



# Ohio Legislative Service Commission

## Final Analysis

Daniel M. DeSantis

### Sub. S.B. 78

130th General Assembly  
(As Passed by the General Assembly)

**Sens.** Hughes, Brown, Bacon, Burke, Eklund, Gentile, Patton, Peterson, Sawyer, Schiavoni

**Reps.** Dovilla, Anielski, Beck

**Effective date:** September 17, 2014

---

## ACT SUMMARY

- Requires, rather than permits, an individual's specialty contractor license to be assigned to a contracting company with whom the individual is employed.
- Modifies the criteria under which an assigned license becomes invalid subsequent to a contractor's disassociation from a contracting company.
- Expands the reasons for which discipline may be imposed against a licensee and modifies the disciplinary actions that may be imposed.
- Requires each specialty section of the Board to direct the Administrative Section of the Board to refuse to issue a license to an applicant who had another person take the licensing examination for the applicant or who failed the licensing examination.
- Allows a specialty section of the Board to take action against a licensee without a hearing if the licensee does not request a hearing within 30 days of receiving notice of the Board's intent to act against the licensee.
- Allows a specialty section of the Board, upon determining that a person has acted as a specialty contractor without the appropriate license, to file a complaint with the appropriate prosecutor for criminal prosecution.
- Removes, from the requirements for a written notice sent by a specialty section to a person who is alleged to have acted as a specialty contractor without a license, the requirement that the notice be sent within seven days of the section's determination.

- Allows a specialty section to take action against a person who is alleged to have acted as a specialty contractor without a license without a hearing upon an affirmative vote of a quorum of the section's members if the person does not request a hearing within 30 days of receiving notice of the section's intent to act against the person.
- Reduces from four to three the number of affirmative votes of specialty section members required to impose a penalty on a person who the section determines after a hearing has acted as a specialty contractor without a license.
- Eliminates the current law liability of each licensee of a business to which multiple licenses have been assigned regarding violations of the terms of the license committed during any work conducted under any of the licenses.
- Removes the current law requirement that liability insurance required by each specialty section of the Board for a person applying to be licensed by the Board must include complete operations coverage, and requires liability insurance to be maintained in only one contracting company name.
- Allows an applicant who fails a specialty contractor licensing examination to retake the examination 60 days after the initial examination, and limits the retakes to five.
- Transfers responsibility for designing examinations for specialty contractor licenses from the Administrative Section of the Board to the specialty sections.
- Requires each specialty section of the Board to adopt rules establishing criteria for the specialty section to use in deciding whether to issue, renew, suspend, revoke, or refuse to issue or renew licenses.

---

## **CONTENT AND OPERATION**

### **Assignment of specialty contractor licenses**

The act requires that an individual's specialty contractor license be assigned to a contracting company with whom the individual is employed. At the time the individual applies for a specialty contractor license, the individual must request that the individual's license be so assigned. Under prior law, such an assignment was optional, and allowed the license to be assigned to a business with whom the individual was associated as a full-time officer, proprietor, partner, or employee. The act further requires that the appropriate specialty section of the board place on inactive status any license that is not assigned to a contracting company. A currently licensed specialty contractor who has not assigned the contractor's license to a contracting company has until November 16, 2014 to make that assignment. If the specialty contractor fails to



make that assignment within the prescribed time, the contractor's license must be placed in inactive status.<sup>1</sup>

A "contracting company" is a company in the construction industry working on construction projects.<sup>2</sup>

While a contracting company holds a license, the Administrative Section is prohibited from issuing another license to the individual who assigned the license to the contracting company for the same type of contracting for which the contracting company uses the assigned license.<sup>3</sup>

The act also modifies the procedure by which a license assignment becomes invalid subsequent to a contractor ceasing to be associated with a contracting company. If a contractor who assigned a license to a contracting company ceases to be associated with the contracting company for any reason, including death of the contractor, the contractor or contracting company must immediately notify the appropriate specialty section of the date on which the association ceased. Such a license assignment becomes invalid at one of the following times, as applicable:

- Ninety calendar days after the date of the contractor's death;
- Ninety calendar days after the contractor completes a change of company form;
- At an earlier time to which the contracting company and the contractor have agreed.<sup>4</sup>

### **Liability of assigning contractors**

Continuing law specifies that any work a contracting company conducts under the license assigned or displayed is deemed to be conducted under the personal supervision of the individual named in the license. Any violation of a term of the license is deemed to have been committed by the individual named in the license. The act eliminates the liability of each licensee of a business entity to which multiple licenses

---

<sup>1</sup> R.C. 4740.07(B) and Section 3 of the act.

<sup>2</sup> R.C. 4740.01(C).

<sup>3</sup> R.C. 4740.07(C).

