



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

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(As Reported by H. Economic Development, Commerce, and Labor)

Reps. Hughes, Antani, Edwards, Leland, Cera, Boccieri, Clyde, K. Smith, West

BILL SUMMARY

- Establishes the Home Inspector Law and requires individuals wishing to perform home inspections to obtain a license in order to perform those inspections.
- Establishes criminal penalties for performing home inspections without a license and knowingly making, or causing to be made, a false representation concerning a material and relevant fact relating to a person's licensure as a home inspector.
- Creates the Ohio Home Inspector Board to regulate the licensure and performance of home inspectors and requires the Superintendent of Real Estate and Professional Licensing to administer the Home Inspector Law.
- Prohibits a home inspection from being performed unless it is performed pursuant to a written contract entered into between a licensed home inspector and a client.
- Requires a 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 the bill's requirements, to investigate a complaint of unlicensed activity or of performing a home inspection in a manner that does not conform to Board rules or without having entered into a contract.
- Requires the Board to hold a hearing regarding an alleged violation of the bill's prohibited activities in accordance with the bill's requirements and, if the Board finds that a violation has occurred, allows the Board to impose a fine on the person, not to exceed \$500 per violation.
- Establishes requirements an individual must satisfy to obtain a license under the bill and requires the Superintendent to have fingerprint-based criminal records checks conducted on applicants for licensure.
- Requires the Board to adopt specified rules for the bill's administration and to approve the education and experience curricula specified in the bill and the examination an applicant must pass for initial licensure.
- Specifies duties for the Superintendent that include approving continuing education providers, courses, and programs in accordance with the Board's rules and issuing and renewing licenses.
- Requires the Superintendent to investigate complaints of violations of the bill and grants the Superintendent and the Board subpoena power in relation to any matter over which the Board or Superintendent has jurisdiction and which is the subject of inquiry and investigation by the Board or Superintendent.
- Specifies disciplinary actions to which a licensed home inspector may be subject for violating the bill's provisions and allows for mediation before an investigation and settlement agreements prior to an adjudication hearing.
- Limits lawsuits brought under the bill to those actions available under common law.
- Specifies that the disciplinary actions against a licensed home inspector are the only remedies for a violation of a conflict of interest prohibition.
- Creates the Home 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 bill's provisions.



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CONTENT AND OPERATION

Licensure of home inspectors

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

¹ R.C. 4764.02(A) and Section 3.

² R.C. 4764.99(A).



The bill defines "home inspection" as the process by which a home inspector conducts a visual examination of the readily accessible components of a residential building for a client. Home inspection does not include pest inspections; environmental testing; inspection of any property or structure conducted by an employee or representative of an Ohio-licensed insurer licensed for purposes related to the business of insurance; or determination of compliance with applicable statutes, rules, resolutions, or ordinances, including, without limitation, building, zoning, or historic codes. A client, under the bill, is a person who enters into a contract with a licensed home inspector to retain for compensation or other valuable consideration the services of that licensed home inspector to conduct a home inspection and to provide a written report on the condition of a residential building.³

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

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

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

³ R.C. 4764.01(A) and (C).

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

⁵ R.C. 4764.15.

⁶ R.C. 121.08 and 4764.16.



Persons not subject to the bill

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

- A person who is employed by or whose services otherwise are retained by Ohio or a political subdivision of Ohio for the purpose of enforcing building codes;
- A person holding a valid certificate to practice architecture issued under the Architects Law;⁷
- A person registered as a professional engineer under the Professional Engineers and Professional Surveyors Law;⁸
- A heating, ventilating, and air conditioning contractor, refrigeration contractor, electrical contractor, plumbing contractor, or hydronics contractor who is licensed under the Construction Industry Licensing Board Law or by a county under the Building Standards Law, or who is licensed or registered by a municipal corporation under the Municipal Corporations–General Powers Law;⁹
- A real estate broker, real estate salesperson, foreign real estate dealer, or foreign real estate salesperson who is licensed under the Real Estate Broker Law;¹⁰
- A real estate appraiser who is licensed under the Real Estate Appraiser Law;¹¹
- A public insurance adjuster who holds a valid certificate of authority issued under the Public Insurance Adjusters Law¹² or an employee or representative of an Ohio-licensed insurer who conducts an inspection of

⁷ R.C. Chapter 4703.

⁸ R.C. Chapter 4733.

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

¹⁰ R.C. Chapter 4735.

¹¹ R.C. Chapter 4736.

