



OHIO LEGISLATIVE SERVICE COMMISSION

Final Analysis

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Am. Sub. S.B. 255 132nd General Assembly (As Passed by the General Assembly)

Sens. McColley, Wilson, Jordan, Huffman, Terhar, LaRose, Coley, Hoagland, Lehner, Eklund, Beagle, Balderson, Hackett, Obhof, O'Brien, Peterson, Uecker

Reps. Roegner, Becker, Merrin, Retherford, Young, Zeltwanger, Brenner, Dean, Faber, Green, Henne, Hood, Reineke, Riedel, Seitz, Thompson, R. Smith

Effective date: April, 5, 2019; prohibitions regarding licensed home inspectors effective November 1, 2019

ACT SUMMARY

Expiration of occupational licensing boards

- Requires all occupational licensing boards to be renewed at least once every six years by the General Assembly.
- States that a board that is not renewed within six years of its last renewal or creation is triggered to expire.
- Requires all boards to be reviewed and renewed by December 31, 2024, unless created within six years of that date.
- Allows for the concluding of business and operation of an expired board and allows any person to engage in an occupation if the board that licensed that occupation has expired.

General Assembly to review occupational licensing boards

- Creates a timeline for the House of Representatives and Senate to review occupational licensing boards scheduled to be triggered to expire during a biennium.

- Requires the Senate President and the Speaker of the House to create standing committees in each chamber to review boards scheduled to be triggered to expire during a biennium.
- Requires the standing committees to review approximately 33% of the boards each biennium, and to review all boards at least once every six years.
- Requires a board before a standing committee to submit a report containing information about the board's purpose, workload, budget, and staffing.
- States that the board has the burden of proving the need for its continued existence and lists factors for a House or Senate standing committee to consider when making a determination about a board.
- Requires the Senate President and the Speaker of the House to notify the Chief of the Common Sense Initiative Office (CSIO) when a board is to be reviewed, and requires the Chief or a designee to testify before the standing committee about any information the CSIO has received regarding the board.
- Requires a standing committee to publish a report of its findings and recommendations and suggests information the report should include.
- Requires the Legislative Service Commission (LSC) to provide staff services to a standing committee performing a review of a board.

LSC Director to issue reports of bills

- Requires the LSC Director to issue reports of all bills introduced in a General Assembly that propose to substantially change or enact occupational regulations.
- States that the Director's report must compare the bill's regulatory scheme with the state's policy on occupational regulation, and the bill's potential impact on employment, consumer choice, market competition, and cost to government.
- Requires the report also to compare the bill's regulatory scheme with those of other states and with any state policy set forth in the Revised Code provisions governing the occupation.
- Allows the bill's sponsor to submit information to the Director to assist the Director with the report.



LSC Director to issue reports of occupations

- Requires the LSC Director to issue a report of 33% of the occupational licensing boards each biennium beginning in 2019, requires the report to be issued of all occupations at least once before 2024, and on a six-year rolling basis after 2024.
- Permits the Director to align the reports with a standing committee's review of occupational licensing boards.
- Requires the report to compare the current regulatory scheme for an occupation with the state's policy on occupational regulation.
- Allows the Director to require a board to submit relevant information to the Director.

Official state policy on occupational regulation

- Establishes a state policy on occupational regulation of individuals to be used when a body is reviewing an occupational licensing board or the board's actions.
- Requires the state to use the least restrictive regulation where the state finds it necessary to displace competition, and states that the least restrictive regulation is that which relies on market competition and private remedy to protect consumers.
- Lists appropriate state actions to be taken to protect against specific harms to consumers.
- Preempts local law or regulation inconsistent with the state's policy on occupational regulation to the extent that a political subdivision regulates an occupation that the state also regulates.

Home inspectors

- Establishes the Home Inspector Law and requires individuals wishing to perform home inspections to obtain a license 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 between a licensed home inspector and a client.
- Requires a real estate broker or salesperson who provides the name of a home inspector to a purchaser or seller of real estate to provide the names of at least three licensed home inspectors.
- 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 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 specified 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 Home Inspector Law's prohibited activities in accordance with specified 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 Home Inspector Law and requires the Superintendent to have fingerprint-based criminal records checks conducted on applicants for licensure.
- Requires the Superintendent to investigate complaints of violations of the Home Inspector Law 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 Home Inspector Law's provisions and allows for mediation before an investigation and settlement agreements prior to an adjudication hearing.
- Limits lawsuits brought under the Home Inspector Law 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 Inspection Recovery Fund administered by the Superintendent for the purpose of satisfying certain judgments against a licensed home inspector when the judgment creditor has exhausted other avenues for recovery.
- Creates the Home Inspectors Fund in the state treasury to be used solely to pay expenses for administering and enforcing the Home Inspector Law's provisions.

Makeup artistry

- Defines "makeup artistry" as the application of cosmetics for the purpose of skin beautification.
- Adds makeup artistry to the practice of boutique services.
- Specifies that a person may submit an affidavit or a certificate as proof of formal training or apprenticeship for a boutique services registration.

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CONTENT AND OPERATION

OCCUPATIONAL LICENSING

Expiration of occupational licensing boards

The act requires all occupational licensing boards to be renewed at least once every six years by the General Assembly. Under the act, an "occupational licensing board" means any board, commission, committee, or council, or any other similar state public body, and any administrative department (see R.C. 121.02), and any agency, division, or office of state government, that issues an occupational license.¹ (See definition of "occupational license" under "**Official state policy on occupational regulation**," below.) If a board is not renewed within six years of its last renewal or creation, the board is triggered to expire at the end of the 31st day of December of the sixth year after that renewal or creation. The board then expires at the end of the 30th day of June the following year.² Any board not renewed before December 31, 2024, except for boards created within six years from that date, will be triggered to expire on that date. A board is renewed when the General Assembly enacts a law that expressly continues statutes creating, empowering, governing, or regulating the board. The review date for a board does not change when a statute creating, empowering,

¹ R.C. 4798.01.

