



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

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S.B. 115

132nd General Assembly
(As Introduced)

Sens. Bacon, Hackett

BILL SUMMARY

Application of the bill

- Establishes a system for the Ohio Construction Industry Licensing Board (the Board) to regulate roofing contractors, their practices, and the terms of their contracts.
- Provides generally that any person who seeks to provide roofing, gutter, downspout, and siding services with regard to a residential premises, including any nonresident contractor, independent contractor, day laborer, or subcontractor, is considered a roofing contractor and is subject to the bill's requirements.
- Excludes certain persons from the bill's requirements, including property owners who work on their own property and government employees who work on government property.
- Specifies that the bill's provisions take effect 180 days after the bill is filed with the Secretary of State.

Roofing contractors

- Requires that, beginning 30 days after the bill's provisions take effect, any person who offers or agrees to perform roofing, gutter, downspout, or siding services must be registered with and approved by the Board as a roofing contractor.
- Allows an unregistered person to complete a roofing contract that already existed as of that date.
- Specifies the required contents of an application to register as a roofing contractor.

- Permits the Board to accelerate the registration process for any applicant that is registered and in good standing as a roofing contractor in another state with similar registration standards.
- Allows the Board to require the periodic renewal of registrations and to set fees for application and renewal.
- Specifies that the Board may 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, such as past fraud or malpractice or failure to comply with the bill's requirements.
- Requires a roofing contractor to have workers' compensation insurance, liability insurance, and a surety license bond.
- Prohibits roofing contractors from engaging in certain practices, including paying an insurance deductible, requiring a deposit of more than half the contract price, engaging in certain advertising and other business practices, fraud, and failure to perform work.

Contracts for roofing services

- Requires any roofing contract for more than \$750 to be in writing and to include several specified types of documentation and information about the contractor and the work to be done.
- Allows a consumer who signs a roofing contract to cancel the contract within three business days after signing it or within three business days after receiving written notice that an insurance claim will be fully or partly denied.
- Specifies procedures for notifying consumers about the right to cancel a roofing contract and for canceling such a contract.

Enforcement

- Requires the Board to enforce the law governing roofing contractors and to adopt any necessary rules to enforce that law.
- Allows the Board to impose a reasonable administrative penalty for any violation of that law or any related rules, and provides conditions for that penalty.
- States that the Board must be provided with sufficient funding to carry out its duties under the bill.

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CONTENT AND OPERATION

Application of the bill

The bill establishes a system for the Ohio Construction Industry Licensing Board (the Board) to regulate roofing contractors, their practices, and the terms of their contracts. Under continuing law, the Board operates within the Department of Commerce and is made up of 17 Ohio residents. The Board currently licenses and regulates plumbing and hydronics contractors; electrical contractors; heating, ventilating, and air conditioning contractors; and refrigeration contractors.

In general, any person who seeks to provide roofing, gutter, downspout, and siding services with regard to a residential premises, including any nonresident contractor, independent contractor, day laborer, or subcontractor, is considered a roofing contractor and is subject to the bill's requirements. "Person" includes a business entity, and "roofing, gutter, downspout, and siding services" means the installation, renovation, repair, maintenance, alteration, or waterproofing of any roof, gutter, downspout, or siding product with regard to a residential premises.¹

The following persons are not subject to the bill:²

- Residential or farm property owners, including their employees, who perform roofing, siding, gutter, or downspout services on their own property;

¹ R.C. 4740.20 and 4740.21(A). See also R.C. 4740.02, not in the bill.

² R.C. 4740.20(B) and 4740.27.



- 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 so as to become affixed to the property. "Consumer" means any individual seeking the services of a roofing contractor.

The bill's provisions take effect 90 days after the bill's effective date – that is, 180 days after the bill is filed with the Secretary of State. 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.³

Roofing contractors

Registration

Application and renewal

Beginning 30 days after the bill's provisions take effect, the bill requires any person who undertakes, offers to undertake, or agrees to perform roofing, gutter, downspout, or siding services to be registered with and approved by the Board as a roofing contractor. However, an unregistered person may complete a roofing contract that already existed as of that date. "Roofing contract" means a contract issued under the provisions of the bill to provide roofing, gutter, downspout, and siding services.

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

- The applicant's name, home address, business address, telephone number, electronic mail address, website address, and Social Security number;
- The name and addresses of any and all affiliates, subsidiaries, partners, or trustees of the applicant, including, in the case of corporate entities, the names and addresses of any and all officers, directors, and principal shareholders;
- A statement of whether the applicant has ever been previously registered in Ohio as a roofing contractor, under what other names the applicant was previously registered, whether there have been previous judgments or

³ Sections 2 and 3 of the bill.



arbitration awards against the applicant, and whether that registration has ever been suspended or revoked;

- Proof of the required insurance, if the Board requests that proof (see "**Insurance**," below);
- A fee, if the Board decides to charge a registration fee. If the Board charges a fee, it must adopt rules setting a maximum fee of \$100.

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

A certificate of registration issued by the Board must contain a unique registration number and other information the Board considers appropriate. The registration is valid for roofing, gutter, downspout, and siding services from the date of issuance and is not transferable. Under the bill, the Board may require the periodic renewal of roofing contractor registrations. If the Board does so, it must adopt rules setting a maximum renewal fee of \$200. All registration and renewal fees collected by the Board must be used to administer the law governing roofing contractors.⁴

Denial, restriction, suspension, or revocation

The bill allows the Board to deny, restrict, suspend, or revoke a roofing contractor's registration, or refuse to register an applicant, if the Board finds that any of the following apply to the contractor or applicant:⁵

- The person has employed the use of fraud, deceit, or misrepresentation in the registration process;
- The person has practiced or attempted to practice roofing, gutter, downspout, or siding services by fraudulent misrepresentation;
- The person has committed an act of gross malpractice or incompetence;
- The person has been convicted of a crime that indicates that the person is unfit or incompetent to practice as a roofing contractor, or that indicates that the person has deceived or defrauded the public, as set forth in Board rules;

⁴ R.C. 4740.20(E) and 4740.24.

