Meredith L. Shively *Legislative Service Commission*

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127th General Assembly
(As Passed by the House)

Reps. Schneider, R. McGregor, Combs, Sayre, Chandler, Harwood, Luckie, Collier, Beatty, Blessing, Bolon, Boyd, Brown, Celeste, Domenick, Dyer, Evans, Flowers, Koziura, Setzer, Stebelton, S. Williams, Yates

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.

- 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 licensed home inspector to include a written report of the visual examination performed by a licensed home inspector during a home inspection.

- 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 unless the individual who is the subject of

the complaint held a valid license issued under the bill any time during the 12 months preceding the violation.

- 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 criminal records checks conducted on applicants for licensure.

- Requires the Board to adopt specified rules for the administration of the bill 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 prior to an investigation and settlement agreements prior to an adjudication hearing.

- Limits civil actions 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 Inspectors Fund in the state treasury to be used solely to pay expenses for administering and enforcing the bill's provisions.

TABLE OF CONTENTS

Licensure of home inspectors 3
Persons not subject to the bill 5
Ohio Home Inspector Board 5
Duties of the Board 6
Duties of the Superintendent of Real Estate and Professional Licensing 8
Application for licensure 8
  Examination and curriculum requirements 10
  Issuing a license 10
  Grounds for refusing to issue or renew a license 11
  Liability insurance policy requirements 11
  Grandfathering provision 12
  Reciprocity 12
License renewal 13
Continuing education 14
Enforcement 15
  Preinvestigation settlements 15
  Investigations 16
  Subpoena powers 17
Hearings and disciplinary action 17
  Settlement agreements 18
  Child support orders 19
Sanctions against unlicensed activity 19
Civil actions 20
Fund 21
Definitions 21

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 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. A person who violates this prohibition is guilty of a third-degree misdemeanor on the first offense and a first-degree misdemeanor on each subsequent offense. (Secs. 4768.02(A) and 4768.99 and Section 3.)

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[1] 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 insurer licensed to transact business in Ohio under the Insurance Law (R.C. Title 39) 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. (Sec. 4768.01(A) and (B).)

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). (Sec. 4768.02(B) and (C) and Section 3.)

The bill permits the Superintendent of Real Estate and Professional Licensing to apply to any court of common pleas to enjoin a violation of the bill. Upon 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. (Sec. 4768.15.) 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).

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[1] A "residential building" is a one-family, two-family, or three-family dwelling house, and any accessory structure incidental to that dwelling house, and includes the individual dwelling units within an apartment or condominium complex containing four or more dwelling units. "Residential building" includes a one-family, two-family, or three-family dwelling house that is used as a model to promote the sale of a similar dwelling house. "Residential building" does not include an industrialized unit, a manufactured home, or a mobile home, as those terms are defined under continuing law. (Sec. 4768.01(D) and sec. 3781.06, not in the bill.)

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 (R.C. Chapter 4703.);

- A person registered as a professional engineer under the Professional Engineers and Professional Surveyors Law (R.C. Chapter 4733.);

- 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 (R.C. Chapter 4740.) or by a county under the Building Standards Law (sec. 3781.102, not in the bill), or who is licensed or registered by a municipal corporation under the Municipal Corporations--General Powers Law (sec. 715.27, not in the bill);

- 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 (R.C. Chapter 4735.);

- A real estate appraiser who is licensed under the Real Estate Appraiser Law (R.C. Chapter 4763.);

- A public insurance adjuster who holds a valid certificate of authority issued under the Public Insurance Adjusters Law (R.C. Chapter 3951.) or an employee or representative of an insurer licensed to transact business in Ohio under the Insurance Law (R.C. Title 39) who conducts an inspection of any property or structure for purposes related to the business of insurance;

- A commercial applicator of pesticide who is licensed under the Pesticides Law (R.C. Chapter 921.) (sec. 4768.03).

Ohio Home Inspector Board

The bill creates the Ohio Home Inspector Board consisting of five members. Not more than three 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 three members who are licensed home inspectors and who each represent different national organizations that consist of and represent home inspectors. Of the members appointed by the Governor, one must be an independent licensed home inspector and one must be a member or representative of a home inspection franchise business. The bill states that persons appointed to the Board during the first year after the bill's effective date need not be licensed as required under the bill. (Sec. 4768.04 and Section 4.)

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 appointed that member. Board members are not compensated but must be reimbursed for actual expenses reasonably incurred in the performance of their duties as members. (Sec. 4768.04.)

