the Board's rules and issuing and renewing licenses.
- Requires the Superintendent to investigate complaints of violations of the bill and grants the Superintendent and the Board subpoena power in relation to any matter over which the Board or Superintendent has jurisdiction and which is the subject of inquiry and investigation by the Board or Superintendent.
- Specifies disciplinary actions to which a licensed home inspector may be subject for violating the bill's provisions and allows for mediation before an investigation and settlement agreements prior to an adjudication hearing.
- Limits lawsuits brought under the bill to those actions available under common law.
- Specifies that the disciplinary actions against a licensed home inspector are the only remedies for a violation of a conflict of interest prohibition.
- Creates the Home Inspectors Fund in the state treasury to be used solely to pay expenses for administering and enforcing the bill's provisions.

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CONTENT AND OPERATION

Licensure of home inspectors

Ohio law currently does not require licensure or registration of home inspectors. Beginning 210 days after the bill's effective date, the bill prohibits any person from knowingly conducting a home inspection or representing a qualification to conduct a home inspection for compensation or other valuable consideration unless that person is licensed pursuant to the bill as a home inspector.¹ A person who violates this prohibition is guilty of a first degree misdemeanor.²

The bill defines "home inspection" as the process by which a home inspector conducts a visual examination of the readily accessible components of a residential building for a client. Home inspection does not include pest inspections; environmental testing; inspection of any property or structure conducted by an employee or representative of an Ohio-licensed insurer licensed for purposes related to the business of insurance; or determination of compliance with applicable statutes, rules, resolutions, or ordinances, including, without limitation, building, zoning, or historic codes. A client, under the bill, is a person who enters into a contract with a licensed home inspector to retain for compensation or other valuable consideration the services of that

¹ R.C. 4764.02(A) and Section 3.

² R.C. 4764.99(A).



licensed home inspector to conduct a home inspection and to provide a written report on the condition of a residential building.³

Beginning 210 days after the bill's effective date, home inspections must be performed pursuant to a written contract entered into by a licensed home inspector and a client. Also, after that time period elapses, all home inspections must conform to the requirements specified in rules adopted by the Ohio Home Inspector Board (see "**Duties of the Board**," below).

The bill also prohibits a person, beginning 210 days after the bill's effective date, from knowingly making or causing to be made a false representation concerning a material and relevant fact relating to a person's licensure as a home inspector. Violation of the prohibition is a fifth degree felony.⁴

The bill permits the Superintendent of Real Estate and Professional Licensing (who administers and enforces the bill) to apply to any court of common pleas to enjoin a violation of the bill. Upon a showing by the Superintendent that a person has violated or is violating the bill, the court must grant an injunction, restraining order, or other appropriate relief.⁵ The bill also permits the Superintendent to investigate, and the Board to impose a fine against, any person who conducts a home inspection without a license or otherwise violates the prohibitions described immediately above (see "**Sanctions against unlicensed activity**," below).⁶

Persons not subject to the bill

The bill specifies that the prohibitions described under "**Licensure of home inspectors**," above do not apply to any of the following persons when acting within the scope of practice of their respective professions:

- A person who is employed by or whose services otherwise are retained by Ohio or a political subdivision of Ohio for the purpose of enforcing building codes;

³ R.C. 4764.01(A) and (C).

⁴ R.C. 4764.02 and 4764.99(B) and Section 3.

⁵ R.C. 4764.15.

⁶ R.C. 4764.16.



- A person holding a valid certificate to practice architecture issued under the Architects Law;⁷
- A person registered as a professional engineer under the Professional Engineers and Professional Surveyors Law;⁸
- A heating, ventilating, and air conditioning contractor, refrigeration contractor, electrical contractor, plumbing contractor, or hydronics contractor who is licensed under the Construction Industry Licensing Board Law or by a county under the Building Standards Law, or who is licensed or registered by a municipal corporation under the Municipal Corporations–General Powers Law;⁹
- A real estate broker, real estate salesperson, foreign real estate dealer, or foreign real estate salesperson who is licensed under the Real Estate Broker Law;¹⁰
- A real estate appraiser who is licensed under the Real Estate Appraiser Law;¹¹
- A public insurance adjuster who holds a valid certificate of authority issued under the Public Insurance Adjusters Law¹² or an employee or representative of an Ohio-licensed insurer who conducts an inspection of any property or structure for purposes related to the business of insurance;
- A commercial applicator of pesticide who is licensed under the Pesticides Law.¹³

⁷ R.C. Chapter 4703.

⁸ R.C. Chapter 4733.

⁹ R.C. Chapter 4740. and R.C. 715.27 and 3781.102, not in the bill.

¹⁰ R.C. Chapter 4735.

¹¹ R.C. Chapter 4736.

¹² R.C. Chapter 3951.

¹³ R.C. Chapter 921. and R.C. 4764.03.