⁵ R.C. 4740.24(F)(1).



- The person has been declared incompetent by a court of competent jurisdiction;
- The person has knowingly violated any provision of the law governing roofing contractors or any related rules adopted by the Board;
- The person has had a roofing contractor license or registration suspended or revoked in Ohio or any other state;
- The person has failed to maintain the required insurance (see "**Insurance**," below);
- The person has failed or refused to pay Ohio taxes.

Practices

Insurance

The bill requires a roofing contractor, while providing roofing, gutter, downspout, or siding services, to have all of the following:

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

If the roofing contractor is a corporate entity, the liability insurance and the surety bond must be in the name of the corporate entity.⁶

Prohibited practices

Under the bill, a roofing contractor is prohibited from doing any of the following:⁷

- Advertising, promising to pay, or rebating any portion of any insurance deductible as an inducement to the sale of goods or services, including granting any allowance or offering any 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.

⁶ R.C. 4740.25.

⁷ R.C. 4740.20(B) and (C) and 4740.26.



- Requiring a deposit of more than half the contract price. "Contract" includes the entire cost of the construction undertaking, including labor, materials, rentals, and all direct and indirect project expenses.
- Inducing the sale of any goods or services by doing any of the following:
 - Offering or providing any upgraded work, material, or product in contrast with the terms of 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.
- Abandoning or failing to perform, without justification, any ongoing contract or project, or deviating from or disregarding plans or specifications in any material respect without consent of the consumer;
- 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 pertinent state or local building codes;
- Failing to notify the Board within 30 business days of any change of trade name or address, or of providing roofing services in any name other than the one in which the contractor is registered;
- 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;
- Performing the reporting, adjusting, or negotiating of a claim on behalf of the consumer or receiving compensation for the referral to any entity that reports, adjusts, or negotiates a claim on behalf of a consumer;

- Failing to possess any insurance required under state, federal, or local laws.

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).⁸

Contracts for roofing services

Contents

The bill requires any roofing contract 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 roofing contractor, with a clear description of any other documents that are or will be incorporated into the contract;
- The roofing contractor's full legal name, business names, principal address that is not a post office box, telephone number, electronic mail address (if available), and registration number;
- The name of the consumer's insurer, if applicable;
- A description of the roofing contractor's required insurance coverage, including the insurance policy limits and the name of the insurer;
- An itemized description of the work to be done and the materials to be used;
- The total itemized amount agreed to be paid for the work, including all change orders and work orders;
- A description of who will perform the work, including any subcontractors, independent contractors, day laborers, and any others who are considered roofing contractors under the bill, including each such person's full legal name, principal address that is not a post office box,

⁸ See, e.g., R.C. 2913.02, not in the bill.

telephone number, electronic mail address (if available), and registration number;

- 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 at any time within three business days of entering into this contract with your contractor. If this contract is related to an insurance claim, you may also cancel the contract with your contractor within three business days of being 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 at any time within three business days of entering into the contract with your contractor. If this contract is in relation to an insurance claim, you may also cancel the contract with your contractor within three business days of being 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 roofing contractor) at (address of roofing contractor's place of business) at any time within three business days of receiving such notice from your insurer. You may also send a cancellation notice through electronic mail. If you cancel, any payments made



by you under the contract will be returned to you, less a reasonable charge for services and materials provided, within ten business days following receipt by the contractor of your cancellation notice, and any security interest arising out of the transaction will be canceled. You shall retain a copy of the notice of cancellation that is transmitted to the contractor.

I HEREBY CANCEL THIS TRANSACTION

(Date)

(Signature)

When a roofing contract is signed, the bill requires the roofing 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.⁹

Cancellation

Under the bill, a consumer who signs a roofing contract has the right to rescind it within three business days after signing. Additionally, if the goods or services to be provided under the contract are to be paid from the proceeds of a property or casualty insurance policy claim, the consumer may cancel the contract at any time before midnight of the third business day after receiving written notice from the insurer that all or any part of the claim is not covered under the insurance policy.

In order to cancel the roofing contract, the consumer must give written notice of the cancellation to the roofing contractor at the physical or electronic mail address stated in the contract. Notice given by physical mail is effective upon deposit into the U.S. mail, postage prepaid, and properly addressed to the roofing contractor. Notice of cancellation need not take a 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.

Within ten days after the contract is canceled, the roofing contractor must tender to the consumer or the possessor of the residential premises any payments, partial

⁹ R.C. 4740.21.



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.¹⁰

Enforcement

The bill requires the Board to enforce the law governing roofing contractors and to adopt rules as necessary to enforce that law. For any violation of that law or any related rules, the bill allows the Board to impose a reasonable administrative penalty of not more than the contract price plus any administrative costs. The penalty and costs must be paid within 30 days of the Board's order. In determining whether to impose a penalty, the Board must consider the seriousness of the violation, the impact of the violation on the complainant, any mitigating factors on the part of the offender, and any previous violations by the offender.

The bill also states that the Board must be provided with sufficient funding to carry out its duties under the bill.¹¹

HISTORY

ACTION	DATE
Introduced	03-22-17

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¹⁰ R.C. 4740.22 and 4740.23.

¹¹ R.C. 4740.24(F)(2) and 4740.28.

