



Ohio Legislative Service Commission

Bill Analysis

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Sub. S.B. 338

129th General Assembly
(As Passed by the Senate)

Sens. Bacon, Beagle, Hughes, Brown, Turner, Hite, Kearney, Lehner, Sawyer, Schiavoni, Skindell, Tavares, Wagoner

BILL SUMMARY

- Requires an individual or business entity that for compensation, directs, supervises, or has responsibility for the means, method, and manner of performance of air conveyance system cleaning services and that performs or otherwise supervises or directs other individuals who perform air conveyance system cleaning services to register with the Director of Commerce.
- Requires an individual who applies for a registration to assign the individual's registration to a business entity if the individual intends to perform air conveyance system cleaning services as a business entity or intends to supervise or direct individuals who will perform air conveyance system cleaning services for a business entity.
- Prescribes the requirements for and process of assignment, including that the individual named in an assignment is responsible for any work a business entity or its employees performs under an assigned registration.
- Makes violating the bill's prohibitions and requirements an unfair, deceptive, or unconscionable act or practice under the Consumer Sales Practices Act and requires the Director to establish rules governing the enforcement of the bill.
- Permits the Director to refuse to issue, suspend, or revoke any registration if the applicant or registrant is incapable of executing the functions of a registrant in a manner consistent with the public's health, safety, and welfare or has engaged in specified prohibited acts.
- Permits an applicant or registrant whose registration is denied, suspended, or revoked to appeal the decision within 30 calendar days.

- Requires every registrant to secure, maintain, and file proof of commercial general liability insurance of not less than \$500,000.
- Requires an air conveyance system cleaning servicer to enter into a written contract that contains certain information regarding the transaction in order to perform air conveyance system cleaning services for a consumer.
- Requires the Director to issue each registrant a unique registration number and requires each registrant to prominently display that number.
- Specifies that the bill supersedes any municipal corporation ordinance or regulation that provides for licensing or registration of air conveyance system cleaning servicers.

CONTENT AND OPERATION

Registration of air conveyance system cleaning servicers

Ohio law currently does not require licensure or regulation of air conveyance system cleaning servicers. The bill defines "air conveyance system cleaning servicer" as an individual or business entity (1) that for compensation, directs, supervises, or has responsibility for the means, method, and manner of performance of air conveyance system cleaning services and (2) that performs or otherwise supervises or directs other individuals who perform air conveyance system cleaning services. "Air conveyance system cleaning service" is the cleaning of a whole system within a forced airstream, consisting of various heating and cooling components.¹ The bill defines "residential property" as any single or multi-unit structure used in whole or in part as a place of dwelling and any accessory construction incidental to the structure and does not include an industrialized unit or a mobile home.² Beginning six months after the bill's effective date, the bill prohibits any individual or business entity from acting or attempting to act as an air conveyance cleaning system servicer without registering with or being assigned a registration by the Director of Commerce (Director). The bill also prohibits any individual or business entity who has not registered with or has not been assigned a registration by the Director from advertising in print, putting out any sign, card, or other device that would indicate to the public that the individual or business entity is an air conveyance system cleaning servicer in Ohio, or causing the individual's

¹ R.C. 4720.01(A) and (B).

² R.C. 4720.01, by reference to R.C. 3781.06, not in the bill, and 4501.01, not in the bill.

or business entity's name to be included in a classified advertisement or directory in Ohio under a classification as an air conveyance system cleaning servicer (servicer).³

The bill also prohibits an individual or business entity that performs air conveyance system cleaning services, beginning six months after the bill's effective date, from engaging in any of the following activities:

- Falsely representing that a consumer's air conveyance system contains any substance that is dangerous or that continued use by the consumer of the consumer's air conveyance system may be harmful;
- Representing that the individual or business entity has any sponsorship, approval, or affiliation relating to air conveyance system cleaning services that the individual or business entity does not have;
- Misrepresenting any sponsorship, approval, or affiliation relating to air conveyance system cleaning services that the individual or business entity does have;
- Misrepresenting the benefits of available air conveyance system cleaning services, including the ability to test for and identify mold present in an air conveyance system;
- Knowingly making a false report to a consumer, or potential consumer, in a solicitation;
- Failing to make available accurate registration information to a consumer.⁴

The bill applies to any person engaging in any of the activities regulated by the bill in Ohio, including persons whose residence or principal place of business is located outside of Ohio.⁵ A person who violates any of the bill's prohibitions or mandates or the rules adopted by the Director as described in "**Duties of the Director**" below commits an unfair, deceptive, or unconscionable act or practice under the Consumer Sales Practices Act.⁶

³ R.C. 4720.02(A) and Section 2.

⁴ R.C. 4720.02(B) and Section 2.

⁵ R.C. 4720.06.

⁶ R.C. 4720.02(C).