Ohio Home Inspector Board

The bill creates the Ohio Home Inspector Board consisting of five members. Not more than three members of the Board can be members of the same political party. The President of the Senate and the Speaker of the House of Representatives each must appoint one member who represents the public and has no financial interest in the home inspection industry. The bill requires the Governor to appoint three members who are licensed home inspectors and who each represent different national organizations that consist of and represent home inspectors. Of the members appointed by the Governor, one must be an independent licensed home inspector and one must be a member or representative of a home inspection franchise business. Persons appointed to the Board during the first year after the bill's effective date need not be licensed as required under the bill.

The Governor, President of the Senate, and Speaker of the House of Representatives must make the initial appointments to the Board not later than 90 days after the bill's effective date. Board members serve five-year terms, and the bill staggers the terms of the initial appointees. The bill includes the standard vacancy provisions. The bill permits a member to be removed for misconduct, neglect of duty, incapacity, or malfeasance by the person who, or office that, appointed the member. Board members are not compensated but must be reimbursed for actual expenses reasonably incurred in the performance of their duties as members.

The Board is part of the Department of Commerce for administrative purposes. The Director of Commerce is the ex officio executive officer. The Director may, however, designate the Superintendent as the executive officer (in what appears to be a drafting error, the bill refers to "commission" rather than "board").¹⁴

Duties of the Board

The bill requires the Board, not later than 180 days after the bill's effective date, to adopt rules in accordance with the Administrative Procedure Act to do all of the following:

(1) Establish standards to govern disciplinary proceedings conducted in accordance with the bill (see "**Hearings and disciplinary action**," below) and the reinstatement of home inspector licenses the Board suspends or revokes pursuant to those proceedings;

¹⁴ R.C. 4764.04 and Section 4.

(2) In accordance with the bill's requirements, specify methods and procedures the Board must use to approve an education curriculum individuals must successfully complete to obtain a license;

(3) In accordance with the bill's requirements, specify methods and procedures the Board must use to approve an experience curriculum that an individual may elect to complete to satisfy the proof of experience requirement for obtaining a license;

(4) Establish the administrative reporting and review requirements for parallel inspections or field experience to assure that an applicant for a license satisfies the requirements to obtain a license;

(5) Establish a curriculum for continuing education that a licensed home inspector must complete to satisfy the requirements for continuing education specified in the bill and procedures to assure continuing education requirements are updated periodically to make those requirements consistent with home inspection industry practices;

(6) Establish requirements an institution, organization, company, or individual must satisfy to obtain approval to provide courses or programs that enable a licensed home inspector to satisfy the continuing education requirements and establish procedures that the Superintendent must use to approve an institution, organization, company, or individual that satisfies the Board's requirements;

(7) Establish procedures and standards that the Superintendent must use to approve courses and programs, including online courses and programs, offered by an entity that is approved by the Superintendent to offer continuing education courses or programs;

(8) Establish the amount of the following fees in an amount that is sufficient to defray necessary expenses incurred in the administration of the bill: (a) the application and licensure fee, which must not exceed \$250, (b) the renewal fee, which must not exceed \$250, (c) the late renewal fee, (d) the fee an entity described in (6) above must pay to receive approval to offer continuing education courses and programs, (e) the fee an approved entity must pay for each continuing education course or program that the entity wishes to have the Superintendent approve pursuant to the rules adopted by the Board, and (f) any other fees as required by the bill;

(9) Establish reporting requirements for a licensed home inspector to follow to demonstrate that the licensed home inspector successfully completed the continuing education requirements;



(10) Establish requirements for conducting home inspections and standards of practice for home inspectors and conflict of interest prohibitions to the extent that those provisions do not conflict with the prohibited activities described in (1) to (4) under "**Grounds for refusing to issue or renew a license**," below;

(11) Specify requirements for settlement agreements entered into between the Superintendent and a licensed home inspector pursuant to the procedure specified under "**Settlement agreements**," below.¹⁵

Duties of the Superintendent of Real Estate and Professional Licensing

The bill requires the Superintendent to administer the bill and exercise the powers and perform the functions and duties delegated to the Superintendent under the bill. This responsibility includes all of the following:

(1) Specify the format and content of all affidavits and other documents required for the administration of the bill;

(2) Specify the information that must be provided on an application for a license;

(3) Establish procedures for processing, approving, and denying applications for licensure;

(4) Issue all orders necessary to implement the bill;

(5) Provide the Board with meeting space, staff services, and other technical assistance required by the Board to carry out its duties;

(6) Provide each applicant for a home inspector license with a copy of the requirements for home inspections specified in rules adopted by the Board (see "**Duties of the Board**," above), and make those requirements available to the public by posting them on the Department of Commerce website;

(7) Issue and renew licenses for any person who satisfies the requirements of the bill, and make a list of licensed home inspectors available to the public by posting the list on the Department's website;

(8) Establish procedures to have criminal records checks conducted by the Bureau of Criminal Identification and Investigation on all applicants for a license in accordance with current law requirements for those checks;

¹⁵ R.C. 4764.05(A) and Section 5.