² R.C. 101.62(B).



governing, or regulating a board is amended. Rather, the review date is only changed if the amendment expressly alters the review date.³

The act allows a board to operate after it has been triggered to expire to wind up its affairs before the board expires. Under the act, if a board expires, any person may engage in the profession or activity that was formerly licensed by the board without a license, notwithstanding any other state law to the contrary. Additionally, the Director of Budget and Management cannot authorize the expenditure of money for a board on or after the board's expiration date.⁴

Under the act, unless the General Assembly enacts contrary laws, the orders, licenses, contracts, and other actions taken by the board remain in effect according to their terms. Similarly, any claims pending against the expired board are not terminated, but the Attorney General succeeds the board in any pending claim. The General Assembly also may transfer functions of some or all of an expired board to a successor agency, board, or officer. Additionally, a board that performs functions other than licensing or regulating an occupational license will not expire under the act. The board continues to the extent it is performing other functions.⁵

General Assembly to review occupational licensing boards

The act requires the Speaker of the House, before March 1 in an odd-numbered year of a biennium, to establish a standing committee to review those occupational licensing boards that are scheduled to expire at the end of that biennium. The standing committee must prepare and publish a report of its findings by November 1 of that year. The House must consider any bill offered by the committee regarding the renewal of any boards by December 31 of that year.

The act then requires the President of the Senate, before March 1 in the even-numbered year of a biennium, to establish a standing committee to review those occupational licensing boards reviewed by the House in the previous year. The standing committee must prepare and publish a report of its findings by November 1 in that year. The Senate must consider any bill offered by the committee regarding the renewal of any boards by December 31 of that year.

The President and the Speaker also may direct those standing committees to review a board that is not triggered to expire during that biennium but for which the

³ R.C. 101.62(E).

⁴ R.C. 101.62(B), (C), and (D).

⁵ R.C. 101.62(D) and (F).



Director of the Legislative Service Commission (LSC) has performed a review (see "**LSC Director to issue a report of occupations**," below). The standing committees must review 33% of the occupational licensing boards in each biennium, and all boards must be reviewed at least once every six years. Additionally, LSC must provide staff services to a standing committee reviewing a board under the act.⁶

Report submitted by occupational licensing board to committee

Under the act, each occupational licensing board that appears before a standing committee must submit a report that contains all of the following information:

- The board's primary purpose and its various goals and objectives;
- The board's past and anticipated workload, the number of staff required to complete that workload, and the board's total number of staff;
- The board's past and anticipated budgets and its sources of funding; and
- The number of members of its governing board or other governing entity and their compensation, if any.⁷

Evidence submitted by occupational licensing board to committee

The act requires each occupational licensing board to demonstrate to the standing committee a public need for its continued existence. In determining whether a board has demonstrated that need, the standing committee must consider, as relevant, all of the following:

- Whether continuing the board is necessary to protect the public's health, safety, or welfare, and if so, whether the board's authority is narrowly tailored to protect against present, recognizable, and significant harms to the public's health, safety, or welfare;
- Whether the public could be protected or served in an alternate or less restrictive manner;
- Whether the board serves a specific private interest;
- Whether the board's rules are consistent with the legislative mandate expressed in the statutes that created and empowered the board;

⁶ R.C. 101.63(A) and (D).

⁷ R.C. 101.63(B).



- The extent to which:
 - The board's jurisdiction and programs overlap or duplicate those of other boards;
 - The board coordinates with those other boards;
 - The board's programs could be consolidated with the programs of other state departments or boards.
- How many other states regulate the occupation, whether other states require a license, whether the initial licensing and license renewal requirements are substantially equivalent in every state, and the amount of regulation the board exercises compared to other states;
- The extent to which significant changes in the board's rules could prevent an individual licensed in Ohio from practicing, or allow an individual licensed in Ohio to practice, the same occupation in another jurisdiction without obtaining the occupational license in that other jurisdiction;
- Whether the board recognizes national uniform licensure requirements for the occupation;
- Whether private contractors could be used, in an effective and efficient manner, either to assist the board in the performance of its duties or to perform those duties instead of the board;
- Whether the operation of the board has inhibited economic growth, reduced efficiency, or increased the cost of government;
- An assessment of the board's authority regarding fees, inspections, enforcement, and penalties;
- The extent to which the board has permitted qualified applicants to serve the public;
- The extent to which the board has permitted individuals to practice elements of the occupation without a license;
- The cost-effectiveness of the board in terms of number of employees, services rendered, and administrative costs incurred, both past and present;



- Whether the board's continued operation has been impeded or enhanced by existing statutes and procedures and by budgetary, resource, and personnel practices;
- Whether the board has recommended statutory changes to the General Assembly that would benefit the public as opposed to the persons the board regulates, if any, and whether its recommendations and other policies have been adopted and implemented;
- Whether the board has required any persons it regulates to report to it the impact of board rules and decisions on the public as they affect service costs and service delivery;
- Whether persons the board regulates, if any, have been required to assess problems in their business operations that affect the public;
- Whether the board has encouraged public participation in its rule-making and decision-making;
- The efficiency with which formal public complaints filed with the board have been processed to completion;
- Whether the purpose for which the board was created has been fulfilled, has changed, or no longer exists;
- Whether federal law requires that the board be renewed in some form;
- An assessment of the board's administrative hearing process, if the board has one, and whether that hearing process is consistent with due process rights;
- Whether the requirement for occupational licensure is consistent with the official state policy (see "**Official state policy on occupational regulation**," below), serves a meaningful, defined public interest, and provides the least restrictive form of regulation that adequately protects the public interest;
- The extent to which licensing ensures that practitioners have occupational skill sets or competencies that are substantially related to protecting consumers from present, significant, and substantiated harms that threaten public health, safety, or welfare, and the impact that those criteria have on applicants, particularly those with moderate or low incomes, seeking to enter the occupation;



- The extent to which the requirement for the occupational license stimulates or restricts competition, affects consumer choice, and affects the cost of services; and
- An assessment of whether changes are needed in the board's enabling laws for it to comply with the criteria suggested by the considerations listed above.⁸

The act establishes that, for the purposes of reviewing a board, a government regulatory requirement protects or serves the public interest if it provides protection from present, significant, and substantiated harms to the health, safety, or welfare of the public.

Common Sense Initiative Office Chief to appear

The act requires the Senate President and the Speaker of the House to notify the Chief of the Common Sense Initiative Office (CSIO) when an occupational licensing board is identified to be reviewed by a standing committee.⁹ The Chief, or the Chief's designee, must appear before the committee and testify, with respect to the board, about at least the following:

- Whether CSIO has, within the past six years, received commentary related to the board under CSIO's process for adverse impact review;
- Whether CSIO has, within the past six years, received advice from the Small Business Advisory Council related to the board; and
- Any other information the Chief believes will address the board's effectiveness and efficiency, and in particular, the quality of customer service the board provides.¹⁰

Requirements for report published by standing committee

A House or Senate standing committee that has reviewed an occupational licensing board must publish a report of its findings and recommendations. The report may include information for more than one board the committee reviewed. The committee must send a copy of the report to the Senate President, the Speaker of the House, the Governor, and each affected board. The published report also must be made

⁸ R.C. 101.63(C)(1) through (27).

