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Bill Analysis
Legislative Service Commission

H.B. 345

123rd General Assembly
(As Introduced)

Reps. DePiero, Olman, Corbin, Terwilleger, O'Brien, Hartnett, Hollister, Perz, Pringle, Barnes, Flannery, Sullivan, Allen, Verich, Metelsky, Smith, Sykes, Patton, Trakas, Jones, Ford

BILL SUMMARY

- Creates the State Board of Home Inspectors to administer the regulatory program.
- Requires the licensure and regulation of home inspectors and associate home inspectors.
- Creates the Home Inspectors Fund in the state treasury.
- Establishes criminal penalties for violation of the bill's provisions.

CONTENT AND OPERATION

The State Board of Home Inspectors

The bill creates the State Board of Home Inspectors and places it for administrative purposes within the Department of Commerce. The bill also specifies that the law regarding the expiration of agencies does not apply to the Board.

Appointment to the Board

The Board consists of five members, each of whom must be Ohio residents, have performed or have supervised at least 500 home inspections, have been engaged substantially in the business of providing home inspections in Ohio for at least five years preceding appointment to the Board, and if other than an initial appointee, or reappointee of the initial Board, hold a valid home inspector license, or a valid associate home inspector license. The Governor, with advice and consent of the Senate, must make appointments to the Board within 30 days after the effective date of the bill. Of the initial appointments, two are for a term of four

years, two are for a term of three years, and one is for a term of two years. Each term after initial appointment is for a term of four years, ending on the same day in the same month as the term began. Vacancies to the Board are filled in the same manner as appointments are made. A Board member who fills a vacancy prior to the expiration of the previous member's term holds office for the remainder of the term. Any member continues in office subsequent to the member's term until that member's successor takes office and no member may serve more than two successive terms. Members are reimbursed for expenses related to their duties on the Board and compensated in an amount equal to the average daily salary of a home inspector in Ohio, as determined by the Board, for each day, or a pro rata portion of a day, that the member is employed in the official duties of the Board.

Duties of the Board

Annually, the Board selects, from its members, one chairperson and one vice-chairperson. At that time, the Board may select a person who need not be a Board member, to serve as secretary to the Board. The Board must meet at least four times per year, but is allowed to hold additional meetings as it determines necessary. Meeting dates and times are determined by the chairperson and must be provided in writing to each member at least ten days prior to the meeting, unless shorter notice is warranted. The bill allows the meetings to occur by electronic means or by telephone. A majority of the Board members constitutes a quorum, which is necessary to transact and to vote on all matters before the Board. The Board has the power to issue, modify, or revoke orders necessary to administer the laws governing home inspectors and associate home inspectors.

Within 180 days following the appointment of the initial Board members, the Board must adopt rules that do all of the following:

(1) Specify any residential housing component that is not described in the definition of "home inspection" and that the Board determines should be examined visually during a home inspection;

(2) Establish standards of practice to be followed by home inspectors and associate home inspectors. The standards of practice shall specify, without limitation, items that must be visually examined with respect to the heating system, cooling system, plumbing system, electrical system, structural components, foundation, roof, exterior and interior components, or any other related residential housing component specified by the Board. The standards of practice shall be no less stringent than the standards of practice adopted by the American Society of Home Inspectors.

(3) Establish a code of ethics for home inspectors, associate home inspectors, and persons who, in order to satisfy eligibility requirements to become an associate home inspector, conduct home inspections under the supervision of a home inspector. The code of ethics must specify guidelines for acting honestly and in good faith toward a client and avoiding conflicts of interest.

(4) Govern disciplinary proceedings conducted by the Board and reinstatement of licenses that have been suspended;

(5) Establish the amount of license fees required to be submitted with an application for licensure and fees associated with license renewal. The amount of the fees must be sufficient to defray all necessary expenses incurred in the administration of the bill's provisions and the rules adopted under it, but must not exceed the amount estimated to be required to defray those expenses.

(6) Establish the information that must be provided on an application for licensure as a home inspector or associate home inspector;

(7) Specify the course of study that an applicant must successfully complete to be eligible for licensure as an associate home inspector. The course of study must consist of at least 160 hours of training, including training in the classroom and training that involves observation of home inspections;

(8) Establish requirements and standards for the continuing education of home inspectors;

(9) Establish provisions governing the registration of persons who conduct home inspections under the supervision of a home inspector in order to satisfy the eligibility requirements for licensure as an associate home inspector;

(10) Establish requirements governing what constitutes a home inspector's adequate supervision of a person performing home inspections for the purpose of satisfying eligibility requirements to become an associate home inspector;

(11) Establish any other provisions necessary for the administration of the bill's provisions and rules adopted under the bill. (Secs. 4768.02 and 4768.03.)