Under that Act, a consumer may bring several types of actions for a violation of the Act, including an individual action to rescind the transaction or recover the consumer's damages and an action to seek a declaratory judgment, an injunction, or other appropriate relief. Additionally, under that Act, the powers and remedies available to the Attorney General include the ability to impose a civil penalty and to bring a class action, an action to obtain a declaratory judgment that an act or practice violates that Act, or to obtain a temporary restraining order, preliminary injunction, or permanent injunction to restrain the act or practice.⁷

Duties of the Director

The bill requires the Director to adopt rules establishing all of the following:

- Registration standards, including financial responsibility and work experience requirements;
- Applicable fees;
- A system by which consumers can readily identify registered servicers, that, at a minimum, should consist of a searchable Internet database;
- Other provisions for the enforcement of the bill.⁸

The bill also requires the Director to assign to each servicer a unique registration number upon approval of the registration. The Director must keep a record of all registration numbers for a period of 20 years.⁹ Under the bill, the Director cannot issue or renew a registration until an applicant demonstrates that the Administrator of Workers' Compensation has issued a certificate establishing that the applicant has paid the required workers' compensation premiums or has been granted the privilege to self insure.¹⁰ The bill also requires the Director to prepare, print, and distribute booklets, pamphlets, or other written information that explain the bill and to make that information available to consumers.¹¹

⁷ R.C. 1345.07 and 1345.09, not in the bill.

⁸ R.C. 4720.03.

⁹ R.C. 4720.04(A).

¹⁰ R.C. 4720.04(E), by reference to R.C. 4123.35, not in the bill.

¹¹ R.C. 4720.04(D).

Registration process

To register as a servicer as required under the bill, an individual must do all of the following:

- Complete an application for registration on a form provided by the Department of Commerce;
- Pay a reasonable fee, determined by the Director, in an amount sufficient to meet the expenses the Department incurs in administering the registration program;
- File a disclosure statement stating whether the applicant has been convicted of or pleaded guilty to any crime and inform the Director in writing within 30 calendar days of any change or additional information.

The bill defines "crime" as any offense involving consumer fraud, predatory marketing practices, misleading advertising practices, or any other offense relating adversely to a person's competence to honestly and safely perform air conveyance system cleaning services.

The bill also requires each registrant to file an amended registration form provided by the Department within 20 days after any change in the information required on the registration form. The bill prohibits requiring a fee for the filing of an amendment.¹²

Assignment of registration

Under the bill, an individual who applies for registration as described in "**Registration process**" above and who intends to perform air conveyance system cleaning services as a business entity or intends to supervise or direct individuals who will perform air conveyance system cleaning services for a business entity must, at the time of applying for a registration or any time thereafter, request that the individual's registration be assigned to the business entity with whom the individual is associated. If the individual who requests assignment is issued or holds a registration, the Director must assign the registration in the name of the business entity. The assigned registration must state the name and position of the individual who assigned the registration to the business entity.¹³

¹² R.C. 4720.05 and 4720.01(D).

¹³ R.C. 4720.051(A) and (B).

The bill requires that, if an individual who assigned a registration to a business entity ceases to be associated with the business entity for any reason (including death), the individual or business entity must notify the Director of the date on which the individual ceased to be associated with the business entity. Under the bill, an assigned registration becomes invalid 90 calendar days after the date on which the individual who assigned the registration ceases to be associated with the business entity or at an earlier time to which the business entity and the individual agree. However, if another individual has also assigned a registration to the same business entity, that business entity may continue to operate under the valid registration.¹⁴

Under the bill, any work a business entity or its employees performs under an assigned registration is deemed to be conducted under the personal supervision of the individual named in the assignment. If more than one registration is assigned to the same business entity, any work the business entity or its employees performs is deemed to be conducted under the personal supervision of each individual named in each assignment.¹⁵

The bill requires any individual who assigns a registration to a business entity to be actively engaged in business as an air conveyance system cleaning servicer and be readily available for consultation with the business entity to which the registration is assigned. The bill prohibits any one registration from being assigned to more than one business entity at a time.¹⁶

Grounds for disciplinary action

The Director may refuse to issue, suspend, or revoke any registration of an applicant or registrant for failing to comply with the bill, for any other good cause shown within the bill's purposes, or upon reasonable proof that the applicant or registrant is incapable, for medical or any other good cause, of executing the functions of a registrant in a manner consistent with the public's health, safety, and welfare or has done any of the following:

- Obtained a registration through fraud, deception, or misrepresentation;
- Engaged in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise, or false pretense;

¹⁴ R.C. 4720.051(C).

¹⁵ R.C. 4720.051(D).

¹⁶ R.C. 4720.051(E) and (F).