⁹ R.C. 101.64.

¹⁰ R.C. 101.64(A) through (C).

available to the public on the committee's website and in the offices of the Senate President and Speaker of the House during reasonable hours. As part of a report, a committee may present its recommendations to the General Assembly in bill form.¹¹

If the committee makes recommendations about a board in its report, the recommendations should indicate how the implementation of the recommendations will accomplish each of the following:

- Improving efficiency in the management of state government;
- Improving services rendered to Ohio citizens;
- Simplifying and improving preparation of the state budget;
- Conserving Ohio natural resources;
- Promoting the orderly growth of Ohio and its government;
- Promoting the idea that occupational regulations must be construed and applied to increase economic opportunities, promote competition, and encourage innovation;
- Providing for the least restrictive regulation by repealing the current regulation and replacing it with a less restrictive regulation that is consistent with the state's policies (see "**Official state policy on occupational regulation**," below);
- Improving the effectiveness of the services performed by the service departments of the state;
- Avoiding duplication of effort by state agencies or boards; and
- Improving the organization and coordination of the state government in one or more of the ways listed above.¹²

LSC Director to issue a report of bills

The act requires the LSC Director to issue a report of all bills introduced in the General Assembly that propose to substantially change or enact occupational regulations. An occupational regulation means a regulation or rule that controls an

¹¹ R.C. 101.65(A).

¹² R.C. 101.65(B).



individual's practice of a trade or profession. The report must compare the regulatory scheme proposed in the legislation with the state's policies (see "**Official state policy on occupational regulation**," below) with respect to proposing the least restrictive regulation to protect consumers from present, significant, and substantiated harms that threaten public health, safety, or welfare.

Under the act, the LSC Director must report on consequences of the legislation with respect to the following:

- Opportunities for employment within the occupation;
- Consumer choices and costs;
- Market competition; and
- Cost to government.¹³

The report also must include all of the following:

- A comparison of the bill's proposed regulatory scheme with the current regulatory scheme in other similar states for the same occupation;
- A consideration of the extent to which significant changes in the board's rules could prevent an individual licensed in Ohio from practicing, or allow an individual licensed in Ohio to practice, the same occupation in another jurisdiction without obtaining the occupational license in that other jurisdiction;
- A comparison of the bill's proposed regulatory scheme with the policy of Ohio as set forth in the Revised Code provisions governing the occupation, if those provisions include a policy.

Additionally, the act allows the sponsor of a bill substantially changing or enacting occupational regulation to submit relevant information to the LSC Director to aid in the Director's report. The information submitted by the sponsor may include all of the following:

- Evidence of present, significant, and substantiated harms to consumers in Ohio;

¹³ R.C. 103.26(A) and (B)(1) through (4).

- An explanation of why existing civil or criminal laws or procedures are inadequate to prevent or remedy any harm to the public;
- An explanation of why a less restrictive regulation consistent with the state's policies on occupational regulation is not proposed;
- The names of associations, organizations, or other groups representing the occupation seeking regulation and the approximate number of members in each in Ohio;
- The functions typically performed by members of this occupation and whether they are identical or similar to those performed by another occupation;
- Whether specialized training, education, or experience is required to engage in the occupation and, if so, how current practitioners acquired that training, education, or experience;
- Whether the proposed regulation would change the way practitioners of the occupation acquire any necessary specialized training, education, or experience, and if so, why;
- Whether any current practitioners of the occupation in Ohio lack whatever specialized training, education, or experience and how the proposed regulation would address that deficiency;
- Whether new entrants into the occupation would be required to provide evidence of any necessary training, education, or experience, or to pass an examination, or both;
- Whether current practitioners would be required to provide evidence of any necessary training, education, or experience, or to pass an examination, and, if not, why not;
- The expected impact of the proposed regulation on the supply of practitioners of the occupation and on the cost of services or goods provided by the occupation; and
- Information from others knowledgeable about the occupation, and the related economic factors.¹⁴

¹⁴ R.C. 103.26(C) and (D)(1) through (12).



The act requires the LSC Director to provide the report in a timely manner. Any bill that proposes to substantially change or enact an occupational regulation cannot be reported out of committee until after the committee has received and considered the report, unless two-thirds of the committee members vote to favorably report the bill without the report.¹⁵

LSC Director to issue a report of occupations

The act requires the LSC Director to issue a report of 33% of the occupations regulated by the state each biennium, beginning in 2019. All occupations must be reported on at least once before 2024, and at least once every six years after 2024. The Director may report on occupations on a schedule that coordinates with a standing committee's review of an occupational licensing board (see above). The report must compare the current regulatory scheme with the state's policies on occupational regulation (see "**Official state policy on occupational regulation**," below). The Director must issue a report by December 1 of each even-numbered year during a biennium and send it to the General Assembly and the Attorney General. The Director may require a board to submit relevant information to the Director.¹⁶

Additionally, the act specifies its intention that for the first biennium, starting in 2019, LSC's review of 33% of the occupations regulated by the state will not consist of the same occupations reviewed by the standing committees of the General Assembly. The intent is that the General Assembly will review the same occupations previously reviewed by LSC in the biennium starting in 2021, and every biennium thereafter.¹⁷

Official state policy on occupational regulation

The act establishes a state policy on occupational regulation of individuals (meaning natural persons), to be used when the General Assembly or other body is reviewing an occupational licensing board or the actions of a board. The policy states that occupational regulations must be construed and applied to increase economic opportunities, promote competition, and encourage innovation.

The act defines an "occupational license" as a nontransferable authorization in law that an individual must possess in order to perform a lawful occupation for compensation based on meeting personal qualifications established by statute, or by a

¹⁵ R.C. 103.26(B) and (E).

¹⁶ R.C. 103.27.

¹⁷ Section 4 of the act.



rule authorized by statute. An occupational license does not include a commercial or other driver's license issued under the Revised Code.

