



**S.B. 179**

125th General Assembly  
(As Introduced)

Sen.    Nein

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**BILL SUMMARY**

- Requires the licensing of backflow contractors and prefabricated fireplace contractors and includes a "grandfathering" provision for existing backflow and prefabricated fireplace contractors.
- Makes operating without an appropriate contractor's license a second degree misdemeanor on the first violation and a first degree misdemeanor on subsequent violations.
- Establishes a \$1,000 fine and increased continuing education courses as potential penalties for violation of the Construction Industry Licensing Law.
- Authorizes the Attorney General to bring a civil action for appropriate relief upon the request of a trades section of the Board.
- Extends the deadline for submitting a complaint against a licensed contractor from one to three years after the alleged action or event occurred.
- Transfers certain duties of the trades sections of the Ohio Construction Industry Examining Board to the administrative section of the Board and modifies some of those duties.
- Modifies certain continuing education, examination, and license renewal requirements relative to licensed contractors.
- Modifies existing limitations on license and renewal fee increases and eliminates Controlling Board approval for license and renewal fee increases.

- Increases fees charged to continuing education providers who provide courses for licensed contractors.
- Modifies provisions relative to an assigned license.
- Modifies the authority of municipal corporations and boards of county commissioners with respect to regulating contractors.
- Renames the Ohio Construction Industry Examining Board the Ohio Construction Industry *Licensing* Board and the Construction Industry Examining Fund the Construction Industry *Licensing* Fund.
- Modifies certain definitions relative to licensed contractors.

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## CONTENT AND OPERATION

### *Renaming the Ohio Construction Industry Examining Board and the Construction Industry Examining Fund*

The bill renames the Ohio Construction Industry Examining Board the Ohio Construction Industry *Licensing* Board and the Construction Industry Examining Fund the Construction Industry *Licensing* Fund. The Board is comprised of an administrative section and three trades sections that have responsibilities relative to the construction trade contractors that each respective section serves. (Sec. 4740.02.)

### *Definitional changes*

#### *Contractor*

Currently the Board licenses the following five types of contractors: heating, ventilating, and air conditioning, refrigeration, electrical, plumbing, and hydronics. For each of these trades, the definition of each type of contractor is separately defined. The bill eliminates the separate definitions and instead simply defines "contractor" in a similar manner as under current law for each specific trade, except without reference to the trade. Additionally, under the bill, a contractor can mean a person who engages in one *or more* trades.

The bill adds that a contractor is one who, for compensation, directs, supervises, or has responsibility for the means, method, and manner of *testing* on a construction project in addition to the construction, improvement, renovation, repair, or maintenance on a construction project.

A contractor under existing law also includes a tradesperson or one who employs tradespersons who perform and who are trained to perform construction, improvement, renovation, repair, or maintenance on a construction project with respect to that contractor's trade. The bill eliminates reference to a person being trained to perform that person's trade. (Sec. 4740.01.)

### **Electrical contractor**

Under current law a person is not considered an electrical contractor if the person performs work on certain types of systems specified in the law that use less than 50 volts of electricity. Tele-data is one of the types of systems specified. The bill eliminates reference to tele-data systems (secs. 4740.01(D)(2)(b) and 4740.02(C)(3)). This potentially means that contractors who work on tele-data systems would be required by the bill to be licensed as electrical contractors, even if the systems upon which the contractors work use less than 50 volts of electricity.

### **Licensed trade**

The bill newly defines "licensed trade" and does so by using the existing definition of "contractor," but specifying that it is a trade performed by contractors of the various enumerated trades. (Sec. 4740.01(G).)

### **Licensing of backflow contractors and prefabricated fireplace contractors**

#### **Backflow contractors**

The bill requires that backflow contractors and prefabricated fireplace contractors also be licensed. A backflow contractor is defined as a contractor responsible for backflow prevention devices on a construction project. A backflow prevention device is defined as a device that prevents the backward flow of liquids, solids, or gases into a potable water system, but does not include any device or fixture installed by, or as a requirement of, any public water system that provides water for human consumption. (Secs. 4740.01(C) and (D) and 4740.02(B).)