¹² R.C. Chapter 3951.



any property or structure for purposes related to the business of insurance;

- A commercial applicator of pesticide who is licensed under the Pesticides Law.¹³

Ohio Home Inspector Board

The bill 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 of Representatives each must appoint one member who represents the public and has no financial interest in the home inspection industry. The bill requires the Governor to appoint five members who are licensed home inspectors. Persons appointed to the Board during the first year after the bill's effective date need not be licensed as required under the bill.

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

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

Duties of the Board

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

(1) Establish standards to govern issuance, renewal, suspension, and revocation of licenses; other sanctions that can be imposed for violating the bill; disciplinary

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

¹⁴ R.C. 4764.04 and Section 4.



proceedings conducted in accordance with the bill (see "**Hearings and disciplinary action**," below); and the process of reactivating a license;

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

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

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

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

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

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

(8) Establish the amount of the following fees in an amount that is sufficient to defray necessary expenses incurred in the administration of the bill: (a) the application and licensure fee 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 bill;



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

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

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

(12) Establish procedures for providing a licensed home inspector with notice and applications for renewal;

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

(14) 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;

(15) Establish requirements a licensed home inspector must satisfy to obtain approval to prepare and conduct peer review sessions described under "**Examination and curriculum requirements**," below.¹⁵

The bill 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;

¹⁵ R.C. 4764.05(A) and Section 5.



(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.¹⁶

Duties of the Superintendent of Real Estate and Professional Licensing

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

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

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

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

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

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

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

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

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

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

¹⁶ R.C. 4764.05(B).



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

(11) Administer the Home Inspector Recovery Fund;

(12) Appoint a hearing officer for any proceeding involving a determination described under "**Child support orders**," "**Enforcement**," or "**Sanctions against unlicensed activity**," below.¹⁷

Application for licensure

To obtain a license to perform home inspections, a person must submit an application on a form the Superintendent provides and the application and licensure fee established in rules adopted by the Board to the Superintendent.¹⁸ Each person applying for a license also must submit one complete set of fingerprints to the Superintendent of the Bureau of Criminal Identification and Investigation (BCII) for a criminal records check. The applicant must provide the fingerprints in a manner prescribed by the BCII Superintendent and fill out a form prescribed by the BCII Superintendent under current law. On receiving an application for a license, the Superintendent of Real Estate and Professional Licensing must request a criminal records check based on the fingerprints from the BCII Superintendent or a vendor approved by BCII to conduct a criminal records check. The Superintendent of Real Estate and Professional Licensing must request criminal record information from the Federal Bureau of Investigation as part of the criminal records check. The fee related to the criminal records check must be paid by the applicant.¹⁹

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

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

¹⁷ R.C. 121.08 and 4764.06.

¹⁸ R.C. 4764.07(A).

¹⁹ R.C. 109.572, 121.08, 4764.07(B), and 4776.10.



(2) Proof of holding a comprehensive general liability insurance policy or a commercial general liability insurance policy 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;

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

(7) Any other information the Board requires that the Board determines is relevant to receiving a license to practice as a licensed home inspector.²⁰

The bill prohibits the Superintendent from requiring an architect certified under the Architects Law or a professional engineer registered under the Professional Engineers and Professional Surveyors Law who wishes to obtain a license to perform home inspections to submit proof of education and experience as required under (4) and (5) immediately above. Such a person, however, must satisfy all other requirements specified to obtain a license and provide proof of licensure in good standing in order to receive a license.²¹

The bill specifies that the act of submitting an application to the Superintendent does not create, must not be construed as creating, and is not intended to indicate licensure as a home inspector. The Superintendent must issue a license to an applicant who satisfies the requirements set forth in the bill.²²

²⁰ R.C. 4764.07(D).

²¹ R.C. 4764.07(E).

²² R.C. 4764.07(C) and (F).



Examination and curriculum requirements

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

- The curriculum 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 the curriculum, complete at least 80 hours of classroom or online prelicensing education, including instruction about compliance with the bill's requirements, inspection safety, report writing, and any other administrative matters required by the Board.
- The curriculum satisfies any other requirements the Board established in rules it adopts.²³

The Board must determine the equivalency of field experience that an individual may elect to complete to satisfy the proof of experience requirement. The Board must approve only a curriculum of experience that includes a requirement that, to successfully complete the curriculum, a person must perform at least 40 hours of work in the home inspection field that allows the person to obtain practical experience or training regarding home inspections. The Board must approve only a curriculum that includes a requirement that, to successfully complete the curriculum, a person must complete a 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.²⁴

Issuing a license

The bill requires the Superintendent to issue a home inspector license to any person who satisfies the requirements for licensure. The Superintendent cannot, however, issue a license to a corporation, limited liability company, partnership, or association, but a licensed home inspector may sign a home inspection report in a

²³ R.C. 4764.05(C).