The act defines an "occupational regulation" as a statute, policy, rule, adjudication order, practice, or other state law requiring an individual to possess certain personal qualifications to use an occupational title or work in a lawful occupation, and includes registration, certification, and occupational license. An occupational regulation does not include a business license, facility license, building permit or zoning and land use regulation, except to the extent those laws regulate an individual's personal qualifications to perform a lawful occupation. Additionally, the definition does not include Revised Code sections related to commercial or other driver's licenses.¹⁸

Where the state finds it necessary to displace competition, the act requires the state to use the least restrictive regulation to protect consumers. The act presumes that the least restrictive regulation is that which relies on market competition and private remedy to protect consumers.¹⁹

The act also lists the appropriate state action to be taken to protect consumers from specific harms as follows:

- For regulations intended to protect consumers against fraud, the appropriate state action is to strengthen powers under the Deceptive Trade Practices Acts.²⁰
- For regulations intended to protect consumers against unsanitary facilities and general health, safety, or welfare concerns, the appropriate state action is to require periodic inspections.
- For regulations intended to protect consumers against potential damages to third parties who are not party to a contract between the seller and the buyer, and other externalities, the appropriate state action is to require bonding or insurance.
- For regulations intended to protect consumers against potential damages by transient providers, the appropriate state action is to require registration with the Secretary of State.

¹⁸ R.C. 4798.01(A) and 4798.02(A).

¹⁹ R.C. 4798.02(B).

²⁰ Chapters 1345. and 4165. of the Revised Code, not in the act.



- For regulations intended to protect consumers against asymmetrical information between the seller and buyer, the appropriate state action is to offer voluntary certification, unless suitable, privately offered voluntary certification for the relevant occupation is available.
- For regulations intended to facilitate governmental reimbursement for providing medical services for an emerging medical specialty, the appropriate state action is to require a specialty occupational license for medical reimbursement.
- For regulations required to perform services regulated by both federal and Ohio laws, that require Ohio to recognize an individual's occupational license from another state or territory to allow that individual to practice in Ohio, and that are based on uniform national laws, practices, and examinations that have been adopted by at least 50 other states and territories, the appropriate state action is to require an occupational license.²¹

The act limits enforcement of an occupational regulation to the extent that an individual sells goods or services that are included explicitly in the statute that defines the occupation's scope of practice. The act also states that it is not intended to restrict an occupational licensing board from requiring, as a condition of licensure or renewal of licensure, that an individual's personal qualifications include obtaining or maintaining a certification from a private organization that credentials individuals in the occupation. Additionally, the act states that its state policy preempts local law or regulation that is inconsistent with it, to the extent that a political subdivision regulates an occupation that is also regulated by the state.²²

Least restrictive regulation

The act defines "least restrictive regulation" as the public policy of relying on one of the following, listed from the least to the most restrictive, as a means of consumer protection:²³

- Market competition;
- Third-party or consumer-created ratings and reviews;

²¹ R.C. 4798.02(B)(1) through (6).

²² R.C. 4798.02(C) and (D) and 4798.03.

²³ R.C. 4798.01.



- Private certification;
- Specific private civil cause of action to remedy consumer harm;
- Actions under the Consumer Sales Practices Law;²⁴
- Regulation of the process of providing the specific goods or services to consumers;
- Inspection;
- Bonding or insurance;
- Registration;
- Government certification;
- Specialty occupational license for medical reimbursement; or
- Occupational license.

The state policy requires the state to use the least restrictive regulation under the above definition that will protect consumers from significant and present harms.

Criminal conviction disqualifications

The act allows an individual who has been convicted of a criminal offense to request that a licensing authority determine whether that conviction disqualifies the individual from obtaining a license issued or conferred by the licensing authority. A request must include the details of an individual's criminal conviction and any fee required by the licensing authority, not to exceed \$25 per request. The licensing authority must inform the individual of its determination within 30 days from receiving the request. However, the licensing authority is not bound by its determination if, upon further investigation, it finds out that the criminal convictions of the individual differ from what was included in the request.

Under the act, a licensing authority is a board, commission, or other entity that issues licenses under Title 47 or any other Revised Code provision to practice an occupation or profession or is a political subdivision that issues a license or that charges a fee for an individual to practice an occupation or profession in that political subdivision.

²⁴ Chapter 1345. of the Revised Code, not in the act.



Additionally, the act requires a licensing authority to make available on its public website a list of all criminal offenses for which conviction of that offense would disqualify an individual from obtaining a license issued or conferred by the licensing authority.²⁵

Rules prescribed by the Ohio Supreme Court

The act specifies that it does not apply to any rules prescribed by the Ohio Supreme Court. Under the Ohio Constitution, the Ohio Supreme Court is authorized with prescribing rules governing the practice and procedure in all Ohio courts, including rules to require uniform record keeping and rules governing the admission to the practice of law and discipline of persons admitted to practice law.²⁶

HOME INSPECTORS

Licensure of home inspectors

The act establishes the Home Inspector Law.²⁷ Beginning November 1, 2019 (210 days after the act's effective date), the act 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 Home Inspector Law as a home inspector or is performing a parallel inspection as described under "**Definitions**," below.²⁸ A person who violates this prohibition is guilty of a first degree misdemeanor.²⁹

A "home inspection" is 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 Home Inspector Law, 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

²⁵ R.C. 9.78.

²⁶ Section 3 of the act. See Ohio Const., art. IV, sec. 5.

²⁷ R.C. Chapter 4764.

²⁸ R.C. 4764.02(A) and Section 5 of the act.

²⁹ R.C. 4764.99(A).



home inspector to conduct a home inspection and to provide a written report on the condition of a residential building.³⁰

Beginning November 1, 2019, home inspections must be performed pursuant to a written contract entered into by a licensed home inspector and a client. Also, on and after that date, all home inspections must conform to the requirements specified in rules adopted by the Ohio Home Inspector Board.

The act also prohibits a person, beginning November 1, 2019, 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.³¹

The act permits the Superintendent of Real Estate and Professional Licensing (who administers and enforces the Home Inspector Law) to apply to any court of common pleas to enjoin a violation of the Law. On a showing by the Superintendent that a person has violated or is violating the Law, the court must grant an injunction, restraining order, or other appropriate relief. The act 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).³²

Persons not subject to the Home Inspector Law

The act's 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 the state or a political subdivision of Ohio for the purpose of enforcing building codes;
- A person holding a valid certificate to practice architecture issued under the Architects Law;
- An Ohio-registered professional engineer;

³⁰ R.C. 4764.01(A) and (C).

³¹ R.C. 4764.02, 4764.05, and 4764.99(B) and Section 5 of the act.

³² R.C. 121.08, 4764.15, and 4764.16.



