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# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Sens. Hottinger and Lang

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### SUMMARY

- Establishes a system for the Ohio Construction Industry Licensing Board to regulate roofing contractors, their practices, and the terms of their contracts.
- Requires, generally, beginning 120 days after the bill's effective date, that a person who is engaged in or offers to engage in or solicits roofing services for a fee register as a contractor and be subject to the bill's requirements, and specifies procedures for registration.
- Allows the Board to require the periodic renewal of registrations and to set fees for application and renewal.
- Allows the Board to deny, restrict, suspend, or revoke a registration or refuse to register an applicant if the Board finds that certain conditions apply to the contractor or applicant.
- Requires a contractor to have workers' compensation insurance, liability insurance, and a surety license bond.
- Prohibits roofing contractors from engaging in specified practices.
- Requires, beginning 90 days after the bill's effective date, any contract for more than \$750 of roofing services to be in writing and include specified documentation and information about the contractor and the work to be done.
- Allows a consumer to cancel a contract within three business days after signing it or receiving written notice that an insurance claim will be fully or partly denied.
- Specifies procedures for notifying consumers about the right to cancel a contract and procedures for canceling such a contract.
- Requires the Board to enforce the law governing contractors and to adopt any necessary rules to enforce that law, including investigating persons engaging in roofing services without a registration.

- Allows the Board to hold a hearing and impose a fine regarding a violation of the law involving a person who is not registered.
- Allows, in addition to other disciplinary actions, the Board to impose a reasonable administrative penalty for any violation of the law or any related rules by a registered contractor, and provides conditions for that penalty.
- Makes a contractor's failure to comply with the bill's requirements a deceptive act or practice in connection with a consumer transaction under Ohio's Consumer Sales Practices Act.
- Deems a contract under the bill to be in compliance with the Home Solicitation Sales Act.

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## DETAILED ANALYSIS

### Roofing contractors

The bill establishes a system for the Ohio Construction Industry Licensing Board to regulate roofing contractors, their practices, and the terms of their contracts. Under continuing law, the Board currently licenses and regulates plumbing contractors; hydronics contractors; electrical contractors; heating, ventilating, and air conditioning contractors; and refrigeration contractors.<sup>1</sup> Beginning 120 days after the bill's effective date, no contractor may undertake, offer to undertake, or agree to perform roofing services unless the contractor is registered with the Board. However, an unregistered contractor may complete a contract that the contractor is a party to and was signed before that date.<sup>2</sup>

For purposes of the bill, a "contractor" means a person (an individual or business entity) who is engaged in roofing services for a fee or who offers to engage in or solicits roofing services for a fee. "Roofing services" means the installation, renovation, repair, maintenance, alteration, or waterproofing of any roof, gutter, downspout, or siding product with regard to a residential premises.

The following persons are not subject to the bill:

- A residential or farm property owner, including the owner's employees, who perform roofing services on the owner's property;
- Any authorized government employee or representative who performs roofing services on government property;
- Any person who furnishes any fabricated or finished product, material, or article of merchandise that is not incorporated into or attached to real property by the consumer (a person who seeks roofing services) so as to become affixed to the property;
- A person who is acting as a contractor's employee or as a subcontractor.

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<sup>1</sup> R.C. 4740.02, not in the bill.

<sup>2</sup> R.C. 4740.21(A).

An “employee” of a contractor performs work in exchange for compensation that is reported as income from wages. A “subcontractor” is a person who undertakes, offers to undertake, agrees to perform, or is otherwise awarded a portion of an existing contract by a contractor but does not include a contractor’s employee.<sup>3</sup>

The bill, except as discussed above, takes effect 90 days after the bill’s effective date. The bill states that the intent of the General Assembly in enacting it is to establish minimum standards for roofing contracts and to promote fair and honest practices in the roofing services business.<sup>4</sup>

## Registration

### Application and renewal

To register as a contractor, a person must submit an application to the Board that contains all of the following information:

- The person’s name, principal business address that is not a post office box, telephone number, and, if applicable, the person’s website address and email address;
- The names and principal business addresses of all of the person’s affiliates, subsidiaries, owners, partners, trustees, officers, directors, and principal shareholders;
- A statement of whether the person or the person’s owner, partner, trustee, officer, director, or principal shareholder has ever been previously registered in Ohio as a contractor, under what other names the person or the person’s owner, partner, trustee, officer, director, or principal shareholder was previously registered, whether that registration has ever been suspended or revoked, and whether there have been any civil judgments or arbitration awards related to registration in Ohio have been entered against the person or the person’s owner, partner, trustee, officer, director, or principal shareholder during the three years immediately before applying;
- Proof of the required insurance, if the Board adopts rules requiring that proof (see “**Insurance and obligations**,” below);
- A maximum registration fee of \$100, if the Board adopts rules to require the fee.