(9) Conduct criminal records checks on each applicant for a license in accordance with continuing law and the procedures developed under (8), above;

(10) Investigate, in accordance with "**Enforcement**," below, complaints concerning an alleged violation of the bill or conduct of a licensee and subpoena witnesses in connection with those investigations;

(11) Establish and maintain an investigation and audit section to investigate complaints and conduct inspections, audits, and other inquiries adjudged by the Superintendent to be appropriate to enforce the bill.¹⁶

Application for licensure

To obtain a license to perform home inspections, a person must submit an application on a form the Superintendent provides and the application and licensure fee established in rules adopted by the Board to the Superintendent.¹⁷ Each person applying for a license also must submit one complete set of fingerprints to the Superintendent of the Bureau of Criminal Identification and Investigation (BCII) for a criminal records check. The applicant must provide the fingerprints in a manner prescribed by the Superintendent and fill out a form prescribed by the BCII Superintendent under current law. On receiving an application for a license, the Superintendent of Real Estate and Professional Licensing must request a criminal records check based on the fingerprints from the BCII Superintendent or a vendor approved by BCII to conduct a criminal records check. The Superintendent of Real Estate and Professional Licensing must request criminal record information from the Federal Bureau of Investigation as part of the criminal records check. The fee related to the criminal records check must be paid by the applicant.¹⁸

The applicant also must satisfy the following requirements and the application must include all of the following:

(1) A pledge the applicant signs, agreeing to comply with the rules adopted by the Board establishing requirements for conducting home inspections and standards of practice for home inspectors and conflict of interest prohibitions and a statement that the applicant understands the grounds for any disciplinary action that may be initiated under the bill;

¹⁶ R.C. 121.08 and 4764.06.

¹⁷ R.C. 4764.07(A).

¹⁸ R.C. 109.572, 121.08, 4764.07(B), and 4776.10.

(2) Proof of holding a comprehensive general liability insurance policy or a commercial general liability insurance policy and an error and omissions insurance policy as described under "**Liability insurance policy requirements**," below;

(3) Proof of successfully passing, within two years before the application date, the national home inspector examination;

(4) Proof of successfully completing an education curriculum approved by the Board;

(5) Proof that the applicant has experience in the field of home inspections by successfully completing an experience curriculum approved by the Board, by equivalency of experience as determined by the Board, or by successfully completing ten parallel inspections;

(6) Proof that the applicant is at least 18 and has graduated from the 12th grade, received a general educational development diploma, or satisfactorily completed a program that is the equivalent to graduating from the 12th grade or receiving a general educational development diploma;

(7) Any other information the Board requires that the Board determines is relevant to receiving a license to practice as a licensed home inspector.¹⁹

The bill prohibits the Superintendent from requiring an architect certified under the Architects Law or a professional engineer registered under the Professional Engineers and Professional Surveyors Law who wishes to obtain a license to perform home inspections to submit proof of education and experience as required under (4) and (5) immediately above. Such a person, however, must satisfy all other requirements specified to obtain a license and provide proof of licensure in good standing in order to receive a license.²⁰

The bill specifies that the act of submitting an application to the Superintendent does not create, must not be construed as creating, and is not intended to indicate licensure as a home inspector. The Superintendent must issue a license to an applicant who satisfies the requirements set forth in the bill.²¹

¹⁹ R.C. 4764.07(D).

²⁰ R.C. 4764.07(E).

²¹ R.C. 4764.07(C) and (F).

Examination and curriculum requirements

The bill requires the Board to approve a curriculum of education that a person must successfully complete to obtain a license. The Board must approve only an education curriculum that satisfies all of the following requirements:

- The curriculum includes a requirement that an individual, in order to successfully complete the curriculum, complete at least 40 hours of classroom instruction, including instruction about compliance with the bill's requirements, inspection safety, report writing, and any other administrative matters required by the Board.
- The curriculum is offered by an accredited public or private college, university, or other institution of higher education or a professional organization that has been approved by the Board to offer a curriculum.
- The curriculum includes a requirement that a person, to successfully complete the curriculum, complete at least 80 hours of prelicensing education.
- The curriculum satisfies any other requirements the Board established in rules it adopts.²²

The Board must determine the equivalency of field experience that an individual may elect to complete to satisfy the proof of experience requirement. The Board must approve only a curriculum of experience that includes a requirement that, to successfully complete the curriculum, a person must perform at least 40 hours of work in the home inspection field that allows the person to obtain practical experience or training regarding home inspections. The Board must approve only a curriculum that includes a requirement that, to successfully complete the curriculum, a person must complete a ride-along session with a licensed home inspector. The ride-along session can be used as part of the required 80 hours of prelicensing education.²³

The Board must adopt the American Society of Home Inspectors' Standards of Practice and Code of Ethics as minimum requirements, in accordance with the bill.²⁴

²² R.C. 4764.05(B).