- A heating, ventilating, and air conditioning contractor, refrigeration contractor, electrical contractor, plumbing contractor, or hydronics contractor who is licensed by the state or by a county or who is licensed or registered by a municipal corporation;
- An Ohio-licensed real estate broker, real estate salesperson, foreign real estate dealer, or foreign real estate salesperson;
- An Ohio-licensed real estate appraiser;
- A public insurance adjuster who holds a valid certificate of authority issued under the Public Insurance Adjusters Law 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;
- An Ohio-licensed commercial applicator of pesticide.³³

Ohio Home Inspector Board

The act creates the Ohio Home Inspector Board consisting of seven members. Not more than four members of the Board can be members of the same political party. The President of the Senate and the Speaker of the House each must appoint one member who represents the public and has no financial interest in the home inspection industry. The act requires the Governor to appoint five members who are licensed home inspectors. Persons appointed to the Board between April 5, 2019, and April 5, 2020, need not be licensed as required under the act.

The Governor, Senate President, and Speaker of the House must make the initial appointments to the Board not later than July 5, 2019 (90 days after the act's effective date). Board members serve five-year, staggered terms. The act includes the standard vacancy provisions. It 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.³⁴

³³ R.C. 4764.03.

³⁴ R.C. 4764.04 and Section 6 of the act.

Application for licensure

To obtain a license to perform home inspections, a person must submit to the Superintendent an application and the application and licensure fee established in rules adopted by the Board.³⁵ Each applicant 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. 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. The Superintendent of Real Estate and Professional Licensing must request criminal record information from the FBI as part of the criminal records check. The applicant must pay the fee related to the criminal records check.³⁶

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 Board's rules 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 Home Inspector Law;

(2) Proof of holding a comprehensive general liability insurance policy or a commercial general liability 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 offered by the Examination Board of Professional Home Inspectors;

(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 or by successfully completing ten parallel inspections or equivalent experience as determined by the Board;

³⁵ R.C. 4764.07(A).

³⁶ R.C. 109.572, 121.08, 4764.06, 4764.07(B), and 4776.10.



(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 it determines is relevant to receiving a license to practice as a licensed home inspector.³⁷

The act prohibits the Superintendent from requiring a certified architect or a registered professional engineer who wishes to obtain a license to perform home inspections to submit proof of education and experience as required under (4) and (5) above. Such a person, however, must satisfy all other requirements and provide proof of licensure in good standing to receive a license.³⁸

The act specifies that submitting an application 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 act's requirements.³⁹

Education and experience requirements

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

- The curriculum is offered by an accredited public or private 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 it, complete at least 80 hours of classroom or online prelicensing education, including instruction about compliance with the act's requirements, inspection safety, report writing, and any other administrative matters required by the Board.

³⁷ R.C. 4764.05 and 4764.07(D).

³⁸ R.C. 4764.07(E).

³⁹ R.C. 4764.07(C) and (F).



- The curriculum satisfies any other requirements the Board established in rules it adopts.⁴⁰

The Board must determine the equivalency of field experience that an individual may elect to complete to satisfy proof of experience. To be approved a curriculum must include:

- 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; and
- A requirement that, to successfully complete the curriculum, a person must complete a peer review session with a licensed home inspector.

The peer review session can be used as part of the required 80 hours of prelicensing education. A "peer review session" is a practical exercise in which a prospective applicant for a home inspector license identifies and reports defects in a residential building that contains previously identified defects for the purpose of evaluating the prospective applicant's ability to conduct a home inspection and prepare a home inspection report.⁴¹

Issuing a license

The act 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.⁴² A home inspector license issued or renewed pursuant to the act expires three years after the date of issuance or renewal.⁴³

Grounds for refusing to issue or renew a license

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

⁴⁰ R.C. 4764.05(A) and (C).

⁴¹ R.C. 4764.01(I) and 4764.05(A) and (D).

⁴² R.C. 4764.06(B) and 4764.07(C).

⁴³ R.C. 4764.09(A).

(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 it and resolution of all contingent issues involving the building and the transaction;

(4) Before entering into a written contract with a client, failed to disclose to the client in writing 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 another state's or federal law, or was required to register under Ohio Sexual Predators, Habitual Sex Offenders, and Sexually Oriented Offenders Law;⁴⁴

(6) Failed to maintain or provide copies of records to the Superintendent or failed to cooperate with an investigation conducted by the Superintendent as required by the act (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 act);

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

(8) Violated rules adopted by the Board or otherwise failed to comply with the act;

(9) Failed to establish to the Superintendent's satisfaction that the applicant is honest, truthful, and of good reputation;

⁴⁴ R.C. Chapter 2950.

(10) Failed to submit proof of satisfying the act's continuing education requirements.⁴⁵

Liability insurance policy requirements

The act 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. The policy 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 a licensed home inspector's employer maintains the insurance policy covering the 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 policy.⁴⁶

Grandfathering provision

During the period of time beginning on the date the last initial Board member is appointed and ending 120 days afterward, the Superintendent must issue a home inspector license if a person satisfies the requirements specified below. The individual must apply for a license on a form the Superintendent provides, pay the fee the Board establishes, and demonstrate proof of maintaining or being covered by a comprehensive general liability insurance policy or a commercial general liability insurance policy as described above. The applicant also must submit proof by direct documentation or signed affidavit attesting to having met any three of the following requirements to demonstrate participation in the home inspection field before April 5, 2019:

(1) Having performed at least 200 home inspections for clients for compensation or other valuable consideration;

(2) Having successfully passed the National Home Inspector Examination offered by the Examination Board of Professional Home Inspectors;

(3) Having actively operated a home inspection business in Ohio for three years before April 5, 2019, under a business name officially registered with the Secretary of State;

⁴⁵ R.C. 4764.14.

⁴⁶ R.C. 4764.11(A).



(4) Having been employed as a home inspector for the consecutive 36 months before April 5, 2019, by an inspection company or individual whose owner or manager meets the act's license requirement;

(5) Having successfully completed 80 hours of instruction of a type described under "**Continuing education**," below;

(6) Having a license, registration, or certification in good standing to perform the duties of a home inspector in another jurisdiction that has requirements for licensure, registration, or certification that are substantially similar to the Home Inspector Law;

(7) Having prepared at least five home inspection reports that have been verified as being in compliance with standards adopted by a national organization that consists of and represents home inspectors;

(8) Having completed, not more than one year before April 5, 2019, at least one peer review session conducted by a national organization that consists of and represents home inspectors.