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 disciplinary proceedings conducted in accordance with the bill (see "***Hearings and disciplinary actions***," below) and the reinstatement of home inspector licenses the Board suspends or revokes pursuant to those proceedings;

(2) Specify the information that must be provided on an application for licensure and establish procedures for processing, approving, and denying applications;

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

(4) 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;

(5) 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;

(6) 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;

(7) Establish requirements an institution, organization, company, or individual 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, organization, company, or individual that satisfies the requirements the Board establishes;

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

(9) 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, which must not exceed $250, (b) the renewal fee, which must not exceed $250, (c) the fee an entity described in (7) above must pay to receive approval to offer continuing education courses and programs, (d) 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 (e) any other fees as required by the bill;

(10) Establish reporting requirements for a licensed home inspector to follow to demonstrate that the licensed home inspector successfully completed the continuing education requirements, and procedures for the Superintendent to follow to determine the veracity of the licensed home inspector's continuing education report;

(11) 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;

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

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

(14) Establish procedures, in accordance with the requirements and procedures specified in continuing law, to have criminal records checks conducted by the Bureau of Criminal Identification and Investigation for all applicants for licensure. (Sec. 4768.05(A) and Section 5.)

Duties of the Superintendent of Real Estate and Professional Licensing

The bill requires the Superintendent of Real Estate and Professional Licensing to administer the bill and exercise the powers and perform the functions and duties delegated to the Superintendent under the bill (secs. 121.08(H) and 4768.06(A)(1)). The Superintendent also must issue all orders necessary to implement the bill.

Under the bill, the Superintendent must 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 web site maintained by the Department of Commerce. Additionally, the bill requires the Superintendent to retain all licensure application materials submitted to the Superintendent, or an electronic image of such materials, for a period of five years after the date of the receipt of the materials and maintain a register of the names and addresses of all individuals to whom the Superintendent has issued or renewed a license under the bill for a period of five years after the date of issuance, renewal, or expiration of a license, whichever is later.

The Superintendent must provide the Board with meeting space, staff services, and other technical assistance required by the Board to carry out its duties. (Sec. 4768.06(A).)

Application for licensure

To obtain a license to perform home inspections, an individual must submit all of the following to the Superintendent: an application on a form the Superintendent provides, the application and licensure fee established in rules adopted by the Board, the information necessary for the Superintendent to have a criminal records check conducted in accordance with the requirements specified in continuing law and the procedures the Board adopts in rules, and the fee established by the Board to cover the costs of that criminal records check (sec. 4768.07(A)). 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;

(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 date of the application, the home inspector examination approved by the Board;

(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;

(6) Proof that the applicant is at least 18 years of age 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 (sec. 4768.07(A)).

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 in order to receive a license. (Sec. 4768.07(B).)

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 (sec. 4768.07(C)). Under the bill, the Superintendent must have criminal records checks conducted for each applicant in accordance with the requirements and procedures specified in continuing law and the procedures specified in rules adopted by the Board (sec. 4768.06(A)(6)).

Examination and curriculum requirements

The bill requires the Board to approve a nationally recognized examination that the Board determines is valid and reliable that individuals must pass to obtain a license. Additionally, the Board must approve an experience curriculum that an individual may elect to complete to satisfy the proof of experience requirement the applicant must satisfy to obtain a license. The Board must approve only a curriculum of experience that includes a requirement that an individual, in order to successfully complete the curriculum, must perform at least 40 hours of work in the home inspection field that allows the individual to obtain practical experience or training regarding home inspections. (Sec. 4768.05(B) and (D).) The bill also requires the Board to approve an education curriculum individuals must successfully complete to obtain a license issued under the bill. 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 college, university, or other institution of higher education or a home inspection franchise business that has been approved by the Board to offer a curriculum.

- The curriculum includes a requirement that an individual, in order to successfully complete the curriculum, complete at least 40 hours of classroom instruction, including instruction about compliance with the requirements specified in the bill, 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. (Sec. 4768.05(C).)

Issuing a license

The bill requires the Superintendent to issue a home inspector license to any person who satisfies the requirements for licensure described above. Under the bill, the Superintendent must issue a license only to an individual and must not issue a license to a corporation, limited liability company, partnership, or association, although a licensed home inspector may sign a home inspection report in a representative capacity on behalf of those entities (sec. 4768.06(A)(4) and (B)). A home inspector license issued or renewed pursuant to the bill expires one year after the date of issuance or renewal (sec. 4768.09(A)).

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 or 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 prior to the close of the real estate transaction associated with that home inspection and the resolution of all contingent issues involving that building and transaction;

(4) Failed to disclose promptly to a client written 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, in a court of competent jurisdiction, any crime of moral turpitude or a felony, or an equivalent offense under the laws of any other state or the United States, or was required to register under the Sexual Predators, Habitual Sex Offenders, and Sexually Oriented Offenders Law (R.C. Chapter 2950.);

(6) Failed to satisfy the continuing education requirements specified under "***Continuing education***," below;

(7) Failed to maintain or be covered by a comprehensive general liability insurance policy or a commercial general liability insurance policy as described under "***Liability insurance policy requirements***," below;

(8) Violated a provision of the bill (secs. 4768.06(A)(4) and 4768.14).

