



S.B. 207

126th General Assembly
(As Introduced)

Sen. Spada

BILL SUMMARY

- Prohibits a person from conducting or representing a qualification to conduct a home inspection for compensation unless that person is licensed as a home inspector or licensed or registered as an associate home inspector who performs inspections under the supervision of a licensed home inspector.
- Makes violation of the above prohibition a third degree misdemeanor on a first offense and a first degree misdemeanor on each subsequent offense.
- Prohibits a person from performing a home inspection unless it is performed pursuant to a written contract.
- Creates the State Board of Home Inspectors in the Department of Commerce for the administration of the bill's licensing provisions.
- Establishes requirements an applicant for licensure or registration must satisfy to obtain a license or registration.
- Requires the State Board of Home Inspectors to establish continuing education requirements for licensees and offer or approve continuing education instruction.
- Requires the State Board of Home Inspectors to investigate complaints and order disciplinary action against licensees who violate the bill or rules adopted under it.
- Creates the Home Inspectors Fund to be used solely to pay costs associated with the administration of the bill and rules adopted under it.

- Specifies that a business that employs or retains the services of a licensee or registrant is jointly and severally liable for any damages incurred by that licensee or registrant as a result of an act or omission concerning a home inspection report prepared while employed or retained by that business.

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CONTENT AND OPERATION

Prohibitions

Ohio law currently does not require the licensure or registration of home inspectors. Beginning 480 days after the bill's effective date, the bill prohibits a person from conducting a home inspection or representing a qualification to conduct a home inspection for compensation unless that person is licensed under the bill as a home inspector or licensed or registered as an associate home inspector who performs inspections under the supervision of a licensed home inspector (sec. 4768.02(A) and Section 2). Whoever violates this provision is guilty, under the bill, of a third degree misdemeanor on a first offense and a first degree misdemeanor on each subsequent offense (sec. 4768.99).

The bill also prohibits a person from performing a home inspection unless it is performed pursuant to a written contract. This prohibition takes effect 480 days after the bill's effective date. (Sec. 4768.02(B) and Section 2.)

The bill defines "home inspection" as "an examination of the readily accessible components of a residential building for a client that includes all or substantially all of the following: heating system, cooling system, plumbing system, electrical system, structural components, foundation, roof, exterior and interior components, and any other related residential housing component the state board of home inspectors specifies in rules. 'Home inspection' includes inspections that are limited to visual inspections. 'Home inspection' does not include environmental testing or determination of compliance with applicable statutes, rules, resolutions, or ordinances, including, without limitation, building, zoning, or historic codes." A "residential building" means "any part of a structure that is occupied or intended to be occupied as a residence." (Sec. 4768.01.)

State Board of Home Inspectors

Composition and appointment

The bill creates the State Board of Home Inspectors in the Department of Commerce consisting of five members appointed by the Governor with the advice and consent of the Senate. The initial members must be appointed within 30 days after the bill's effective date. All members must be residents of this state and at the time of appointment, must have performed not fewer than 500 home inspections for compensation. Members other than initial members also must have been a licensed home inspector in this state for at least five years at the time of appointment.

Of the initial appointments, two must be for terms of four years, two must be for terms of three years, and one must be for a term of two years. Thereafter, terms are four years. Members may be reappointed, except that no member can serve more than two successive terms in addition to any unexpired term to which the member was appointed. The bill contains standard provisions concerning the filling of vacancies and specifies that a vacancy on the Board does not impair the right of the other members to exercise all of the Board's powers and duties. (Sec. 4768.03(A) and (B) and Section 3.)

Under the bill, a member may be removed for misfeasance, nonfeasance, or malfeasance in office. Each member of the Board receives compensation in an amount determined by the Director of Administrative Services for each day employed in the discharge of official duties, as well as actual and necessary expenses incurred in the performance of those duties. (Sec. 4768.03(B) and (C).)

The Board must elect one member to serve as Chairperson and one member to serve as Vice-chairperson annually. Additionally, the Board may appoint one person, who need not be a member of the Board, to serve as Secretary.

Meetings of the Board

The Board must meet at least four times per year and, at the direction of the Chairperson or at the request of three Board members, may hold additional meetings as necessary to discharge its duties. The Chairperson must determine the location, date, and time of all meetings. Meetings may be held by electronic means, including telephone conference and computer conferencing applications, provided that all members have access to the electronic means of the meeting and access to all communications pertaining to the subject of the meeting.