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 act. The Superintendent must have a fingerprint-based criminal records check conducted on any applicant who applies for a license under the grandfathering provision in accordance with the requirements specified in continuing law governing those checks and the procedures the Board adopts in rules. A license issued under the grandfathering provision is valid for three years and can be renewed in accordance with the act's renewal procedure.⁴⁷

Reciprocity

The Superintendent may issue a home inspector license to an applicant who holds a license, registration, or certification as a home inspector in another jurisdiction if the 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 act as Ohio grants to persons in that jurisdiction, and that jurisdiction has licensing,

⁴⁷ Section 8 of the act.



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 Home Inspector Law.

(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.⁴⁸

Real estate brokers and salespersons

The act requires a real estate broker or salesperson who provides the name of a home inspector to a purchaser or seller of real estate to provide at least three names. Any home inspector named by the broker or salesperson at the request of a buyer or seller must be licensed under the act. Providing a purchaser or seller with the names of licensed home inspectors does not constitute an endorsement or recommendation of those inspectors and does not obligate the broker or salesperson to satisfy any due diligence requirements with respect to the licensed home inspectors.

Under the act, a broker or salesperson is not required to provide a purchaser or seller with information on home inspection services or home inspectors. No cause of action arises against a broker or salesperson for providing or failing to provide the names of licensed home inspectors or information on home inspection services or for failing to recommend a home inspector to a purchaser or seller.⁴⁹

If a real estate broker or salesperson provides a buyer or seller with the names of home inspectors, but fails to provide the names of at least three licensed home inspectors, the Superintendent may initiate disciplinary action against the broker or

⁴⁸ R.C. 4764.10.

⁴⁹ R.C. 4735.22.



salesperson or serve a citation and impose sanctions on the broker or salesperson.⁵⁰ Disciplinary actions, citations, and sanctions against brokers and salespersons are governed by the Real Estate Brokers Law.⁵¹

Record keeping

Under the act, a licensed home inspector must retain for five years the original or a true copy of each written contract for the licensee'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 the retention period expires, 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 must make the records available for inspection and copying by the Superintendent on reasonable notice to the licensee.⁵²

License renewal

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 expiration date:

- (1) A renewal application pursuant to the procedures established by the Board;
- (2) Proof of holding or being covered by the required comprehensive general liability insurance policy or a commercial general liability insurance policy;
- (3) Proof of satisfying the act's continuing education requirements.

The Superintendent must renew a home inspector license for any person who satisfies the act's requirements for renewal.⁵³

A licensed home inspector who fails to renew a license before it expires 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 act prohibits a licensed home inspector who applies for a late renewal during the three-month period from engaging in any activities the license being

⁵⁰ R.C. 4735.181, with a conforming change in R.C. 4735.99.

⁵¹ R.C. Chapter 4735.

⁵² R.C. 4764.11(B).

⁵³ R.C. 4764.06(A)(4) and 4764.09(B)(1).



renewed permits until the Superintendent notifies the licensed home inspector that the license has been renewed.

Under the act, 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.⁵⁴

Continuing education

During each three-year license period, a licensed home inspector must successfully complete at least 14 hours of continuing education instruction annually in courses or programs directly applicable to the standards of practice and requirements specified in the Board's rules. 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 act prohibits the Superintendent from including parallel inspections completed by a person for credit toward satisfying the continuing education requirements.⁵⁵

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

- The course or program is offered by an institution or organization approved by the Superintendent;
- The course or program satisfies the standards established in rules adopted by the Board;
- The institution or organization pays the fee established in rules adopted by the Board.⁵⁶

⁵⁴ R.C. 4764.09(B)(2) and (C).

⁵⁵ R.C. 4764.05, 4764.06, and 4764.08.

⁵⁶ R.C. 4764.06(A).



Enforcement

Preinvestigation settlements

Within five business days after a person files a complaint against a licensed home inspector with the Superintendent, the act requires the Superintendent (1) to provide to that person an acknowledgment of the receipt of the complaint and (2) to 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 act. Within 20 days after the Superintendent sends the notice, the complainant and the licensed home inspector may request an informal mediation hearing. If both the complainant and the licensed home inspector file a request, the Superintendent must notify them of the hearing's date and time.

A mediator employed by the Superintendent must conduct the informal mediation hearing. If an accommodation is reached during that informal mediation hearing, the mediator must send a written report describing the accommodation to the Superintendent, complainant, and licensee. Notwithstanding the act's provision that allows the Superintendent to release information relating to licensees, the written report describing the accommodation is confidential and is not a public record for purposes of Ohio's Public Records Law. The Superintendent must 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.⁵⁷

Investigations

Under the act, the Superintendent may investigate complaints against licensed home inspectors (1) on receipt of a written complaint concerning any alleged violation of the act or (2) on the Superintendent's or Board's motion, and may subpoena any witnesses in connection with 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.

⁵⁷ R.C. 4764.12(B), by reference to R.C. 149.43, not in the act.



The Superintendent must 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 Home Improvement Law. Additionally, the Superintendent may utilize the investigators and auditors employed pursuant to the Real Estate Broker Law to assist in the Superintendent's investigation and audit duties.⁵⁸

The act does not prohibit 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 remains confidential.⁵⁹

Subpoena powers

The act 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 act 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 act 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.

In addition to those powers, 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 act permits any court of common pleas, on the Board's or Superintendent's application setting forth that 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.

The act 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

⁵⁸ R.C. 4767.06(A) and 4764.12(A).

⁵⁹ R.C. 4764.12(C).

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, on motion supported by proof, may 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 act. If the person is brought before the court by virtue of the attachment, and if on a hearing the disobedience appears, the court may order the offender to be committed and kept in close custody.⁶⁰

Hearings and disciplinary action

If, on examining the results of an investigation, the Superintendent determines that reasonable evidence exists that a licensed home inspector has violated the act'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 act requires the Superintendent to proceed in accordance with the notice and hearing requirements prescribed in the Administrative Procedure Act (APA). After a hearing officer appointed by the Superintendent conducts a hearing in accordance with the APA and issues a report and recommendations, all parties may file objections to the report and recommendations as permitted under the APA. The act 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.

⁶⁰ R.C. 4764.12(D) and (E).



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

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.⁶¹

Under the act, the Board's decision is final, subject to review under the APA and appeal to the Franklin County Court of Common Pleas.⁶²

Settlement agreements

At any time after the Superintendent notifies a licensed home inspector that a hearing will be held, but before the hearing date, 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 Board rules. If the parties enter into the settlement agreement and comply with all of the requirements set forth in that agreement, the investigation regarding that alleged violation is considered closed. The settlement agreement is a public record for purposes of Ohio's Public Records Law.⁶³

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 act requires the Superintendent to comply with the requirements of that law and any rules adopted pursuant to it with respect to a home inspector license.⁶⁴

⁶¹ R.C. 4764.13.