The plumbing section of the Board must issue a backflow license to any person who, on the bill's effective date, holds a valid "backflow certificate" in Ohio and who submits an application and pays the fees as the section prescribes. No person who does not hold a valid backflow certificate on the bill's effective date is eligible for licensure pursuant to this section. (Section 3 (A).)

### *Prefabricated fireplace contractor*

A prefabricated fireplace contractor, under the bill, is a contractor who is responsible on a construction project for a combustion chamber that burns solid fuels or gas. A prefabricated fireplace is defined to include, but not be limited to, a fireplace that is factory built and any chimney, pellet fuel appliances, and free-standing masonry or wood burning stove inserts that may be composed of solid masonry, brick, stone, and concrete units, and may have a steel combustion chamber surrounded by solid masonry units. The bill prohibits the heating, ventilating, and air conditioning section from requiring a person who is licensed as a heating, ventilating, and air conditioning contractor also to hold a license as a prefabricated fireplace contractor in order to act as a prefabricated fireplace contractor and to be responsible for prefabricated fireplaces on a construction project. (Secs. 4740.01(E) and (F) and 4740.02(D).)

The heating, ventilating, and air conditioning and refrigeration section of the Board must issue a prefabricated fireplace contractor license to any individual who satisfies all of the following criteria:

- (1) Applies to the section within 180 days after the bill's effective date;
- (2) Pays the fee the section establishes;
- (3) Has been actively engaged as a prefabricated fireplace contractor in Ohio for the three years immediately prior to the bill's effective date;
- (4) Furnishes business records that include contracts, permits, and inspections, or other evidence of experience satisfactory to the section;
- (5) Provides evidence of current contractor's liability insurance, including complete operations coverage, in the amount of \$500,000, except that if more than one individual affiliated with a business entity is issued a license, those individuals collectively must provide evidence of current contractor's liability coverage, including complete operations coverage in the total amount of \$500,000;
- (6) Provides evidence of compliance with the Workers' Compensation Law (R.C. Chapters 4121. and 4123.) and compliance with any other applicable legal requirements to do business in this state, as the Board requires. (Section 3(B).)

The Board must keep a record containing the name, address, and license number of, and the date on which the board issues or renews a license to, every backflow contractor and fireplace contractor issued a license, the same as it must now do for all the other contractors it licenses. (Sec. 4740.04(E).)

### **Transferring and modifying certain duties of trades sections of the Board**

The bill specifies that the plumbing section has primary responsibility for the licensure of plumbing contractors, hydronics contractors, and backflow contractors. The electrical section has primary responsibility for the licensure of electrical contractors. And the heating, ventilating, air conditioning, and refrigeration section has primary responsibility for the licensure of heating, ventilating, and air conditioning contractors, refrigeration contractors, and prefabricated fireplace contractors. Under current law, each of these sections is authorized to adopt rules limited to the following related to their respective sections:

- (1) Application procedures for examinations;
- (2) Specifications concerning continuing education requirements for license renewal that address all of the following:
  - (a) Criteria for selecting and approving courses and persons to provide those courses;
  - (b) A specification that individuals holding a valid and unexpired license be required to accrue no more than 30 hours of continuing education courses over a period of three years;
  - (c) A requirement that persons seeking approval to provide continuing education courses submit information regarding the courses to the appropriate section of the board for approval not less than 90 days nor more than one year prior to the date on which the courses are offered, unless a section of the Board permits submission at a different time;
  - (d) A prohibition against any person providing a course for the purpose of meeting continuing education requirements unless, not more than one year prior to the date the course is offered, the person has been approved by the appropriate section of the Board to provide that course;
  - (e) A provision limiting approval of continuing education courses to one year;
  - (f) A provision establishing the following annual fees, to be paid to the Board by persons approved to provide continuing education courses:
    - For the approval of each continuing education course, not more than \$10 plus \$1 per credit hour;

- For the approval of each person providing continuing education courses, \$25. (Sec. 4740.05(A).)

The bill shifts authority for adopting rules concerning the foregoing subjects to the administrative section of the Board. It also modifies what the rules should accomplish as follows:

(2)(a) above is more generally stated in the bill. It simply says "Criteria for continuing education courses conducted under this chapter."