The Chairperson must provide each member with written notice of the location, date, and time of each meeting not fewer than ten days prior to the scheduled date of the meeting, except that the bill allows a meeting to be held with less notice when necessary to conduct the Board's business properly. A majority of the members of the Board constitutes a quorum, which is necessary to transact and vote on any matter before the Board. (Sec. 4768.03(D) and (E).)

Duties of the Board

The bill requires the Board to do all of the following:

- (1) Employ staff;
- (2) Approve an examination for licensure that is accepted by a national association of home inspectors or national associations of home inspectors the Board recognizes;
- (3) Issue a home inspector license, an associate home inspector license, a license renewal, or a registration as an associate home inspector to any person who satisfies the requirements established by the bill;
- (4) Retain all licensure and registration application materials submitted to it and maintain a register of the names and addresses of all individuals to whom the Board has issued a license, renewed a license, or issued or renewed a registration. (Sec. 4768.04.)

Rules the Board must adopt

The bill also requires the Board, not later than 180 days after the appointment of all initial members to the Board, to adopt rules in accordance with

the Administrative Procedure Act to carry out the bill's purposes, including rules that establish all of the following:

(1) Standards of practice to be followed by persons licensed or registered under the bill. The standards must specify items an inspector must visually examine with respect to each component included in a home inspection. The standards must be no less stringent than standards of practice adopted by nationally recognized associations for home inspectors that the Board recognizes.

(2) A code of ethics for persons licensed and registered under the bill. The code must specify guidelines for acting honestly and in good faith toward a client and avoiding conflicts of interest.

(3) Standards to govern disciplinary proceedings the Board conducts and the reinstatement of licenses the Board suspends pursuant to those proceedings.

(4) The amount of any fees required under the bill. The rules must specify that for the time period beginning on the bill's effective date and ending three years after that date, license fees cannot exceed \$500 per year per licensee. Thereafter, the amount of any fee must be sufficient to defray necessary expenses incurred in the administration of the bill and rules adopted under it.

(5) The information to be provided on an application for licensure and registration;

(6) Procedures for processing, approving, and denying applications for licensure and registration;

(7) Requirements and standards for the continuing education of home inspectors;

(8) Provisions governing the registration of persons working towards satisfying the requirements for licensure as an associate home inspector;

(9) Requirements governing the supervision of persons performing home inspections as registered or licensed associate home inspectors;

(10) Procedures and requirements for reciprocity of a person licensed or certified in another state;

(11) Any other provision necessary for the administration of the bill and rules adopted under it.

The bill also requires the Board to adopt rules in accordance with the Administrative Procedure Act that specify any residential housing component not



described in the definition of "home inspection" that the Board determines should be visually examined during a home inspection and that specify the course of study that an applicant must complete for licensure as an associate home inspector. The bill requires the course of study to consist of not fewer than 120 hours of training, including training in the classroom and training that involves observation of home inspections. (Sec. 4768.04(B) and Section 3.)

Obtaining a license

Application

To obtain a license to practice as a home inspector or an associate home inspector, an individual must submit an application to the Board on a form the Board provides, together with the fee the Board prescribes. The application must include all of the following:

- (1) A pledge the applicant signs, agreeing to comply with the standards of practice and code of ethics the Board establishes;
- (2) A statement that the applicant understands the grounds for any disciplinary action that may be initiated under the bill's provisions;
- (3) Proof of a general liability insurance policy in an amount of \$100,000 or a higher minimum amount the Board specifies;
- (4) Upon the request of the Board, a sample of the home inspection reports the applicant has prepared in the course of the applicant's practice as an associate home inspector;
- (5) Any other information the Board requires by rule. (Sec. 4768.05(A).)

Home inspector license requirements

An applicant for licensure specifically as a home inspector must satisfy all of the following requirements:

- (1) Have had a license as an associate home inspector for not less than one year and performed not fewer than 200 home inspections for compensation under the supervision of a licensed home inspector;
- (2) Successfully completed high school or its equivalent;
- (3) Passed an examination the Board offers or prescribes or an examination the Board approves that is offered by a nationally recognized association of home inspectors that the Board recognizes. (Sec. 4768.05(B).)

Associate home inspector license requirements

An applicant for licensure as an *associate* home inspector must satisfy all of the following requirements:

- (1) Have served as a registered associate home inspector for at least 12 months;
- (2) Successfully completed high school or its equivalent;
- (3) Successfully completed a curriculum the Board approves consisting of not less than 120 hours with at least 80 of those hours devoted to classroom hours;
- (4) Performed not fewer than 30 home inspections as a registered associate home inspector under the direct supervision of a licensed home inspector;
- (5) Passed an examination the Board offers or prescribes or an examination the Board approves that is offered by a nationally recognized association of home inspectors that the Board recognizes. (Sec. 4768.05(C).)