⁶² R.C. 4764.13(F).

⁶³ R.C. 4764.05 and 4764.13(C).

⁶⁴ R.C. 4764.19.



Human trafficking

The act requires the Superintendent to comply with the continuing law procedures in the event a licensed home inspector is convicted of, or pleads guilty to, the offense of trafficking in persons.⁶⁵

Sanctions against unlicensed activity

The act creates 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.

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

The act 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 APA for notices given to licensees, except that the notice must specify that a hearing will be held and specify its date, time, and place.⁶⁶

The Board must hold a hearing regarding the alleged violation in the same manner prescribed for an adjudication hearing under the APA. If the Board, after the

⁶⁵ R.C. 4764.20 and 4776.20.

⁶⁶ R.C. 4764.16(A) and (B).



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 act. Each day a violation occurs or continues is a separate violation. The act 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 APA. The Superintendent may approve a payment plan if the unlicensed person requests one.⁶⁷

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 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.

If the Board finds, or an unlicensed person admits to the Board, that the unlicensed person violated the prohibitions, the Superintendent cannot issue the person a home inspector license without prior Board approval.⁶⁸

Civil actions

Except as provided below, the act states that nothing in the Home Inspector Law can be construed to create or imply a private cause of action against a licensed home inspector for a violation of the Law if that action is not otherwise maintainable under common law. The act states that its remedies under it are the exclusive remedies for alleged violations of the conflict of interest prohibitions specified in the Board's rules.⁶⁹

Under the act, 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, 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 is tolled for the period that begins on the date the client notifies the licensed home inspector of the alleged deficiencies and that

⁶⁷ R.C. 4764.16(C).

⁶⁸ R.C. 4764.16(D) and (E).

⁶⁹ R.C. 4764.05 and 4764.17(A) and (D).

ends on the date that the licensed home inspector reviews, declines to review, remedies, or declines to remedy the alleged deficiencies, whichever comes later.⁷⁰

The act states that nothing in its 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 act 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.⁷¹

Home Inspection Recovery Fund

The act creates the Home Inspection Recovery Fund administered by the Superintendent for payment of judgments related to home inspectors. The Board, in accordance with rules it adopts, must impose a special assessment for the Fund on each person applying for a license and each licensee applying for renewal. The table below describes the amount of the fee to be assessed based on the Fund's balance.⁷²

Fund balance on July 1 preceding the application	Amount of assessment per year of the licensing period
Less than \$250,000	May not exceed \$5
More than \$500,000 but less than \$1 million	May not exceed \$3
More than \$1 million	No assessment

A person who obtains a final judgment against a licensed home inspector based on a transaction that can only be performed by a licensed home inspector may apply to the Franklin County Court of Common Pleas requesting a payment from the Fund, provided the home inspector's conduct violated the act or Board rules. The applicant must describe in the application the nature of the act or transaction on which the underlying judgment was based, the actions the applicant took under continuing law to collect the judgment, the applicant's actual and direct losses, attorney's fees, and the applicant's court costs.⁷³

The applicant must file notice of the application with the Superintendent. The Superintendent may defend any action on the Fund's behalf using any appropriate

⁷⁰ R.C. 4764.17(B) and (C).

⁷¹ R.C. 4764.17(E).

⁷² R.C. 4764.21(A).

⁷³ R.C. 4764.21(B)(1) and (3).



means of defense and review, including examination of witnesses, verification of actual and direct losses, and challenging the underlying judgment to determine whether the underlying judgment is based on activity only a licensed home inspector is permitted to perform. The Superintendent may ask the court to dismiss the application if it appears there are no triable issues and the application is without merit. The request for dismissal may be supported by an affidavit of any person having knowledge of the facts and may be made on the basis that the application, including the judgment referred to in it, does not merit recovery from the Fund. The Superintendent must give written notice to the applicant at least ten days before requesting a dismissal. The Superintendent may, subject to court approval, settle a claim based on the application. In the settlement, the Superintendent is not bound by any prior compromise or stipulation of the judgment debtor.⁷⁴

A court must order the Superintendent to make a payment from the Fund when the applicant proves all of the following:

- (1) The applicant obtained a judgment;
- (2) All appeals from the judgment have been exhausted and the person has given notice to the Superintendent;
- (3) The person is not a judgment debtor's spouse or the spouse's personal representative;
- (4) The applicant has diligently pursued the applicant's remedies against all the judgment debtors and all other persons liable to the applicant in the transaction for which the applicant seeks recovery from the Fund;
- (5) The application was filed not more than one year after termination of all proceedings connected to the judgment, including appeals.⁷⁵

An applicant cannot recover punitive damages, attorney's fees, or interest on a judgment from the Fund. Court costs can be recovered from the Fund only if the Superintendent authorizes the recovery. The Fund cannot be used to recover any of the following:

- (1) Judgments related to home inspections conducted by an unlicensed individual;

⁷⁴ R.C. 4764.21(C).

⁷⁵ R.C. 4764.21(B)(4).

(2) Losses incurred by a bonding company when the company is not a principal in the real estate transaction;

(3) Fees or other compensation for the performance of a home inspection or related services performed by a licensed home inspector;

(4) Losses incurred by a real estate investor if the applicant and the licensee are principals in the investment.⁷⁶

The Fund's liability cannot exceed \$40,000 per licensee. If \$40,000 is insufficient to pay all of the valid claims against a licensee, the \$40,000 must be distributed among the persons entitled to it in the ratio that their respective claims bear to the total amount of valid claims or in any manner the court finds equitable. Distribution must be among all persons entitled to it, without regard to the order of priority in which their respective judgments were obtained or their claims were filed. The Superintendent may petition the court for an order requiring all claimants and prospective claimants against one licensee to be joined in one action for the purpose of equitably adjudicating and settling the respective rights of all the claimants.⁷⁷

If, at any time, the money deposited in the Fund is insufficient to satisfy an authorized claim or portion of a claim, the Superintendent must satisfy the unpaid claims or portions when sufficient money has been deposited in the Fund, in the order that the claims or portions were originally filed. Authorized payments that are delayed because of insufficient money accrue interest at a rate specified in the continuing law generally governing interest.⁷⁸

When the Superintendent has paid money from the Fund to a judgment creditor in accordance with a court order, the Superintendent is subrogated to all of the rights of the judgment creditor to the extent of the amount paid. The judgment creditor must assign all the judgment creditor's right, title, and interest in the judgment to the Superintendent to the extent of the amount paid. Any money, including interest, recovered by the Superintendent as a subrogee must be deposited into the Fund.⁷⁹

If the Superintendent pays money from the Fund to settle a claim or to satisfy a judgment against a licensed home inspector, the Superintendent may suspend the home inspector's license. The act prohibits the Superintendent from reactivating the license

⁷⁶ R.C. 4764.21(B)(2) and (5).