(2)(b) requires ten hours per year instead of a maximum of 30 hours every three years.

(2)(c) requires submission of required information at least 30 days prior to course offering instead of not less than 90 days. Additionally, the Board's authority to permit submission at a different time is eliminated. (Sec. 4740.04(G).)

Under current law, the trades sections of the Board establish license, renewal, and late fees, subject to the approval of the Controlling Board. Each section may increase these fees, provided that no increase exceeds 50% of the lowest fee determined by that section of the Board during the three-year period immediately preceding an increase, and further provided that no increase is made more than once a year. The bill transfers the authority to establish the license and renewal fees to the administrative section, while leaving late fee authority with the trades sections. It also eliminates the required approval of the Controlling Board; and modifies the limitation placed on fee increases. The bill requires the administrative section to establish license and renewal fees annually pursuant to rules it adopts in accordance with the Administrative Procedure Act and prohibits the section from increasing fees more than once a year. (Secs. 4740.05(A)(2)(f) and 4740.09.)

### **Continuing education**

The bill requires each section of the Board to establish a continuing education curriculum for license renewal for each class of contractors for which the section has primary responsibility and specifies that no curriculum may require more than five hours per year of specific course requirements. The bill requires the administrative section of the Board to adopt any continuing education curriculum that the other sections of the Board approve. It is not clear whether the five-hour-maximum per year course requirement of the trade sections is in addition to or a part of the ten hours required by rules of the administrative section (see references to (2)(b) directly above). (Secs. 4740.04(G) and 4740.05(C).)

If a licensee violates the Construction Industry Licensing Law (R.C. Chapter 4740.), the trades sections of the Board are permitted under the bill to require the licensee to complete additional continuing education course work. Any continuing education course work so required may not count toward any other continuing education requirements established under that Law. (Sec. 4740.10(A)(4).)

### **Fee schedule**

The bill also modifies the fee schedule relative to continuing education. The administrative section must adopt rules that add a new fee of \$1 per credit hour of instruction per attendee, which is charged to persons who provide continuing education courses. Regarding the current charge of not more than \$10 plus \$1 per credit hour described above, the bill more specifically states that this charge is for the approval of *each* course offered. (Sec. 4740.04(G)(2)(e).)

### **Legal aliens may take required examination**

One of the criteria that must be satisfied to qualify to take the examination required for licensure is that a person be a United States citizen. The bill expands this criterion by allowing legal aliens who produce valid documentation demonstrating their legal-resident-status to also qualify to take the examination. (Sec. 4740.06(B)(2).)

### **License renewal**

Under current law, a licensee may renew an unexpired license without reexamination if the licensee submits an application for renewal along with the renewal fee and proof of having satisfied continuing education requirements if the applicant submits this material not more than 90 days before the license expires. The bill clarifies that this deadline is 90 *calendar* days. (Sec. 4740.06(D).)

Currently, each section of the Board may waive renewal requirements upon finding that an applicant substantially meets renewal requirements. The bill specifies that a section may grant such waiver upon application and within one calendar year after a license has expired. The bill adds that an applicant must satisfy any condition the section imposes before a license is reissued. (Sec. 4740.06(D).)

### **Assigned licenses**

The bill specifies that any person who holds a valid active license issued pursuant to the Construction Industry Licensing Law (R.C. Chapter 4740.) and whose license has been assigned to an entity that employs the licensee may

perform any work relating to that license as it pertains to the job site of the employer that was assigned the license. (Sec. 4740.12 (B).)

Under current law, if an individual who assigned a license to a business entity ceases to be associated with the business entity for any reason, including, without limitation, death of the individual, the individual or business entity immediately must notify the appropriate section of the Board of the date on which the individual ceased to be associated with the business entity. The bill eliminates "without limitation," which could imply that limitations may be placed upon this provision. (Sec. 4740.07(D)(1).)

Currently, a license assigned to a business entity is invalid 90 days after the date on which the individual who assigned the license ceases to be associated with the business entity. The bill specifies that this 90-day period is 90 calendar days. (Sec. 4740.07(D)(1).)