The names and principal business addresses of a person’s affiliates, subsidiaries, owners, partners, trustees, officers, directors, or principal shareholders included in an application are not a public record under Ohio’s Public Records Law. The Board must keep those names and addresses confidential and not disclose the names and addresses.

The Board may accelerate the registration process for any applicant that is registered or licensed and in good standing as a roofing contractor in another state with similar registration or licensing standards.

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<sup>3</sup> R.C. 4740.20.

<sup>4</sup> Sections 2 and 3.

A certificate of registration issued to a contractor by the Board must contain a unique registration number and any other information the Board considers appropriate. The registration is valid from the date of issuance and is not transferable. Under the bill, the Board may adopt rules requiring the periodic renewal of contractor registrations. If the Board does so, it must set a maximum renewal fee of \$100 and the renewal cannot occur more regularly than every two years.<sup>5</sup>

### **Denial, restriction, suspension, or revocation**

The bill allows the Board to deny, restrict, suspend, or revoke a contractor registration if the Board finds that the person or the person's owner, partner, trustee, officer, director, or principal shareholder has done any of the following:

- Committed fraud, deceit, or misrepresentation in the registration process;
- Practiced or attempted to practice roofing services by fraudulent misrepresentation;
- Committed an act of gross malpractice or incompetence;
- Been convicted of a crime that indicates unfitness or incompetence to practice as a contractor, or that indicates that the person or the person's partner, trustee, officer, director, or principal shareholder has deceived or defrauded a member of the public;
- Been declared incompetent by a court of competent jurisdiction;
- Knowingly violated any provision of the law governing roofing contractors or any related rules adopted by the Board;
- Had a roofing contractor license or registration suspended or revoked in Ohio or any other jurisdiction;
- Failed to maintain the required insurance (see "**Insurance and obligations,**" below);
- Failed or refused to pay Ohio taxes;
- Failed to comply with laws requiring a foreign corporation or limited liability company to be licensed or registered with the Secretary of State to transact business in Ohio.

The Board must promptly inform the Secretary of State if it becomes aware of a person's failure to comply with the licensing or registration requirement for a foreign corporation or limited liability company.

The Board may refuse to issue a registration to an applicant who has been convicted of or plead guilty to an offense only if the offense is a disqualifying offense as specified in rules

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<sup>5</sup> R.C. 4740.20(E), 4740.21, and 4740.25.

adopted by the Board and the Board considers the circumstances of the offense in accordance with continuing law procedures when deciding whether to refuse to issue the registration.<sup>6</sup>

## **Insurance and obligations**

The bill requires a contractor to obtain all of the following in the name of the contractor:

- Workers' compensation insurance;
- Contractor's liability insurance, including completed operations coverage, in an amount of at least \$500,000;
- A surety license bond in an amount set by the Board.

The contractor is required to maintain the contractor's insurance and surety bond in full force and effect while providing roofing services.

The bill also requires a contractor, for any contract for which the contractor has begun work during the past three years, to maintain a list of all subcontractors, including full legal name and principal business address, who have performed work under the contract. A contractor also must notify the Board within 30 business days if the contractor changes the contractor's trade name or principal business address, or provides roofing services in any name other than the name in which the contractor is registered.<sup>7</sup>

## **Prohibited practices**

Under the bill, a contractor is prohibited from doing any of the following:

- Advertising, promising to pay, or rebating any portion of an insurance deductible as an inducement to the sale of goods or services, including granting an allowance or offering a discount against the fees to be charged or paying the consumer, or any person directly or indirectly associated with the property in question, any form of compensation;
- Inducing the sale of any goods or services by doing any of the following, unless the contractor and consumer sign a written addendum to the contract providing otherwise:
  - Offering or providing any upgraded work, material, or product not specified in the contract;
  - Granting any allowance or offering any discount against the fees to be charged;
  - Paying to the consumer or any other person directly or indirectly associated with the property in question, any form of compensation, including a gift, prize, bonus, coupon, credit, referral fee, trade-in or trade-in payment, advertising, or other fee or payment.
- Requiring a deposit of more than half the contract price;

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<sup>6</sup> R.C. 4740.21(D), (E), and (I) and 4740.25, by reference to R.C. 9.79, 1703.03, 1705.54, and 1706.511, not in the bill.

<sup>7</sup> R.C. 4740.24(A) and 4740.25.