²³ R.C. 4764.05(C).

²⁴ R.C. 4764.05(D).



Issuing a license

The bill requires the Superintendent to issue a home inspector license to any person who satisfies the requirements for licensure. The Superintendent cannot, however, issue a license to a corporation, limited liability company, partnership, or association, but a licensed home inspector may sign a home inspection report in a representative capacity for any of those entities.²⁵ A home inspector license issued or renewed pursuant to the bill expires three years after the date of issuance or renewal.²⁶

Grounds for refusing to issue or renew a license

The bill allows the Superintendent to refuse to issue or renew a license to anyone who has done any of the following:

(1) Accepted compensation or other valuable consideration from more than one interested party for the same service without the written consent of all interested parties;

(2) Accepted commissions, allowances, or other valuable consideration, directly or indirectly, from other parties who deal with a client in connection with the home inspection for which the home inspector is responsible or from other parties who are involved in any part of the real estate transaction involving a residential building for which that home inspector conducted a home inspection;

(3) Repaired, replaced, or upgraded, or solicited to repair, replace, or upgrade, for compensation or other valuable consideration, systems or components in a residential building after completing a home inspection of that residential building but before the close of the real estate transaction associated with the home inspection and resolution of all contingent issues involving the building and the transaction;

(4) Failed to disclose within ten business days to a client written information about any business interest of the home inspector that may affect the client in connection with the home inspection;

(5) Pleaded guilty to or been convicted of a crime of moral turpitude, a felony, or an equivalent offense under the laws of any state other than Ohio or the United States, or was required to register under Ohio Sexual Predators, Habitual Sex Offenders, and Sexually Oriented Offenders Law;²⁷

²⁵ R.C. 4764.06(A) and (B).

²⁶ R.C. 4764.09(A).

²⁷ R.C. Chapter 2950.



(6) Failed to provide copies of records to the Superintendent or failed to maintain records as required by the bill (failure to provide a document related to services as a home inspector pursuant to a subpoena described under "**Subpoena powers**" below is prima facie evidence that the person did not retain the document in the manner required under the bill);

(7) Failed to maintain or be covered by a comprehensive general liability insurance policy or a commercial general liability insurance policy as described under "**Liability insurance policy requirements,**" below;

(8) Violated the bill;

(9) Failed to establish to the satisfaction of the Superintendent that the applicant is honest, truthful, and of good reputation.²⁸

Liability insurance policy requirements

The bill requires every licensed home inspector to maintain, or be covered by, a comprehensive general liability insurance policy or a commercial general liability insurance policy with coverage limits of not less than \$100,000 per occurrence and not less than a \$300,000 aggregate limit. Additionally, every licensed home inspector must maintain or be covered by an errors and omissions insurance policy with a coverage limit of not less than \$1,000,000. These insurance policies must provide coverage against liability of the licensed home inspector for loss, damage, or expense as a result of an act that occurred while the licensed home inspector was on the premises performing a home inspection. If the employer of a licensed home inspector maintains these insurance policies covering the licensed home inspector, and the employer is not a licensed home inspector, the licensed home inspector is not required to maintain the licensed home inspector's own insurance policies.²⁹

Grandfathering provision

During the period of time beginning on the date the last initial Board member is appointed and ending 120 days after that date, the Superintendent must issue a home inspector license if an individual applies for a license on a form the Superintendent provides and pays the fee the Board establishes, and if the applicant demonstrates proof of maintaining or being covered by a comprehensive general liability insurance policy or a commercial general liability insurance policy and an errors and omissions policy as described under "**Liability insurance policy requirements,**" above. The

²⁸ R.C. 4764.14.

²⁹ R.C. 4764.11(A).



applicant also must submit proof by direct documentation or signed affidavit attesting to having met any one of the following requirements to demonstrate participation in the home inspection field prior to the bill's effective date: (a) having performed at least 200 home inspections for clients for compensation or other valuable consideration, (b) having successfully passed the National Home Inspector Examination offered by the Examination Board of the Professional Home Inspectors, (c) having actively operated a home inspection business in Ohio for three years before the bill's effective date under a business name officially registered with the Secretary of State, (d) having been employed as a home inspector for the consecutive 36 months before the bill's effective date by an inspection company or individual whose owner or manager meets the license requirement specified in the bill, or (e) having successfully completed 80 hours of instruction of a type described under "**Continuing education**," below. The applicant also must submit proof of signing a pledge agreeing to comply with the requirements for conducting home inspections and standards of practice and conflict of interest prohibitions established in rules adopted by the Board, and, in a written statement, acknowledge that the individual understands the grounds for any disciplinary action that may be initiated under the bill. If the Board determines necessary, the Board may request the Superintendent to have a criminal records check conducted in accordance with the requirements specified in continuing law and the procedures the Board adopts in rules, on any applicant who applies for a license under the grandfathering provision. A license issued under the grandfathering provision is valid for three years and can be renewed in accordance with the bill's renewal procedure.³⁰

Reciprocity

The bill permits the Superintendent to issue a home inspector license to an applicant who holds a license, registration, or certification as a home inspector in another jurisdiction if that applicant submits an application on a form the Superintendent provides, pays the fee the Board prescribes, and satisfies all of the following requirements:

(1) The applicant is licensed, registered, or certified as a home inspector in a jurisdiction the Board determines grants the same privileges to persons licensed under the bill as Ohio grants to persons in that jurisdiction, and that jurisdiction has licensing, registration, or certification requirements that are substantially similar to, or exceed, those of Ohio.