Licensing home inspectors and associate home inspectors

Effective 270 days after the effective date of the bill, all persons conducting home inspections for clients must be licensed as either a home inspector or an associate home inspector and the inspection must be performed in accordance with a written contract binding on all parties to the contract (sec. 4768.04).

To become a licensed home inspector or a licensed associate home inspector, a person must submit to the Board a signed application, pledging that the applicant will comply with the standard of practice and code of ethics established in rules and a statement that the applicant understands the type of activities that give rise to disciplinary action. The applicant must also submit an application fee in an amount established by the Board. (Sec. 4768.06.)

The bill specifies that licenses may only be issued to individuals and not to business entities. Licenses are valid for two years, except that the Board may specify that the licenses first issued or renewed after the effective date of the bill expire on a date fixed by the Board, not sooner than six months or later than 29 months after the date that those licenses are issued. (Sec. 4768.06(I) and (J).)

The bill allows the Board to refuse to issue or renew a license to anyone who violates the code of ethics; wrongly accepts commissions, allowances or compensation; fails to make a required disclosure; has been convicted of a crime involving dishonesty; fails to properly supervise home inspections of associates or persons meeting the requirements to become an associate. (Sec. 4768.13.)

Applicants for licensure as a home inspector

An applicant for licensure as a home inspector must have held a valid associate home inspector license for at least one year and must have performed at least 300 home inspections for compensation under the supervision of a licensed home inspector. The applicant also must have completed high school or its equivalent and have successfully completed an examination offered or prescribed by the Board or an examination approved by the Board and offered by the American Society of Home Inspectors.

For the 270 days that follow the effective date of the bill, the bill provides that these requirements for initial licensure as a home inspector do not apply to persons who have conducted home inspections prior to the effective date of the bill and who meet all of the following criteria:

(1) Have been engaged in the practice of home inspection for at least three years prior to the effective date of the bill;

(2) Have performed or supervised at least 500 home inspections for compensation;

(3) Have successfully completed at least ten hours of courses approved by the Board concerning the licensing law of home inspection and the rules adopted under that law;

(4) Have successfully completed high school or its equivalent; and

(5) Have successfully completed an examination offered or prescribed by the Board or an examination approved by the Board and offered by the American Society of Home Inspectors.

Applicants for licensure as associate home inspectors

An applicant for licensure as an associate home inspector must meet the following requirements:

(1) Successful completion of high school or its equivalent;

(2) Successful completion of the course of study specified in rules adopted by the Board;

(3) Performance of at least 50 home inspections in the presence and under the direct supervision of a home inspector followed by registering with the Board to perform at least 100 home inspections conducted under the supervision of a home inspector; and

(4) Successful completion of an examination offered or prescribed by the Board or an examination approved by the Board and offered by the American Society of Home Inspectors.

Exemptions

The bill exempts the following persons from home inspector or associate home inspector licensing requirements:

(1) Persons employed by the state or a political subdivision to enforce building codes;

(2) Persons acting within the scope of their licenses or authority who perform engineering, architectural, electrical, plumbing, real estate brokering, real estate sales, or real estate appraisal services;

(3) A public insurance adjuster holding a valid certificate of authority;

(4) A licensed commercial pesticide applicator;

(5) A person performing inspections under the supervision of a home inspector to satisfy licensing requirements;

(6) A person registered with the Board who has successfully completed high school or its equivalent, and has successfully completed the course of study prescribed by Board rules. (Sec. 4768.05.)

Continuing education and renewal licenses

The bill requires licensed home inspectors and licensed associate home inspectors to submit to the Board, every two years, proof of successful completion of a minimum of 40 hours of continuing education in courses or seminars offered or approved by the Board. A licensee who fails to submit the proof of successful completion of continuing education requirements will not receive a license renewal and must comply with the requirements for initial licensure to become relicensed. The bill specifies that changes to the continuing education requirements will not deprive a licensee of credits earned prior to the change. (Sec. 4768.09.) A licensee who submits proof of completion of continuing education requirements may obtain a renewal license by filing a renewal application with the Board and by paying the renewal fee prescribed by the Board. A licensee must file the renewal application at least 30 days, but no earlier than 120 days prior to the expiration of the licensee's current license. A licensee who fails to obtain a renewal license before the expiration of the licensee's current license, but within three months thereafter, may still obtain a renewal license by paying a late fee in addition to the licensing renewal fee. If the licensee fails to obtain a renewal license within three months of the expiration of the licensee's current, valid license, then to again be licensed the person must comply with the procedures to obtain an initial new license. (Sec. 4768.07.)