- Abandoning or failing to perform, without justification, any ongoing contract or deviating from or disregarding plans or specifications in any material respect without the consumer’s consent;
- Failing to credit the consumer for any payment the consumer has made to the contractor in connection with the contract;
- Making any material misrepresentation in the procurement of a contract or making any false promise likely to influence, persuade, or induce the procurement of a contract;
- Violating any applicable state or local building codes;
- Failing to pay for materials or services rendered in connection with operating as a contractor where the contractor has received sufficient funds as payment for the particular construction work, project, or operation for which the services or materials were rendered or purchased;
- Reporting, adjusting, or negotiating a claim on behalf of the consumer or receiving compensation for referring a claim to any person who reports, adjusts, or negotiates a claim on a consumer’s behalf;
- Failing to possess any insurance required under state, federal, or local laws;
- Seeking or obtaining a power of attorney on a consumer’s behalf;
- Representing, negotiating, obtaining, or attempting to obtain an assignment of claims, rights, benefits, or proceeds from a consumer;
- Offering or advertising to represent, negotiate, obtain, or attempt to obtain an assignment of claims, rights, benefits, or proceeds from a consumer;
- Knowingly awarding a portion of a contract to, or otherwise engaging, a subcontractor who is ineligible to register as a contractor under the bill (see “**Denial, restriction, suspension, or revocation,**” above).

A contractor may provide information or a professional opinion about a claim directly to a consumer.<sup>8</sup>

Under continuing law, some of those prohibited practices – for example, failure to perform a contract, failure to pay business debts, or making false promises in procuring a contract – would be considered fraud, theft, or breach of contract. A person currently could file a police report against a contractor or sue the contractor for money damages, but would not necessarily be able to ask a regulatory body to impose administrative sanctions, as the bill allows (see “**Enforcement,**” below).<sup>9</sup>

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<sup>8</sup> R.C. 4740.24(B) and (C).

<sup>9</sup> See, e.g., R.C. 2913.02, not in the bill.

## Contracts for roofing services

### Contents

The bill requires any contract for roofing services for more than \$750 to be in writing and to include all of the following documentation and information:

- The complete agreement between the consumer and the contractor, with a clear description of any other documents that are or will be incorporated into the contract;
- The contractor's full legal name, business names, principal business address that is not a post office box, telephone number, email address (if available), and registration number;
- Either of the following:
  - A description of the contractor's insurance coverage (see "**Insurance**," above), including the insurance policy limits, the effective dates of applicable policies, and the name of the insurer;
  - A statement that a description of the contractor's insurance coverage may be accessed at a specific website or otherwise provided to the consumer on request.
- An itemized description of the work to be done, the cost of labor, and the materials to be used;
- The total amount agreed to be paid for the work, including all change orders and work orders;
- An approximation of the cost expected to be borne by the consumer, if some or all of the cost will be paid by the consumer's insurer;
- A provision allowing payment to be made by cash, check, or credit card, at the consumer's discretion;
- The signatures of all parties to the contract, with a statement in substantially the following form, in immediate proximity to the consumer's signature, in boldface type of at least ten-point font (see "**Cancellation**," below):

**You may cancel this contract not later than the third business day after entering into this contract. If this contract is related to an insurance claim, you may also cancel the contract not later than the third business day after you are notified that your insurer has denied all or any part of a claim or loss related to the contract. See the attached notice of cancellation form for an explanation of this right.**

The contract must be accompanied by a fully completed form in duplicate, which must be attached to the contract but easily detachable, and must contain the following statement in boldface type of at least ten-point font:

#### NOTICE OF CANCELLATION

**You may cancel this contract not later than the third business day after entering into the contract. If this contract is related to an insurance claim, you may also cancel the contract not later than the third business day after you are notified that your insurer has denied all or any part of your claim or loss. You may cancel the contract by mailing or delivering a signed and dated copy of this cancellation notice or any other written notice to (name of contractor) at (contractor's principal business address) at any time before the application deadline. You may also send a cancellation notice through electronic mail if the contractor has provided an electronic mail address. If you cancel, any payments you have made under the contract will be returned to you, less a reasonable charge for services and materials provided, not later than the tenth business day after you send the cancellation notice to the contractor, and any security interest arising out of the transaction will be canceled. You must retain a copy of the cancellation notice.**

**I HEREBY CANCEL THIS TRANSACTION**

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**(Date)**

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**(Signature)**

At the time a contract is signed, the bill requires the contractor to provide to the consumer a copy of the contract signed by both parties. No work may begin before the contract is signed and a copy is transmitted to the consumer. The contract and cancellation notice may be delivered and signed electronically in accordance with Ohio's Uniform Electronic Transactions Act, which specifies that an electronic record or signature satisfies legal requirements and is considered a written record.<sup>10</sup>

### **Cancellation**

Under the bill, a consumer may cancel a contract for roofing services not later than the third business day after the consumer enters into the contract. Additionally, if a consumer has entered into a contract that is to be paid from the proceeds of a property or casualty insurance policy claim, the consumer may cancel the contract not later than the third business day after receiving written notice from the insurer that all or any part of the claim in question is not covered under the insurance policy.