(2) The applicant attests that the applicant is familiar with and will comply with the bill.

³⁰ Section 6.

(3) The applicant attests to all of the following in a written statement that the applicant submits to the Superintendent:

- To provide the Superintendent the name and address of an agent to receive service of process in Ohio or that the applicant authorizes the Superintendent to act as agent for that applicant;
- That service of process in accordance with Ohio law is proper and the applicant is subject to the jurisdiction of Ohio courts;
- That any cause of action arising out of the conduct of the applicant's business in Ohio must be filed in the county in which the events that gave rise to that cause of action occurred.³¹

Record keeping

Under the bill, a licensed home inspector must retain for a period of five years the original or a true copy of each written contract for the person's services relating to home inspection work, all home inspection reports, and all documentation and data assembled in preparing those reports. The retention period begins on the date the report is submitted to the client unless, before expiration of the retention period, the licensee is notified that the services or report is the subject of or is otherwise involved in pending investigation or litigation, in which case the retention period begins on the date of final disposition of the litigation. The licensee also must retain for a period of five years a hard copy or an electronic copy of all license application materials submitted to the Superintendent.³²

License renewal

Any home inspector license issued or renewed under the bill expires three years after the date of issuance or renewal.³³ To renew a home inspector license, a licensed home inspector must file all of the following with the Superintendent within the 90-day period immediately preceding the date the license expires:

(1) A renewal application pursuant to the procedures set forth in the Standard License Renewal Procedure;³⁴

³¹ R.C. 4764.10.

³² R.C. 4764.11(B).

³³ R.C. 4764.09(A).

³⁴ R.C. Chapter 4745.

(2) Proof of holding or being covered by a comprehensive general liability insurance policy or a commercial general liability insurance policy as described under "**Liability insurance policy requirements**," above;

(3) Proof of satisfying the continuing education requirements described under "**Continuing education**," below.³⁵

The Superintendent must renew a home inspector license for any person who satisfies the bill's requirements for renewal.³⁶

A licensed home inspector who fails to renew a license before its expiration may, during the three months following the expiration, renew the license by paying a late fee in an amount the Board establishes in addition to meeting the criteria for license renewal. The bill prohibits a licensed home inspector who applies for a late renewal during the three-month period from engaging in any activities the license being renewed permits until the Superintendent notifies the licensed home inspector that the license has been renewed.³⁷

The bill prohibits the Superintendent from renewing a license if any of the following conditions apply:

(1) The licensed home inspector is in violation of any provision of the bill or order of the Board;

(2) The licensed home inspector fails to submit proof of holding a comprehensive general liability insurance policy or a commercial general liability insurance policy and an errors and omissions insurance policy;

(3) The licensed home inspector fails to submit proof of satisfying the continuing education requirements.³⁸

Under the bill, a licensed home inspector who fails to submit the proof of insurance or continuing education required or fails to renew during the required time periods may obtain a license by applying for a new license.³⁹

³⁵ R.C. 4764.09(B)(1).

³⁶ R.C. 4764.06(A)(4).

³⁷ R.C. 4764.09(B)(2).

³⁸ R.C. 4764.09(C).

³⁹ R.C. 4764.09(D).

Continuing education

During each three-year period that a license is valid, the bill requires a licensed home inspector to successfully complete not less than 14 hours of continuing education instruction annually in courses or programs directly applicable to the standards of practice and requirements specified in rules adopted by the Board. The Superintendent must accept only those courses and programs the Superintendent approves in accordance with the requirements and procedures described below before the date the licensed home inspector completes the course or program. The bill prohibits the Superintendent from including parallel inspections completed by a person for credit toward satisfying the continuing education requirements.⁴⁰

The bill requires the Superintendent, in accordance with the procedures specified in rules adopted by the Board, to approve an institution, organization, company, or person wishing to provide continuing education courses or programs if that institution, organization, company, or person satisfies the requirements specified in those rules and pays the fee established in rules the Board adopts. Additionally, the Superintendent, in accordance with the procedures specified in rules adopted by the Board, must approve a course or program that a licensed home inspector may complete to satisfy the bill's continuing education requirements if all of the following are satisfied:

- The course or program is offered by an entity approved by the Superintendent;
- The course or program satisfies the standards established in rules adopted by the Board;
- The entity pays the fee established in rules adopted by the Board.⁴¹

Enforcement

Preinvestigation settlements

Within five days after a person files a complaint against a licensed home inspector with the Superintendent, the bill requires the Superintendent to provide to that person an acknowledgment of the receipt of the complaint and send a notice regarding that complaint to the licensee who is the subject of the complaint. The Superintendent must include in that notice a description of the activities in which the licensed home inspector allegedly engaged that violate the bill. Within 20 days after the

⁴⁰ R.C. 4764.08.