²⁴ R.C. 4764.01(I) and 4764.05(D).



representative capacity for any of those entities.²⁵ A home inspector license issued or renewed pursuant to the bill expires three years after the date of issuance or renewal.²⁶

Grounds for refusing to issue or renew a license

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

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

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

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

(4) Before entering into a written contract with a client, failed to disclose to the client information about any business interest of the home inspector that may affect the client in connection with the home inspection;

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

(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 bill (failure to provide a document related to services as a home inspector pursuant to a subpoena described under "**Subpoena powers**" below is prima facie evidence that the person did not retain the document in the manner required under the bill);

²⁵ R.C. 4764.06(B) and 4764.07(C).

²⁶ R.C. 4764.09(A).

²⁷ R.C. Chapter 2950.



(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 bill;

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

(10) Failed to submit proof of satisfying the bill's continuing education requirements.²⁸

Liability insurance policy requirements

The bill requires every licensed home inspector to maintain, or be covered by, a comprehensive general liability insurance policy or a commercial general liability insurance policy with coverage limits of not less than \$100,000 per occurrence and not less than a \$300,000 aggregate limit. The insurance 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 the employer of a licensed home inspector maintains the insurance policy covering the licensed home inspector, and the employer is not a licensed home inspector, the licensed home inspector is not required to maintain the licensed home inspector's own insurance policy.²⁹

Grandfathering provision

During the period of time beginning on the date the last initial Board member is appointed and ending 120 days after that date, the Superintendent must issue a home inspector license if an individual 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 under "**Liability insurance policy requirements**," 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 the bill's effective date:

²⁸ R.C. 4764.14.

²⁹ R.C. 4764.11(A).



(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 the bill's effective date under a business name officially registered with the Secretary of State;

(4) Having been employed as a home inspector for the consecutive 36 months before the bill's effective date by an inspection company or individual whose owner or manager meets the license requirement specified in the bill;

(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 bill;

(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 the bill's effective date, 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 bill. 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 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 bill's renewal procedure.³⁰

³⁰ Section 6.



Reciprocity

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

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

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

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

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

Real estate brokers and salespersons

The bill 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 bill. 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.

³¹ R.C. 4764.10.



Under the bill, 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.³²

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 bill allows the Superintendent to initiate disciplinary action against the broker or salesperson or serve a citation and impose sanctions on the broker or salesperson.³³ Disciplinary actions, citations, and sanctions against brokers and salespersons are governed by the Real Estate Brokers Law.³⁴

Record keeping

Under the bill, a licensed home inspector must retain for a period of five years the original or a true copy of each written contract for the 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.³⁵

License renewal

Any home inspector license issued or renewed under the bill expires three years after the issuance or renewal date.³⁶ To renew a home inspector license, a licensed home inspector must file all of the following with the Superintendent within the 90-day period immediately preceding the date the license expires:

- (1) A renewal application pursuant to the procedures established by the Board;

³² R.C. 4735.22.

³³ R.C. 4735.181, with a conforming change in R.C. 4735.99.

³⁴ R.C. Chapter 4735.

³⁵ R.C. 4764.11(B).

³⁶ R.C. 4764.09(A).



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

(3) Proof of satisfying the bill's continuing education requirements.³⁷

The Superintendent must renew a home inspector license for any person who satisfies the bill's requirements for renewal.³⁸

A licensed home inspector who fails to renew a license before its expiration may, during the three months following the expiration, renew the license by paying a late fee in an amount the Board establishes in addition to meeting the criteria for license renewal. The bill prohibits a licensed home inspector who applies for a late renewal during the three-month period from engaging in any activities the license being renewed permits until the Superintendent notifies the licensed home inspector that the license has been renewed.³⁹

Under the bill, a licensed home inspector who fails to submit the proof of insurance or continuing education required or fails to renew during the required time periods may obtain a license by applying for a new license.⁴⁰

Continuing education

During each three-year period that a license is valid, the bill requires a licensed home inspector to successfully complete not less than 14 hours of continuing education instruction annually in courses or programs directly applicable to the standards of practice and requirements specified in rules adopted by the Board. The Superintendent must accept only those courses and programs the Superintendent approves in accordance with the requirements and procedures described below before the date the licensed home inspector completes the course or program. The bill prohibits the Superintendent from including parallel inspections completed by a person for credit toward satisfying the continuing education requirements.⁴¹

The bill requires the Superintendent, in accordance with the procedures specified in rules adopted by the Board, to approve an institution or organization wishing to

³⁷ R.C. 4764.09(B)(1).

³⁸ R.C. 4764.06(A)(4).