- Engaged in gross negligence, gross malpractice, or gross incompetence;
- Engaged in repeated acts of negligence, malpractice, or incompetence;
- Engaged in professional or occupational misconduct as determined by the Director;
- Except as described under "**Rehabilitation**" below, been convicted of or pleaded guilty to any crime involving moral turpitude or relating adversely to a person's competence to honestly and safely perform air conveyance system cleaning services;
- Had the authority to engage in air conveyance system cleaning services revoked or suspended by any other state, agency, or authority for reasons consistent with the bill;
- Violated or failed to comply with the provisions of any rule administered by the Director;
- For purposes of Ohio's Workers' Compensation Law, was determined to be a noncomplying employer by the Administrator.¹⁷

The Director may, in lieu of revoking a registration, suspend the registration for a reasonable time period or do that suspension and assess a monetary penalty to the registrant. In lieu of suspending a registration, the Director may assess a monetary penalty to the registrant. The Director may issue a new registration to an applicant whose previous registration was revoked.¹⁸

The bill requires the Director to deny registration for a period of up to six months to an applicant who violates any of the prohibitions described under "**Registration of air conveyance system cleaning servicers,**" above.¹⁹

The bill permits an applicant or registrant whose registration is denied, suspended, or revoked to appeal the decision pursuant to the Administrative Procedure Act within 30 calendar days of the decision by transmitting a written request to the Director.²⁰ Under the bill, an applicant or registrant has a continuing duty to provide

¹⁷ R.C. 4720.04 and 4720.08.

¹⁸ R.C. 4720.04.

¹⁹ R.C. 4720.02 and 4720.08(B).

²⁰ R.C. 4720.08(C).

any assistance or information requested by the Director, and must cooperate in any inquiry, investigation, or hearing conducted by the Director regarding the issuance, denial, suspension, or revocation of a registration.²¹

Rehabilitation

The Director must not deny, suspend, or revoke a registration on the basis of any conviction or plea of guilty disclosed if the applicant or registrant has affirmatively demonstrated to the Director clear and convincing evidence of the applicant's or registrant's rehabilitation. In making this determination, the Director must consider the following factors:

- The nature and responsibility of the position the applicant or registrant would hold;
- The nature and seriousness of the offense;
- The circumstances under which the offense occurred;
- The date of the offense;
- The age of the applicant or registrant when the offense was committed;
- Whether the offense was an isolated incident or repeated situation;
- Any social conditions that may have contributed to the offense;
- Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have the applicant or registrant under their supervision.²²

Liability insurance policy requirements

The bill requires a registrant to secure, maintain, and file proof of commercial general liability insurance in a minimum amount of \$500,000 per occurrence. If a registrant's insurance is to be canceled or is nonrenewable, the registrant must submit a

²¹ R.C. 4720.08(D).

²² R.C. 4720.08(E).

copy of a new insurance policy or a replacement policy in a minimum amount of \$500,000 per occurrence before the former policy lapses.²³

Additional requirements

Written contract

The bill requires air conveyance system cleaning services to be performed pursuant to a written contract entered into by the servicer and the consumer. The contract must clearly and accurately set forth in legible form and understandable language all agreements and conditions related to the service and include the following information:

- The legal name of the servicer, and if the registration has been assigned as described in "**Assignment of registration**" above, the name of the individual associated with the assignment;
- The business address and registration number;
- A copy of the proof of the required commercial general liability insurance;
- The total price or other consideration to be paid by the consumer, including the finance charges.²⁴

Display of registration number

Under the bill, each registrant must prominently display the registrant's registration number in the registrant's place of business, in all advertisements distributed within Ohio, on business documents, contracts, and correspondence with consumers of air conveyance system cleaning services, and on all commercial vehicles registered in Ohio that are leased or owned by the registrant and used by the registrant for the purpose of engaging in air conveyance system cleaning services. If a registration has been assigned to a business entity, the business entity must display the registration number of the individual named in the assignment. If more than one registration is assigned to a business entity, the business entity must display the registration number of each individual named in each assignment.²⁵

²³ R.C. 4720.09.

²⁴ R.C. 4720.12.

²⁵ R.C. 4720.10.

Annual renewal

The bill requires each registrant to annually reregister by completing an application for registration on a form provided by the Department and by paying a reasonable fee, as determined by the Director.²⁶

Municipal ordinances and regulations superseded

The bill and rules adopted pursuant to it supersede any ordinance or regulation of a municipal corporation that provides for licensing or registration of servicers or for the protection of consumers by bonds or warranties required to be provided by servicers. The bill allows a municipal corporation to enact ordinances and regulations relating to servicers that are not provided for by the bill or by the rules required to be adopted as described in "**Duties of the Director**" above.²⁷

HISTORY

ACTION	DATE
Introduced	05-01-12
Reported, S. Insurance, Commerce & Labor	06-13-12
Passed Senate (32-0)	06-13-12

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²⁶ R.C. 4720.07.

²⁷ R.C. 4720.11.