⁴¹ R.C. 4764.06(A).



Superintendent sends the notice to the complainant and that licensed home inspector and the licensed home inspector may file with the Superintendent a request to have an informal mediation hearing. If both the complainant and the licensed home inspector file such a request, the Superintendent must notify the complainant and the licensed home inspector of the date and time of the informal mediation hearing.

A mediator employed by the Superintendent must conduct the informal mediation hearing. If the complainant and the licensed home inspector reach an accommodation during that informal mediation hearing, the mediator must send a written report describing the accommodation to the Superintendent, complainant, and licensee. Notwithstanding the bill's provision that allows the Superintendent to release information relating to licensees to specified parties for the purpose of administering continuing law, the written report describing the accommodation is confidential and is not a public record for purposes of Ohio's Public Records Law. The bill requires the Superintendent to close the complaint on satisfactory completion of the accommodation. If the licensee or the complainant fails to file a request for an informal mediation hearing, or if the parties fail to agree on an accommodation during that informal mediation hearing, the Superintendent must proceed with an investigation of the complaint.⁴²

Investigations

Under the bill, the Superintendent must investigate complaints against licensed home inspectors on receipt of a complaint concerning any alleged violation of the bill and subpoena any witnesses in connection with those investigations. The investigators and auditors employed by the Superintendent may review and audit, during normal business hours, the licensed home inspector's business records that are directly related to complaints. The licensed home inspector must permit this review and audit.⁴³ As discussed above, the bill also requires the Superintendent to establish and maintain an investigation and audit section to investigate complaints and conduct inspections, audits, and other inquiries as in the judgment of the Superintendent are appropriate to enforce the bill. The Superintendent may employ investigators and auditors to assist in investigating complaints and conducting investigations, audits, and other inquiries that the Superintendent considers appropriate to enforce the bill. Additionally, the bill permits the Superintendent to utilize the investigators and auditors employed pursuant

⁴² R.C. 4764.12(B) and R.C. 149.43, not in the bill.

⁴³ R.C. 4764.06(A)(10) and 4764.12(A).



to the Real Estate Broker Law or licensees to assist in performing the Superintendent's investigation and audit duties.⁴⁴

Except as otherwise specified in the bill, the written report describing the accommodation reached in mediation is confidential and is not a public record under Ohio's Public Records Law.⁴⁵ The bill states that nothing in that provision must be construed as prohibiting the Superintendent from releasing information relating to a licensed home inspector to the Superintendent of Financial Institutions, the Superintendent of Insurance, the Commissioner of Securities, a law enforcement officer, the Attorney General, or the appropriate prosecutorial authority. The information released must remain confidential.⁴⁶

Subpoena powers

The bill permits the Board or the Superintendent to compel, by order or subpoena, the attendance of witnesses to testify in relation to any matter over which the Board or Superintendent has jurisdiction and that is the subject of inquiry and investigation by the Board or Superintendent, and require the production of any book, paper, or document pertaining to that matter. For that purpose, the bill grants the Board or Superintendent the same power as judges of county courts to administer oaths, compel the attendance of witnesses, and punish them for refusal to testify. The bill specifies procedures for the service of a subpoena and requires witnesses to receive the fees and mileage allowed in lawsuits in courts of common pleas. If two or more witnesses travel together in the same vehicle, only one witness receives the mileage fee, but the witnesses may agree to divide the fee in a manner they choose.⁴⁷ In addition to the powers granted to the Board and Superintendent described immediately above, in case any person fails to file any statement or report, obey any subpoena, give testimony, answer questions, or produce any books, records, or papers as required by the Board or Superintendent, the bill permits the court of common pleas of any county in Ohio, on application made to it by the Board or Superintendent setting forth such failure, to (1) make an order awarding process of subpoena or subpoena duces tecum for the person to appear and testify before the Board or Superintendent, and (2) order any person to give testimony and answer questions and to produce books, records, or papers, as required by the Board or Superintendent.

⁴⁴ R.C. 4767.06(A)(11).

⁴⁵ R.C. 4764.12(A).

⁴⁶ R.C. 4764.12(C).

⁴⁷ R.C. 4764.12(D).