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<sup>10</sup> R.C. 4740.20(E) and 4740.22, by reference to R.C. Chapter 1306.



A contract is canceled when the consumer gives written notice of the cancellation to the contractor at the principal business address or email address (if applicable) stated in the contract. Notice given by physical mail is effective on deposit into the U.S. mail, postage prepaid, and properly addressed to the contractor. Notice of cancellation is not required to be in any particular form, and the notice is sufficient if it indicates, by any form of written expression, the consumer's intention not to be bound by the contract. The consumer must retain a copy of the cancellation notice for a reasonable period of time.

Not later than the tenth business day after the contract is canceled, the contractor must tender to the consumer or the possessor of the residential premises any payments, partial payments, or deposits made by the consumer and any note of indebtedness. If, however, the contractor has performed services or provided materials that the consumer has acknowledged in writing, the contractor is entitled to the reasonable value of those services or materials.<sup>11</sup>

## **Enforcement**

The bill requires the Board to enforce the law governing roofing contractors. For any violation of that law or any related rules by a registered contractor, the bill allows the Board to impose a reasonable fine in an amount not to exceed the contract price plus any administrative costs. If the violation does not involve a specific contract, the amount of fine cannot be more than \$1,000 per violation. In determining whether and in what amount to impose a fine, the Board must consider the seriousness of the violation, the impact of the violation on the injured party, any mitigating factors on the part of the violator, and any previous violations by the violator. The violator must pay the fine within 30 days after the Board issues an order imposing the fine.<sup>12</sup>

## **Investigations and hearings**

The bill requires the Board to investigate allegations of violations of the law governing roofing contractors or any rules adopted to implement the law, and adopt rules specifying the procedures for conducting investigations and hearings. An investigator appointed by the Director of Commerce may investigate, on the Board's behalf, any person who is engaging in or offering to engage roofing services without a contractor registration required by the bill. If the Board determines that reasonable evidence of a violation exists, the Board must send the person a written notice that the person may request a hearing in accordance with the Administrative Procedure Act. The Board may take action, by a majority vote of a quorum of the Board's members, against the person without a hearing if the person fails to request a hearing within 30 days after the Board sends the notice. If the person requests a hearing, and the Board determines that a violation has occurred after holding the hearing, the Board may impose a fine on the person as described in "**Enforcement**," above on an affirmative vote of a majority of the Board's members. The person may appeal the Board's order imposing the fine.

If the Board assesses a civil penalty against a person and the person fails to pay the civil penalty within 30 days after the Board issues the order, the Board must forward the person's

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<sup>11</sup> R.C. 4740.23.

<sup>12</sup> R.C. 4740.25(C) and 4740.251.

name and the amount of the civil penalty to the Attorney General for the purpose of collecting the civil penalty. The person also must pay any collection fee assessed by the Attorney General.<sup>13</sup>

## Deceptive acts or practices

A contract for roofing services under the bill is deemed to be in compliance with the requirements of a contract for a home solicitation sale under the Home Solicitation Sales Act. A home solicitation sales contract must be in writing and signed by the buyer and seller of the home and include a notice of cancellation for the buyer to cancel the contract. The bill also states that it does not limit or diminish the rights or remedies available under the act regarding home solicitation sales, including the right to cancel a contract.<sup>14</sup>

Additionally, a contractor's failure to comply with the bill constitutes a deceptive act or practice in connection with a consumer transaction under Ohio's Consumer Sales Practices Act (CSPA). Without limiting the scope of what is considered a prohibited practice, the CSPA lists examples of acts or practices that are considered unfair or deceptive. Generally, these prohibited practices involve a supplier misrepresenting the subject of a consumer transaction as having a particular feature or warranty or being of a particular standard.<sup>15</sup> The Attorney General may bring action against a supplier who violates the CSPA, including an injunction or civil penalty, or a consumer may sue a supplier for a violation.<sup>16</sup>

## Rules

Under the bill, the Board must adopt rules as necessary to carry out the bill. The Board must consider the roofing industry's workforce needs when adopting the rules.<sup>17</sup>

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## HISTORY

Action	Date
Introduced	02-17-21

S0064-I-134/ts

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<sup>13</sup> R.C. 4740.25(A) and (D) and 4740.252, by reference to R.C. 119.07 and 119.09, not in the bill.

<sup>14</sup> R.C. 4740.26, by reference to R.C. 1345.21 to 1345.28, not in the bill.

<sup>15</sup> R.C. 4740.253, by reference to R.C. 1345.02, not in the bill.

<sup>16</sup> R.C. 1345.06, 1345.07, and 1345.09, not in the bill.

<sup>17</sup> R.C. 4740.25(A) and (B).