Registration of associate home inspectors

An applicant for *registration* as an associate home inspector must file an application for registration with the Board on the form the Board provides, together with the fee the Board specifies and proof of a general liability insurance policy in an amount of \$100,000 or a higher minimum amount the Board specifies. The applicant must provide a signed statement of intent to perform at least 30 home inspections and a statement signed by the applicant and a licensed home inspector agreeing that the applicant will perform home inspections under the supervision of the licensed home inspector.

Registration as an associate home inspector is effective for 12 months after the date of registration and may be renewed for an additional 12-month period if the registrant is unable, for good cause, to complete 30 home inspections during the initial 12-month period. Upon the Board's request, a registrant must furnish a sample of the inspection reports prepared in the course of the registrant's practice. (Sec. 4768.05(D).)

"Grandfather" provisions

During the period of time beginning on the bill's effective date and ending three years after that date, the Board must license an individual as a home inspector if the individual applies to the Board on a form the Board provides, pays the fee the Board prescribes in rule, and demonstrates all of the following to the Board's satisfaction:

(1) The applicant has passed a nationally accredited home inspection examination or completed an educational program in home inspection certified by the Board;

(2) Prior to applying for licensure, the applicant performed not less than 250 home inspections for compensation;

(3) The applicant has a general liability insurance policy in a minimum amount of \$100,000 or other higher minimum amount the Board specifies by rule. (Section 4(A).)

During the period of time beginning on the bill's effective date and ending three years after that date, the Board must issue a *provisional* home inspector license to an individual if the individual satisfies the requirements described immediately above for a home inspector license, except that the applicant must have performed not fewer than 100, rather than 250, home inspections for compensation and the examination or education program must be recognized rather than certified by the Board. (Section 4(B).)

During the three years after the date that is 270 days after the bill's effective date, the Board must issue a home inspector license to any holder of a provisional license who applies to the Board on a form the Board provides, pays the fee the Board prescribes by rule, and demonstrates all of the following to the Board's satisfaction:

(1) The applicant complies with the continuing education requirements established pursuant to the bill;

(2) The applicant has completed at least 250 home inspections for compensation after receiving the provisional license;

(3) The applicant has passed a nationally accredited home inspection examination or completes an educational program in home inspection certified by the Board. (Section 4(C).)

Every provisional home inspector license expires three years after the date that is 270 days after the bill's effective date. A person licensed as a provisional home inspector who does not receive a license as a home inspector during the three years following that date would have to obtain a license by satisfying the regular licensing requirements described above. (Section 4(D).)

The bill requires a licensee who receives a license as a home inspector under the "grandfather" provisions described above to complete eight hours of education approved by the Board regarding the standards and rules enacted under the bill within 12 months after receiving that license. (Section 4(E).)

Individuals, not businesses, are licensed or registered

The Board must register or issue a license only to an individual and must not register or issue a license to a corporation, limited liability company, partnership, or association, although a licensee may sign an inspection report in a representative capacity on behalf of those entities. (Sec. 4768.04(D).)

License renewal

Under the bill, licenses expire two years after the date of issuance. To renew a license, a licensee must file a renewal application with the Board pursuant to the Standard License Renewal Procedure Law (R.C. Chapter 4745.), along with proof of satisfying the continuing education requirements the Board establishes by rule.

A licensee who fails to renew a license before its expiration, during the six months following the expiration, may renew the license by following the regular renewal procedures and paying a late fee in an amount the Board establishes by rule. A licensee who applies for a late renewal may engage in all activities the license being renewed permits until three months after the license expires.

A licensee who fails to renew a license prior to its expiration or during the six months following its expiration may obtain a license by complying with the application procedures and meeting the requirements for an initial license. (Sec. 4768.05.)

Continuing education requirements

The bill prohibits the Board from renewing the license of a licensee who fails to submit proof of satisfying the continuing education requirements. A licensee who fails to submit the required proof may obtain a license by following the application procedures and meeting the requirements for an initial license. (Sec. 4768.06.)