⁷⁷ R.C. 4764.21(D).

⁷⁸ R.C. 4764.21(F).

⁷⁹ R.C. 4764.21(G).



until the home inspector repays the amount paid from the Fund on the home inspector's account, plus yearly interest at a rate specified in continuing law. A discharge in bankruptcy does not relieve the licensee from the suspension unless the underlying judgment was included in the discharge and the licensee has not reaffirmed the judgment. If a home inspector repays the Fund and reactivates the inspector's license, the liability of the Fund returns to \$40,000 for that licensee, but only for transactions that occur after the time of the reactivation.⁸⁰

The Superintendent's authority with respect to the Fund does not limit the Superintendent's authority to take additional disciplinary action against a licensee. In addition, the repayment of obligations to the Fund by a licensee does not nullify or modify the effect of any other disciplinary proceeding brought pursuant to the Law.⁸¹

To defray the expense of administering the Fund, the Superintendent must collect from the Fund a service fee equal to the annual interest earned on the assets of the Fund, multiplied by a rate specified in the continuing law generally governing interest. On July 1 each year, the Superintendent must calculate the amounts collected for the Fund and the interest earned.⁸²

Additional Board duties

The act requires the Board, not later than October 2, 2019 (180 days after the act's effective date), to adopt rules required under the Home Inspector Law in accordance with the APA, including rules that do all of the following:

(1) Establish standards to govern issuance, renewal, suspension, and revocation of licenses; other sanctions that can be imposed for violating the Home Inspector Law; disciplinary proceedings conducted in accordance with the act (see "**Hearings and disciplinary action**," below); and the process of reactivating a license;

(2) 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;

(3) Establish a curriculum for continuing education that a licensed home inspector must complete to satisfy the Law's continuing education requirements and

⁸⁰ R.C. 4764.21(D) and (E).

⁸¹ R.C. 4764.21(H).

⁸² R.C. 4764.21(I).

procedures to assure continuing education requirements are updated periodically to make those requirements consistent with home inspection industry practices;

(4) Establish the amount of the following fees in an amount that is sufficient to defray necessary expenses incurred in the administration of the Home Inspector Law: (a) the application and licensure fee and the special assessment for the Home Inspection Recovery Fund, which together must not exceed \$250, (b) the renewal fee and special assessment, which together 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 act;

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

(6) Establish a set of standards of practice and canons of ethics for the home inspection industry;

(7) Establish directions for the Superintendent to follow regarding the scheduling, instruction, and offerings of home inspection courses a person must successfully complete to obtain a license;

(8) Establish requirements a licensed home inspector must satisfy to obtain approval to prepare and conduct peer review sessions described under "**Examination and curriculum requirements**," above.⁸³

The act also requires the Board to do all of the following:

(1) On appeal by an affected party, or on its own motion, review orders and application determinations made by the Superintendent, and as the Board determines necessary, reverse, vacate, modify, or sustain the orders or determinations;

(2) Hear appeals from orders made by the Superintendent regarding claims against the Home Inspection Recovery Fund;

(3) Disseminate to licensees and the public information relative to the Board's activities and decisions;

⁸³ R.C. 4764.05(A) and Section 7 of the act.

(4) Notify licensees of changes in state and federal laws pertaining to home inspections and relevant case law and inform licensees that they are subject to disciplinary action if they do not comply with the changes.⁸⁴

Additional Superintendent duties

The act requires the Superintendent to administer the Home Inspector Law and exercise the powers and perform the functions and duties delegated to the Superintendent under the act. This responsibility includes:

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

(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 Home Inspector Law;

(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 Board rules, and make those requirements available to the public by posting them on the Department of Commerce website;

(7) Make a list of licensed home inspectors available to the public by posting the list on the Department's website;

(8) Appoint a hearing officer for any proceeding involving a determination described under "**Child support orders**," "**Enforcement**," or "**Sanctions against unlicensed activity**," above.⁸⁵

Home Inspectors Fund

The act also creates the Home Inspectors Fund in the state treasury. Except as described under "**Home Inspection Recovery Fund**," above, the Superintendent must

⁸⁴ R.C. 4764.05(B).

⁸⁵ R.C. 121.08 and 4764.06.

deposit all money collected under the Home Inspector Law into that fund and use it solely to pay costs associated with administering and enforcing the Law.⁸⁶

Definitions

The act also defines the following terms for purposes of the Home Inspector Law:

(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:

(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 act;

(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 Board rules.
- 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.⁸⁷

⁸⁶ R.C. 4764.18.

⁸⁷ R.C. 4764.01 and 4764.05.



MAKEUP ARTISTRY

Makeup artistry

Under the act, "makeup artistry" is newly defined as "the application of cosmetics for the purpose of skin beautification."⁸⁸ The definition further specifies that makeup artistry "does not include any other services described in the practice of any branch of cosmetology." The act also adds makeup artistry to the definition of boutique services, which under prior law included only braiding, threading, and shampooing. Under continuing law, a person engaging in the practice of boutique services must be registered by the State Cosmetology and Barber Board but does not need to be licensed in cosmetology or a branch of cosmetology.⁸⁹

In addition, the act allows an applicant for a boutique services registration to present a *certificate* (in addition to an affidavit under continuing law) to prove formal training or apprenticeship under an individual providing those services as sufficient proof of formal training or apprenticeship for registration purposes.⁹⁰ Former law allowed an applicant for a boutique services registration to submit only an affidavit to prove sufficient training or apprenticeship.

HISTORY

ACTION	DATE
Introduced	02-12-18
Reported, S. Gov't Oversight & Reform	06-27-18
Passed Senate (24-8)	06-27-18
Reported, H. Federalism & Interstate Relations	12-05-18
Re-referred, H. Rules & Reference	12-11-18
Reported, H. Gov't Accountability & Oversight	12-13-18
Passed House (56-28)	12-13-18
Senate concurred in House amendments (24-8)	12-19-18

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⁸⁸ R.C. 4713.01.

⁸⁹ R.C. 4713.35, not in the act.

⁹⁰ R.C. 4713.69.