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, providing 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 such an insurance policy covering the licensed home inspector, the licensed home inspector is not required to maintain the licensed home inspector's own comprehensive general liability insurance policy or commercial general liability insurance policy. (Sec. 4768.11.)

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 applies for a license on a form the Superintendent provides and pays the fee the Board establishes, and if the applicant demonstrates 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 one of the following requirements to demonstrate participation in the home inspection field prior to the bill's effective date: (a) having performed at least 200 home inspections for clients for compensation or other valuable consideration, (b) having successfully passed a home inspector examination described under (3) under "***Application for licensure***," above, (c) 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, or (d) 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 this provision. 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. If the Board determines necessary, the Board may request the Superintendent to have a criminal records check conducted in accordance with the requirements specified in continuing law and the procedures the Board adopts in rules, on any applicant who applies for a license under the grandfathering provision. (Section 6.)

Reciprocity

The bill permits the Superintendent to issue a home inspector license to an individual who holds a license, registration, or certification as a home inspector in

another jurisdiction if that individual submits an application on a form the Superintendent provides, pays the fee the Board prescribes, and satisfies all of the following requirements:

(1) The individual 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 individual is familiar with and will abide by the bill's provisions.

(3) The individual agrees to all of the following in a written statement that the individual 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 individual authorizes the Superintendent to act as agent for that individual;

- That service of process in accordance with Ohio law is proper and the individual is subject to the jurisdiction of Ohio courts;

- That any cause of action arising out of the conduct of the individual's business in Ohio must be filed in the county in which the events that gave rise to that cause of action occurred. (Sec. 4768.10.)

License renewal

Any home inspector license issued or renewed under the bill expires one year after the date of issuance or renewal (sec. 4768.09(A)). To renew a home inspector license, a licensed home inspector must file a renewal application within the 90-day period immediately preceding the date the license expires with the Superintendent pursuant to the procedures set forth in the Standard License Renewal Procedure (R.C. Chapter 4745.), along with 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 and proof of satisfying the continuing education requirements described under "***Continuing education***," below (secs. 4745.01 and 4768.09(B)(1)). The bill requires the Superintendent to renew a home inspector license for any person who satisfies the bill's requirements for renewal (sec. 4768.06(A)(4)).

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. A licensed home inspector who fails to renew a license prior to its expiration or during the three months following its expiration may obtain a license by complying with the normal application procedures and meeting the standard requirements for obtaining a license, as described under "***Applying for licensure***," above. (Sec. 4768.09(B)(2) and (3).)

The bill prohibits the Superintendent from renewing a license if any of the following conditions apply:

(1) The licensed home inspector is in violation of any provision of the bill or order of the Board or Superintendent;

(2) The licensed home inspector fails to submit proof of holding an appropriate insurance policy as described under "***Liability insurance policy requirements***," above;

(3) The licensed home inspector fails to submit proof of satisfying the continuing education requirements described under "***Continuing education***," below.

Under the bill, a licensed home inspector who fails to submit the proof required under (2) or (3) immediately above may obtain a license by following the normal application procedures and meeting the standard requirements for obtaining a license described under "***Application for licensure***," above. (Sec. 4768.09(C) and (D).)

Continuing education

During each one-year period that a license is valid, the bill requires a licensed home inspector to successfully complete not less than six hours of continuing education instruction 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 prior to 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. (Sec. 4768.08.)

The bill requires the Superintendent, in accordance with the procedures specified in rules adopted by the Board as required in (7) under "***Duties of the Board***," above, to approve an institution, organization, company, or individual wishing to provide continuing education courses or programs if that institution, organization, company, or individual 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 as required in (8) under "***Duties of the Board***," above, 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 entity approved by the Superintendent;
- The course or program satisfies the standards established in rules adopted by the Board;
- The entity pays the fee established in rules adopted by the Board. (Sec. 4768.06(A)(7) and (8).)

Enforcement

Preinvestigation settlements

Within five 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 the licensed home inspector who is the subject of the complainant's complaint, 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.

An investigator 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 investigator must send a written report describing the accommodation to the Superintendent, complainant, and licensee. Notwithstanding the bill's provision that states that investigations are confidential and are not public records, the written report describing the

accommodation is a public record for purposes of Ohio's Public Records Law (sec. 149.43, not in the bill). The bill requires the Superintendent to close the complaint upon 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. (Sec. 4768.12(B).)