Reciprocity

A person who holds a valid home inspector license issued by another state or possession of the United States or the District of Columbia that has standards that are substantially equivalent to those of this state, as determined by the Board, can receive an initial home inspector license upon payment to the Board of a fee in an amount established by the Board, and submittal of a written application the form and content of which are prescribed by the Board. (Sec. 4768.06.)

Insurance

All home inspectors or associate home inspectors who conduct home inspections for compensation must file with the Board proof of an errors and omissions insurance policy in a minimum amount of \$250,000 per occurrence and a general liability insurance policy in a minimum amount of \$1 million or other amount specified by the Board. The Board may also accept other proof of financial responsibility, including indemnity bonds or "standby" letters of credit.

Proof of insurance or other proof of financial responsibility must provide that cancellation or nonrenewal of a policy is not effective unless written notice of the intent to cancel or not to renew has been received by the Board no fewer than ten days prior to the cancellation or nonrenewal. (Sec. 4768.08.)

Enforcement

The bill gives the Board the power to investigate complaints on the Board's initiative or upon receipt of a complaint alleging a violation of the bill's provisions or the rules adopted under them. The Board has the authority to employ investigators and auditors to obtain information. All information that arises as a result of an investigation must be kept confidential by the Board unless otherwise required by law. (Sec. 4768.10.) Under the bill, the Board and any hearing officers it employs, have the power to compel, by order or subpoena, the attendance of witnesses to testify in relation to any matter over which the Board has jurisdiction and the production of documents pertaining to any matter over which the Board has jurisdiction. The bill gives the Board and its hearing officers the same power as judges of county courts to administer oaths, compel the attendance of witnesses and punish witnesses for refusal to testify. The Board also may apply to the court of common pleas in any county for an award of a subpoena or a subpoena duces tecum to compel a person to appear, or to compel a person to produce documents. A person's failure to appear then is governed by contempt of court laws. (Sec. 4768.11.)

Injunctions

The bill specifies that the Board may apply to any court of common pleas to enjoin a violation of the law governing home inspection licensing or the rules adopted under the bill. (Sec. 4768.14.)

Hearings

If the Board determines that reasonable and substantial evidence exists that a licensee has violated or is violating the bill's provisions or the rules adopted under the bill, the Board must notify the licensee within five days of the determination. The licensee may request a hearing in accordance with the Administrative Procedure Act. A hearing officer, retained by the Board, determines whether the licensee has committed a violation and must notify the licensee of the determination not later than five days after it is made. The notice must describe the basis for the determination. The licensee has 15 days after the hearing officer notifies the complainant and the licensee to request that the Board review the determination. The Board must review the determination at its next regularly scheduled meeting and either affirm or reverse the decision of the

hearing officer and notify the complainant and the licensee of its decision within five business days.

If the Board determines that a licensee has committed a violation of the licensing laws or the rules adopted under those laws, after review of the hearing officer's report and evidence, the Board must order disciplinary action that it considers appropriate, which may include reprimand, or suspension or revocation of a license. Under the bill, the decision of the Board is final, subject to review under the Administrative Procedure Act. (Sec. 4768.12.)

Liabilities and penalties

The bill provides that every partnership, corporation, or association that employs or retains the services of a licensee, whether the licensee is an independent contractor or under the supervision or control of the partnership, corporation, or association, is jointly and severally liable for any damages incurred by a person as a result of an act or omission concerning a home inspection report prepared or facilitated in the preparation by a licensee while employed or retained by the business entity. (Sec. 4768.16.)

The bill also provides that any person who is not licensed who performs a home inspection for a client, is guilty of a third degree misdemeanor (not more than 60 days imprisonment and not more than a \$500 fine) on the first offense and a first degree misdemeanor (not more than six months imprisonment and not more than a \$1,000 fine) for each subsequent offense. (Sec. 4768.99.)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	05-18-99	p. 677

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