The bill specifies duties for the clerk of the court of common pleas that files that order regarding the process of the subpoena and issuing any additional orders. The subpoena may contain a direction that the witness bring to the examination any books, records, or papers mentioned in the subpoena. If any person summoned by subpoena fails to obey the subpoena, to give testimony, to answer questions as required, or to obey an order of the court, the bill permits the court, on motion supported by proof, to order an attachment for contempt to be issued against the person charged with disobedience of any order or injunction issued by the court under the bill. If the person is brought before the court by virtue of the attachment, and if upon a hearing the disobedience appears, the court may order the offender to be committed and kept in close custody.⁴⁸

Hearings and disciplinary action

If, upon examining the results of an investigation, the Superintendent determines that reasonable evidence exists that a licensed home inspector has violated the bill's provisions or engaged in an activity described in (1) to (6) and (9) under "**Grounds for refusing to issue or renew a license**," above, the bill requires the Superintendent to proceed in accordance with the notice and hearing requirements prescribed in the Administrative Procedure Act. After a hearing officer conducts a hearing and issues a report and recommendations, the bill requires the Board to review the report and recommendations and order the disciplinary action the Board considers appropriate, which may include any one or more of the following:

- (1) A reprimand;
- (2) A fine not exceeding \$1,000 per violation;
- (3) Completion of hours of education in subjects related to the underlying cause of the violation in an amount determined by the Board;
- (4) Suspension of the license until the licensed home inspector complies with conditions the Board establishes;
- (5) Suspension of the license for a specific period of time;
- (6) Revocation of the license;
- (7) Surrender of license in lieu of discipline.⁴⁹

⁴⁸ R.C. 4764.12(E).

⁴⁹ R.C. 4764.13(A).

The bill prohibits the Superintendent from crediting any hours of education a licensed home inspector completes in accordance with (3) above toward satisfying the bill's continuing education requirements.

The bill requires the Superintendent to appoint a hearing officer to conduct adjudication hearings in accordance with the Administrative Procedure Act. In accordance with the Administrative Procedure Act, after conducting a hearing, a hearing officer must submit to the Board a report of the hearing and a recommendation for the action to be taken against the licensed home inspector. All parties may file objections to the report and recommendations as permitted under the Act. The Board must issue an order in accordance with the procedures prescribed by the Act.

If the Board assesses a licensee a fine for committing a prohibited act and the licensee fails to pay the fine in the time period prescribed by the Board, the Superintendent must forward the name of the licensee and the amount of the fine to the Attorney General to collect the fine. The licensee must additionally pay the fee assessed by the Attorney General for collection of the fine.⁵⁰

Under the bill, the decision of the Board is final, subject to review under the Administrative Procedure Act and appeal to the Franklin County Court of Common Pleas.⁵¹

Settlement agreements

Under the bill, at any time after the Superintendent notifies a licensed home inspector that a hearing will be held but before the date of the hearing, the licensed home inspector may apply to the Superintendent to enter into a settlement agreement regarding the alleged violation. The Superintendent and the licensed home inspector must comply with the requirements for settlement agreements established in rules adopted by the Board. If the parties enter into the settlement agreement and comply with all of the requirements set forth in that agreement, the bill states that the investigation regarding that alleged violation is considered closed. The settlement agreement is a public record for purposes of Ohio's Public Records Law.⁵²

Child support orders

On receipt of a notice that a licensed home inspector is in default under a child support order under the procedures established under existing law, the bill requires the

⁵⁰ R.C. 4764.13(B), (D), and (E).

⁵¹ R.C. 4764.13(F).

⁵² R.C. 4764.13(C).



Superintendent to comply with the requirements of that law and any rules adopted pursuant to it with respect to a license issued under the bill.⁵³

Human trafficking

The bill requires the Superintendent to comply with the current law procedures in the event a licensed home inspector is convicted of, or pleads guilty to, the offense of trafficking in persons.⁵⁴

Sanctions against unlicensed activity

The bill specifies an additional sanction against an unlicensed person who does any of the following:

- (1) Knowingly performs a home inspection;
- (2) Knowingly represents that the person is qualified to perform a home inspection;
- (3) Knowingly makes a false representation concerning a material and relevant fact relating to the person's license (it is unclear whether this is unlicensed activity, or if this provision results in additional discipline against a licensee);
- (4) Performs a home inspection in a manner that does not conform to Board rules;
- (5) Performs a home inspection without entering into a contract.

Upon receipt of a written complaint or upon the motion of the Superintendent, the bill permits the Superintendent to investigate any unlicensed person who has allegedly violated those prohibitions.⁵⁵

The bill grants the Superintendent the same powers to investigate an alleged violation of these prohibitions as those powers specified under "**Investigations**," above. If, after an investigation, the Superintendent determines that reasonable evidence exists that an unlicensed person has violated these prohibitions, within seven days after that determination, the Superintendent must send a written notice to that person by regular mail and must include in the notice the information specified in the Administrative

⁵³ R.C. 4764.19.

⁵⁴ R.C. 4764.20 and 4776.20.

⁵⁵ R.C. 4764.16(A).