The bill specifies that during each two-year period during which a license is valid, a licensee must successfully complete the continuing education requirements the Board establishes by rule, which must include not less than 20 and not more than 40 hours of continuing education instruction in courses or seminars the Board offers or approves. The bill also specifies that no amendment or rescission of a rule involving continuing education requirements can operate to deprive a licensee of credit toward renewal of licensure for any course of instruction the licensee completes prior to the effective date of that amendment or rescission. (Sec. 4768.07.)

Investigation of complaints

Under the bill, the Board must investigate complaints, on the Board's own motion or on receipt of a complaint, concerning any alleged violation of the bill or rules adopted under it. The Board may employ investigators and auditors to assist in investigating complaints and conducting investigations, audits, and other inquiries that the Board considers appropriate to enforce the bill and rules adopted under it. (Sec. 4768.08.)

If, upon examining the results of an investigation, the Board determines that reasonable and substantial evidence exists that a licensee or registrant has violated the bill or rules adopted under it, or otherwise has committed misconduct for which disciplinary proceedings may be initiated (see "**Disciplinary action by the Board**" below), the Board must notify the licensee or registrant not later than five business days following the determination. The licensee or registrant may request a hearing pursuant to the Administrative Procedure Act. Hearings must be conducted by hearing officers the Board retains. (Sec. 4768.09(A).)

If a hearing is conducted, the hearing officer must determine whether evidence of a violation exists, notify the complainant and the licensee or registrant of that determination not later than five days after it is made, and describe the basis for the determination. Within 15 business days after the hearing officer notifies the complainant and licensee or registrant, the complainant, licensee, or registrant may file a request that the Board review the determination. (Sec. 4768.09(B).)

If a request for a review by the Board is filed, the Board must review the hearing officer's determination at its next regularly scheduled meeting. The Board may hear the testimony of the complainant, licensee, or registrant at the meeting on request of either party. The Board either must affirm or reverse the decision of the hearing officer and notify the complainant and licensee or registrant of its decision within five business days after making its decision. (Sec. 4768.09(C).)

If the Board determines that a licensee or registrant has violated the bill or rules adopted under it, after review of the hearing officer's report and evidence, the Board must order the disciplinary action the Board considers appropriate, which may include any one or more of the following:

- (1) A reprimand;
- (2) Suspension of the license or registration for a specific period of time;
- (3) Suspension of the license or registration until the licensee or registrant complies with conditions the Board establishes;

(4) Revocation of the license or registration.

The decision and order of the Board is final, subject to review in the manner provided in the Administrative Procedure Act and appeal to any court of common pleas. (Sec. 4768.09(D).)

The bill allows the Board to apply to any court of common pleas to enjoin a violation of the bill or rules adopted under it. Upon a showing by the Board that a person has violated or is violating the bill or rules adopted under it, the court must grant an injunction, restraining order, or other appropriate relief. (Sec. 4768.11.)

Disciplinary action by the Board

The Board may refuse to issue or renew a license or registration if an applicant for a license or registration or license or registration renewal has done any of the following:

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

(2) Accepted commissions or allowances, directly or indirectly, from other parties dealing with a client in connection with the home inspection for which the licensee or registrant is responsible, without the express written approval of the client or the client's representative. This provision does not apply, however, to inspections subcontractors provide, including, without limitation, pest or environmental inspections.

(3) Failed to disclose promptly to a client written information about any business interest of the licensee or registrant that may affect the client in connection with the home inspection;

(4) Pleaded guilty to or been convicted in a court of competent jurisdiction of forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud, theft, or any crime of moral turpitude;

(5) Failed to supervise adequately and in accordance with rules a registered or licensed associate home inspector performing home inspections under the supervision of the licensed home inspector;

(6) Violated a standard of practice or provision of the code of ethics established in rules;

(7) Failed to maintain insurance or proof of financial responsibility as the bill requires. (Sec. 4768.10.)

Liability

The bill specifies that every partnership, corporation, limited liability company, or association that employs or retains the services of a person registered or licensed under the bill, whether as an independent contractor or under the supervision or control of the partnership, corporation, limited liability company, or association, is jointly and severally liable for any damages incurred by that person as a result of an act or omission concerning a home inspection report prepared while employed or retained by the partnership, corporation, limited liability company, or association. (Sec. 4768.13.)

Home Inspectors Fund

The Board is required by the bill to deposit all money collected under the bill in the state treasury to the credit of the Home Inspectors Fund, which the bill creates. Money credited to the Fund must be used solely to pay costs associated with the administration of the bill and rules adopted under it. (Sec. 4768.12.)

HISTORY

ACTION	DATE
Introduced	10-19-05

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