³⁹ R.C. 4764.09(B)(2).

⁴⁰ R.C. 4764.09(C).

⁴¹ R.C. 4764.08.



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

- The course or program is offered by an 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.⁴²

Enforcement

Preinvestigation settlements

Within five business days after a person files a complaint against a licensed home inspector with the Superintendent, the bill requires the Superintendent to provide to that person an acknowledgment of the receipt of the complaint and send a notice regarding that complaint to the licensee who is the subject of the complaint. The Superintendent must include in that notice a description of the activities in which the licensed home inspector allegedly engaged that violate the bill. Within 20 days after the Superintendent sends the notice to the complainant and that licensed home inspector, the complainant and the licensed home inspector may file with the Superintendent a request to have an informal mediation hearing. If both the complainant and the licensed home inspector file such a request, the Superintendent must notify the complainant and the licensed home inspector of the date and time of the informal mediation hearing.

A mediator employed by the Superintendent must conduct the informal mediation hearing. If the complainant and the licensed home inspector reach an accommodation during that informal mediation hearing, the mediator must send a written report describing the accommodation to the Superintendent, complainant, and licensee. Notwithstanding the bill's provision that allows the Superintendent to release information relating to licensees to specified parties for the purpose of administering continuing law, the written report describing the accommodation is confidential and is not a public record for purposes of Ohio's Public Records Law. The bill requires the

⁴² R.C. 4764.06(A).



Superintendent to close the complaint on satisfactory completion of the accommodation. If the licensee or the complainant fails to file a request for an informal mediation hearing, or if the parties fail to agree on an accommodation during that informal mediation hearing, the Superintendent must proceed with an investigation of the complaint.⁴³

Investigations

Under the bill, the Superintendent may investigate complaints against licensed home inspectors on receipt of a written complaint concerning any alleged violation of the bill or on the Superintendent's or Board's motion and subpoena any witnesses in connection with those investigations. The investigators and auditors employed by the Superintendent may review and audit, during normal business hours, the licensed home inspector's business records that are directly related to complaints. The licensed home inspector must permit this review and audit.⁴⁴ As discussed above, the bill requires the Superintendent to establish and maintain an investigation and audit section to investigate complaints and conduct inspections, audits, and other inquiries as in the judgment of the Superintendent are appropriate to enforce the bill. The Superintendent may employ investigators and auditors to assist in investigating complaints and conducting investigations, audits, and other inquiries that the Superintendent considers appropriate to enforce the bill. Additionally, the bill permits the Superintendent to utilize the investigators and auditors employed pursuant to the Real Estate Broker Law or licensees to assist in performing the Superintendent's investigation and audit duties.⁴⁵

The bill 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.⁴⁶

Subpoena powers

The bill permits the Board or the Superintendent to compel, by order or subpoena, the attendance of witnesses to testify in relation to any matter over which the Board or Superintendent has jurisdiction and that is the subject of inquiry and

⁴³ R.C. 4764.12(B) and R.C. 149.43, not in the bill.

⁴⁴ R.C. 4764.06(A)(10) and 4764.12(A).

⁴⁵ R.C. 4767.06(A)(11).

⁴⁶ R.C. 4764.12(C).



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

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

Hearings and disciplinary action

If, on examining the results of an investigation, the Superintendent determines that reasonable evidence exists that a licensed home inspector has violated the bill's provisions or engaged in an activity described in (1) to (6) and (9) under "**Grounds for refusing to issue or renew a license**," above, the bill requires the Superintendent to proceed in accordance with the notice and hearing requirements prescribed in the Administrative Procedure Act. After a hearing officer conducts a hearing and issues a

⁴⁷ R.C. 4764.12(D).

⁴⁸ R.C. 4764.12(E).



report and recommendations, the bill requires the Board to review the report and recommendations and order the disciplinary action the Board considers appropriate, which may include any one or more of the following:

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

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

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

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

⁴⁹ R.C. 4764.13(A).

⁵⁰ R.C. 4764.13(B), (D), and (E).



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

Settlement agreements

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

Child support orders

On receipt of a notice that a licensed home inspector is in default under a child support order under the procedures established under existing law, the bill requires the Superintendent to comply with the requirements of that law and any rules adopted pursuant to it with respect to a license issued under the bill.⁵³

Human trafficking

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

Sanctions against unlicensed activity

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

- (1) Knowingly performs a home inspection;

⁵¹ R.C. 4764.13(F).

⁵² R.C. 4764.13(C).

⁵³ R.C. 4764.19.

⁵⁴ R.C. 4764.20 and 4776.20.