Procedure Act for notices given to licensees, except that the notice must specify that a hearing will be held and specify the date, time, and place of the hearing.⁵⁶

The bill requires the Board to hold a hearing regarding the alleged violation in the same manner prescribed for an adjudication hearing under the Administrative Procedure Act. If the Board, after the hearing, determines a violation has occurred, the Board may impose a fine on the person, not exceeding \$500 per violation, which is distinct from any criminal fine imposed for violation of the bill's provisions. The bill specifies that each day a violation occurs or continues is a separate violation. The bill requires the Board to maintain a transcript of the proceedings of the hearing, and issue a written opinion to all parties, citing its findings and grounds for any action taken. The Board's determination is an order that the person may appeal in accordance with the Administrative Procedure Act. The Superintendent may approve a payment plan if the unlicensed person requests such a plan.⁵⁷

Under the bill, if the unlicensed person who allegedly committed a violation fails to appear for a hearing, the Board may request the court of common pleas of the county where the alleged violation occurred to compel the person to appear before the Board for a hearing. If the Board assesses an unlicensed person a civil penalty for a violation and the person fails to pay that civil penalty within the time period prescribed by the Board, the Superintendent must forward to the Attorney General the name of the person and the amount of the civil penalty for the purpose of collecting that civil penalty. The person also must pay any fee assessed by the Attorney General for collection of the civil penalty.

If the Board finds, or an unlicensed person admits to the Board, that the unlicensed person violated the prohibitions, the Superintendent must not issue the person a home inspector license without prior approval from the Board.⁵⁸

Civil actions

Except as provided below, the bill states that nothing in the bill can be construed to create or imply a private cause of action against a licensed home inspector for a violation of the bill if that action is not otherwise maintainable under common law.⁵⁹ The bill states that the remedies provided under "**Enforcement**," "**Hearings and disciplinary action**," and "**Grounds for refusing to issue or renew a license**," above

⁵⁶ R.C. 4764.16(B).

⁵⁷ R.C. 4768.16(C).

⁵⁸ R.C. 4768.16(D) and (E).

⁵⁹ R.C. 4764.17(A).



are the exclusive remedies for alleged violations of the conflict of interest prohibitions specified in rules the Board adopts (see "**Duties of the Board**," above).⁶⁰

Under the bill, a lawsuit for damages that is based on professional services that were rendered or that should have been rendered by a licensed home inspector must be brought within one year after the date that the home inspection is performed. Before suing an action, a client must notify the licensed home inspector of the alleged deficiencies and must allow the licensed home inspector the opportunity to review and remedy the alleged deficiencies. The statute of limitations specified in the bill is tolled for the period that begins on the date the client notifies the licensed home inspector of the alleged deficiencies and that ends on the date that the licensed home inspector reviews, declines to review, remedies, or declines to remedy the alleged deficiencies, whichever comes later.⁶¹

The bill states that nothing in the bill's provisions regarding lawsuits can be construed to prohibit the Superintendent from investigating, or prohibit the Board from taking action against a licensed home inspector for violations of the bill if the investigation commences more than one year after the date that the licensed home inspector conducts the home inspection that is the subject of the investigation and action.⁶²

Fund

The bill creates the Home Inspectors Fund in the state treasury. The Superintendent must deposit all money collected under the bill into that fund and use it solely to pay costs associated with administering and enforcing the bill's provisions.⁶³

Definitions

The bill also defines the following terms:

(1) "Home inspection report" means a written report prepared by a licensed home inspector for compensation and issued after an onsite inspection of a residential property. A report must include all of the following:

⁶⁰ R.C. 4764.17(D).

⁶¹ R.C. 4764.17(B) and (C).

⁶² R.C. 4764.17(E).

⁶³ R.C. 4764.18.

(a) Information on any system or component inspected that, in the professional opinion of the inspector, is deficient to the degree that it is deficient;

(b) The inspector's recommendation to repair or monitor deficiencies reported under the bill;

(c) A list of any systems or components that were designated for inspection in the standards of practice adopted by the Board but that were not inspected;

(d) The reason a system or component was not inspected.

(2) "Parallel inspection" means a home inspection performed by an applicant for a home inspector license at which both of the following take place concurrently:

- A licensed home inspector observes and evaluates the applicant during the inspection to verify the applicant's compliance with the standards of practice specified in rules adopted by the Board (see "**Duties of the Board**," above).
- The inspection is an onsite inspection of a residential building for the licensed home inspector's client.

(3) "Readily accessible" means available for visual inspection without requiring a person to move or dismantle personal property, take destructive measures, or take any other action that will involve risk to a person or to the property.

(4) "Residential building" means a one-family, two-family, or three-family dwelling house, and any accessory structure incidental to a dwelling house, and includes individual dwelling units within an apartment or condominium complex containing four or more dwelling units.⁶⁴

HISTORY

ACTION	DATE
Introduced	05-09-17

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⁶⁴ R.C. 4764.01.