Investigations

Under the bill, the Superintendent must investigate complaints against licensed home inspectors on receipt of a complaint concerning any alleged violation of the bill and subpoena any witnesses in connection with those investigations (see "***Subpoena powers***," below) (secs. 4768.06(A)(10) and 4768.12(A)). The bill also 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. The investigators and auditors may review and audit, during normal business hours, the licensed home inspector's business records that are directly related to complaints. (Secs. 4768.06(C) and 4768.12(A).)

Except as otherwise specified in the bill, all information related to investigations and audits is confidential and is not a public record under Ohio's Public Records Law (sec. 4768.12(C)). The bill states that nothing in this provision must be construed as prohibiting the Superintendent from releasing information relating to a licensed home inspector to a law enforcement officer or the appropriate prosecutorial authority. The law enforcement officer or prosecutorial authority who receives information relating to a licensed home inspector from the Superintendent must comply with the same requirements regarding confidentiality as those with which the Superintendent must comply, notwithstanding any conflicting provision of the Revised Code or procedure of the law enforcement officer or prosecutorial authority that applies when the law enforcement officer or prosecutorial authority is dealing with other information in its possession. (Sec. 4768.12(C).)

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 which is the subject of inquiry and investigation by the Board or Superintendent, and require the production of any book, paper, or document pertaining to such matter. For such purpose, the bill states that the Board or Superintendent has 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 civil actions in courts of common pleas. (Sec. 4768.12(D).)

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, upon 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 upon a hearing the disobedience appears, the court may order the offender to be committed and kept in close custody. (Sec. 4768.12(E).)

Hearings and disciplinary action

If, upon 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 (7) 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 report and recommendations as required below, 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. (Sec. 4768.13(A).)

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 (see "***Continuing education***," above) (sec. 4768.13(B)).

The bill requires the Superintendent to appoint a hearing officer to conduct adjudication hearings in accordance with the Administrative Procedure Act. The Superintendent must appoint a person who has been admitted to the practice of law in Ohio to serve as the hearing officer. 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, and the Board must issue an order in accordance with the procedures prescribed in the Act.

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. (Sec. 4768.13(D)and (E).)

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 as required in (13) under "***Duties of the Board***," above. 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. Notwithstanding the bill's provision that states that investigations are confidential and are not public records, the settlement agreement is a public record for purposes of Ohio's Public Records Law. (Sec. 4768.13(C).)

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 or rules adopted pursuant to it with respect to a license issued under the bill. (Sec. 4768.19.)

Sanctions against unlicensed activity

The bill specifies an additional sanction against unlicensed activity and performing a home inspection in a manner that does not conform to Board rules or without having entered into a contract. Upon receipt of a written complaint or upon the motion of the Superintendent, the bill permits the Superintendent to investigate any person that has allegedly violated those prohibitions, except that the Superintendent must not investigate a complaint under this provision if the person who is the subject of the complaint held a valid license issued under the bill any time during the 12 months preceding the date of the alleged violation. (Sec. 4768.16(A).)

The bill states that the Superintendent has 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 a 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. (Sec. 4768.16(B).)

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. The bill specifies that each day a violation occurs or continues is a separate violation. The bill requires the Board to determine the terms of

payment, 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. (Sec. 4768.16(C).)

Under the bill, if the 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 a 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. (Sec. 4768.16(D) and (E).)

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 (sec. 4768.17(A)). The bill states that the remedies provided under "***Enforcement***," "***Hearings and disciplinary actions***," 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) (sec. 4768.17(D)).

Under the bill, an action for damages that is based on professional services that were rendered or that should have been rendered by a licensed home inspector must not be brought, commenced, or maintained unless the action is filed within one year after the date that the home inspection is performed. Before bringing, commencing, or maintaining 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. (Sec. 4768.17(B) and (C).)

The bill states that nothing in the bill's provisions regarding civil actions 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 (sec. 4768.17(E)).

Fund

The bill creates the Home Inspectors Fund in the state treasury. 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's provisions. (Sec. 4768.18.)

Definitions

The bill also defines the following terms:

(1) "Parallel inspection" means the process by which a licensed home inspector observes and evaluates an on-site home inspection performed by an applicant for a home inspector license and reviews and verifies the applicant's compliance with the standards of practice specified in rules adopted by the Board (see "***Duties of the Board***," above), while concurrently performing the primary home inspection of the same residential building for the licensed home inspector's client.

(2) "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. (Sec. 4768.01.)

HISTORY

ACTION	DATE
Introduced	06-05-07
Reported, H. Commerce & Labor	04-09-08
Passed House (84-11)	05-06-08

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