(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 bill permits the Superintendent to investigate any unlicensed person who has allegedly violated those prohibitions.⁵⁵

The bill grants the Superintendent the same powers to investigate an alleged violation of these prohibitions as those powers specified under "**Investigations**," above. If, after an investigation, the Superintendent determines that reasonable evidence exists that an unlicensed person has violated these prohibitions, within seven days after that determination, the Superintendent must send a written notice to that person by regular mail and must include in the notice the information specified in the Administrative Procedure Act for notices given to licensees, except that the notice must specify that a hearing will be held and specify the date, time, and place of the hearing.⁵⁶

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

⁵⁵ R.C. 4764.16(A).

⁵⁶ R.C. 4764.16(B).

⁵⁷ R.C. 4768.16(C).



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

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

Civil actions

Except as provided below, the bill states that nothing in the bill can be construed to create or imply a private cause of action against a licensed home inspector for a violation of the bill if that action is not otherwise maintainable under common law.⁵⁹ The bill states that the remedies provided under "**Enforcement**," "**Hearings and disciplinary action**," and "**Grounds for refusing to issue or renew a license**," above are the exclusive remedies for alleged violations of the conflict of interest prohibitions specified in rules the Board adopts (see "**Duties of the Board**," above).⁶⁰

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

⁵⁸ R.C. 4768.16(D) and (E).

⁵⁹ R.C. 4764.17(A).

⁶⁰ R.C. 4764.17(D).

⁶¹ R.C. 4764.17(B) and (C).



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

Home Inspection Recovery Fund

The bill creates the Home Inspection Recovery Fund administered by the Superintendent. To defray the expense of administering the Fund, the Superintendent must collect from the Fund a service fee in an amount equivalent 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 on the amounts.

The Board, in accordance with rules the Board adopts, must impose a special assessment for the Fund on each person applying for a license and each licensee applying for renewal. If the amount available in the Fund is less than \$250,000 on July 1 preceding an application for licensure or renewal, the assessment may not exceed \$5 per year for each year of a licensing period. If the amount in the Fund is greater than \$500,000, but less than \$1,000,000 on that date, the special assessment may not exceed \$3 per year for each year of a licensing period. If the amount in the Fund exceeds \$1,000,000, the Board cannot impose an assessment.⁶³

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 file an application in the Franklin County Court of Common Pleas requesting a payment from the Fund, provided the home inspector's conduct violated the bill or rules adopted by the Board. 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.⁶⁴

An applicant for a payment from the Fund must file notice of the application with the Superintendent. The Superintendent may defend any action on behalf of the Fund using any appropriate means of defense and review, including examination of

⁶² R.C. 4764.17(E).

⁶³ R.C. 4764.21(A) and (I).

⁶⁴ R.C. 4764.21(B)(1) and (3).



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.⁶⁵

Under the bill, 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 spouse of the judgment debtor, or the personal representative of the spouse;
- (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.⁶⁶

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;

⁶⁵ R.C. 4764.21(C).

⁶⁶ 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.⁶⁷

Under the bill, 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 bill requires the \$40,000 to 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.⁶⁸

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, when sufficient money has been deposited in the Fund, satisfy the unpaid claims or portions, in the order that the claims or portions were originally filed. Authorized payments that are delayed because of insufficient money in the Fund accrue interest at a rate specified in the continuing law generally governing interest.⁶⁹

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.⁷⁰

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 bill prohibits the Superintendent from reactivating the license

⁶⁷ R.C. 4764.21(B)(2) and (5).

⁶⁸ R.C. 4764.21(D).

⁶⁹ R.C. 4764.21(F).

⁷⁰ 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.⁷¹

The Superintendent's authority with respect to the Fund does not limit the Superintendent's authority to take additional disciplinary action against a licensee under the bill. 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 bill.⁷²

Home Inspectors Fund

The bill also creates the Home Inspectors Fund in the state treasury. Except as described under "**Home Inspection Recovery Fund**," above the Superintendent must deposit all money collected under the bill into that fund and use it solely to pay costs associated with administering and enforcing the bill.⁷³

Definitions

The bill also defines the following terms:

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

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

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

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

⁷¹ R.C. 4764.21(E).

⁷² R.C. 4764.21(H).

⁷³ R.C. 4764.18.



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

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

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

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

(4) "Residential building" means a one-family, two-family, or three-family dwelling house, and any accessory structure incidental to a dwelling house, and includes individual dwelling units within an apartment or condominium complex containing four or more dwelling units.⁷⁴

HISTORY

ACTION	DATE
Introduced	05-09-17
Reported, H. Economic Development, Commerce, & Labor	02-28-18

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⁷⁴ R.C. 4764.01.