#### **Penalty for operating without a contractor's license**

Whoever acts as or claims to be a heating, ventilating, and air conditioning contractor, refrigeration contractor, plumbing contractor, electrical contractor, hydronics contractor, backflow contractor, or prefabricated fireplace contractor without an appropriate license is guilty, under the bill, of a misdemeanor of the second degree on the first violation and a misdemeanor of the first degree on subsequent violations. (Sec. 4740.99.)

#### **Civil action brought by the Attorney General**

The bill specifies that upon the request of the appropriate section of the Board, the Attorney General may bring a civil action for appropriate relief, including but not limited to a temporary restraining order or permanent injunction in the court of common pleas of the county where the unlicensed person resides or is acting as or claiming to be a licensed contractor. (Sec. 4740.13(B).)

#### **\$1,000 fine for violation of Construction Industry Licensing Law**

The bill authorizes the trades sections of the Board to impose a fine on a licensee who violates the Construction Industry Licensing Law (R.C. Chapter 4740.), not exceeding \$1,000 per violation per day. (Sec. 4740.10(A)(1).)

#### **Extension for submitting written complaints**

Under current law, a person may submit a written complaint to the appropriate section of the Board against a licensee within one year after the action or event upon which the complaint is based. The bill extends this deadline to three years after the action or event. (Sec. 4740.10(D).)

### *Deposit of fines*

Currently the Board must deposit all receipts it collects into the state treasury to the credit of the Industrial Compliance Operating Fund. The bill adds a specification that the Board deposit all *fines* it collects to the credit of that Fund. (Sec. 4740.11.)

### *Conflict with other statutes*

Existing law specifies that nothing in the law regulating trades contractors can be construed to limit the operation of any statute or rule of Ohio or any ordinance or rule of any political subdivision, district, or agency of the state that does either of the following:

(1) Regulates the installation, repair, maintenance, or alteration of plumbing systems, electrical systems, heating, ventilating, and air conditioning systems, or refrigeration systems;

(2) Requires the registration and assessment of a registration or license fee of tradespersons who perform heating, ventilating, and air conditioning, refrigeration, electrical, plumbing, or hydronics construction, improvement, renovation, repair, or maintenance.

The bill applies provision (1) described directly above to hydronics systems, backflow systems, and prefabricated fireplaces. It also creates an exception to provision (2) described directly above by specifying that any political subdivision, district, or state agency that requires these types of contractors to register and pay a registration, permit, or license fee, must require that those contractors also be licensed under Ohio law. (Sec. 4740.12(A)(1).)

Current law authorizes a board of county commissioners to establish standards and provide for the licensing of electrical contractors and heating, ventilating, and air conditioning contractors who perform work only on residential buildings. The bill instead authorizes a board of county commissioners to establish standards and provide for the licensing of contractors who are not required to hold a contractor's license under the Construction Industry Licensing Law (R.C. Chapter 4740.). This provision seems to allow boards of county commissioners to regulate additional types of contractors other than only residential electrical contractors and residential heating, ventilating, and air conditioning contractors, as under existing law. (Sec. 307.382(A).)

Existing law also specifies that rules a county board of commissioners adopt establishing standards for the licensing of electrical and heating, ventilating, and air conditioning contractors cannot conflict with rules adopted by the Board of

Building Standards under the Building Standards Law (R.C. Chapter 3781.) or by the Department of Commerce under the Plumbing Law (R.C. Chapter 3703.). The bill eliminates this provision, the effect of which is uncertain. (Sec. 3781.102(B).)

Existing law specifies that the authority of a board of county commissioners to establish standards and provide for the licensing of electronic and heating, ventilating, and air conditioning contractors does not impair or restrict the power of municipal corporations under the Municipal Home Rule Law (Section 3, Article XVIII, Ohio Constitution), to adopt rules concerning the erection, construction, repair, alteration, and maintenance of buildings and structures or of establishing standards and providing for the licensing of residential heating, ventilating, and air conditioning contractors, refrigeration contractors, electrical contractors, plumbing contractors, or hydronics contractors. The bill eliminates this provision, the effect of which is uncertain. (Sec. 3781.102(B).)

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## **HISTORY**

ACTION	DATE	JOURNAL ENTRY
Introduced	01-13-04	p. 1386

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