<sup>4</sup> R.C. 4740.07(D).



have been assigned for license violations occurring during any work conducted under any of the licenses.<sup>5</sup>

### **Definition of "contractor"**

The act revises the definition of "contractor." Under the act, a "contractor" is an individual or contracting company that satisfies all of the following requirements:

(1) Has responsibility for the means, method, and manner of construction, improvement, renovation, repair, or maintenance on a construction project with respect to one or more of the trades governed by the Construction Industry Licensing Law, and offers, identifies, advertises, or otherwise holds out or represents that the individual or contracting company is permitted or qualified to perform or have responsibility for the means, method, and manner of construction, improvement, renovation, repair, or maintenance with respect to one or more trades on a construction project; and

(2) Either performs construction, improvement, or renovation on a construction project with respect to the individual's or contracting company's trade, or employs tradespersons who perform construction, improvement, or renovation on a construction project with respect to the individual's or contracting company's trades.<sup>6</sup>

A "tradesperson" is an individual who is employed by a contractor and who engages in construction, improvement, renovation, repair, or maintenance of buildings or structures without assuming responsibility for the means, method, or manner of that construction, improvement, renovation, repair, or maintenance.<sup>7</sup>

### **Unlicensed contracting**

The act requires an investigator to be appointed by the Director of Commerce, on behalf of the appropriate specialty section of the Construction Industry Licensing Board (see "**Specialty sections**," below), to investigate any person who allegedly has acted as a specialty contractor or represented that the person is a specialty contractor without the appropriate license. Under prior law, a specialty section was authorized to conduct such an investigation.<sup>8</sup>

---

<sup>5</sup> R.C. 4740.07(E).

<sup>6</sup> R.C. 4740.01(B).

<sup>7</sup> R.C. 4740.01(E).

<sup>8</sup> R.C. 4740.16(A).



Continuing law requires that if, after an investigation, the appropriate specialty section determines that reasonable evidence exists that a person has acted as a specialty contractor or represented that the person is a specialty contractor without the appropriate license, the section must send written notice to the person in the same manner that notice is sent to licensees under the Administrative Procedure Act. The act removes a requirement that the notice be sent within seven days after the section's determination, and specify that a hearing will be held at a specified date, time, and place.<sup>9</sup>

The act also allows a specialty section to take action against the person without an adjudication hearing, upon an affirmative vote of a quorum of its members, if the person does not request a hearing within 30 days after receiving notice of the section's intent to act. If a hearing is held and the specialty section determines that a violation has occurred, the act allows the section to impose a fine of up to \$1,000 per day on the person upon an affirmative vote of a majority of the section's members, rather than upon the affirmative vote of four out of five members as under prior law. The specialty section also may file a complaint with the appropriate prosecutor for criminal prosecution. Continuing law provides that a person who acts as a specialty contractor or represents that the person is a specialty contractor without being licensed as such is guilty of a minor misdemeanor on the first violation and a fourth degree misdemeanor on subsequent violations.<sup>10</sup>

The act eliminates the authority of a specialty section to request the court of common pleas to compel attendance of persons before the section for hearings.<sup>11</sup>

### **Disciplinary action against applicants and license holders**

The act requires a specialty section to adopt rules under the Administrative Procedure Act that establish criteria for the section to use in evaluating the qualifications of an applicant, and for determining whether to issue, renew, suspend, revoke, or refuse to issue or renew a license.<sup>12</sup>

---

<sup>9</sup> R.C. 119.07, not in the act. The Administrative Procedure Act requires the notice to include the charges or other reasons for the proposed action, the law or rule directly involved, and a statement informing the party that the party is entitled to a hearing if the party requests a hearing within 30 days of the time of mailing the notice.

<sup>10</sup> R.C. 4740.16(A), (B), and (D) and 4740.02. The penalties are prescribed in R.C. 4740.99, not in the act.

<sup>11</sup> R.C. 4740.16(C).

<sup>12</sup> R.C. 4740.05(A)(1) and (2).



The act generally revises the statute that authorizes a specialty section to discipline applicants and license holders.

A specialty section may impose any, or a combination of any, of the following disciplinary actions against an applicant or license holder: suspend, revoke, or refuse to issue any license; require additional continuing education hours; or issue a fine.<sup>13</sup> The act repeals a provision that authorized a specialty section to apply to the court of common pleas of the county in which a violation occurred or is occurring for an injunction or other appropriate relief to enjoin or terminate the violation.<sup>14</sup>

The reasons for which such a disciplinary action can be taken are any of the following:

- Having been convicted of or having pleaded guilty to a crime of moral turpitude or to a disqualifying offense;<sup>15</sup>
- Violating any provision of the Construction Industry Licensing Law;
- Violating any rule adopted under the Construction Industry Licensing Law;
- Obtaining, or attempting to obtain, a license or renewal of a license by means of fraud, deception, or misrepresentation;
- Engaging in fraud, misrepresentation, or deception in the conduct of business;
- Transferring the person's license to another person without approval of the specialty section;
- Allowing the person's license to be used by an unlicensed person or entity;<sup>16</sup>

---

<sup>13</sup> Under prior law, the amount of the fine was limited to not more than \$1,000 per violation per day. The act removes this limitation.

<sup>14</sup> Former R.C. 4740.10(C).

<sup>15</sup> Under R.C. 4776.10(C), which is referenced but not in the act, a "disqualifying offense" is a criminal offense that is a felony that has a direct nexus to an individual's proposed or current field of licensure or employment. A "direct nexus" exists under R.C. 4776.10(B), if the nature of the offense for which the individual was convicted or pleaded guilty has a direct bearing on the individual's fitness or ability to perform one or more of the duties or responsibilities necessarily related to a particular trade.

<sup>16</sup> This ground for discipline does not apply to a contracting company that has been assigned a license.



- Failing to comply with a disciplinary action imposed by the specialty section; or
- Failing to maintain insurance throughout the licensing year, unless the license properly has been placed in active status.

A specialty section also may take disciplinary action against an applicant or license holder upon receiving notice that a municipality or any other governmental agency has suspended or revoked a local contracting license or registration of the applicant or license holder.

If an applicant or license holder fails to request a hearing within 30 days after the specialty section notifies the applicant or license holder that it intends to take disciplinary action against the applicant or license holder, the bill specifies that specialty section, by majority vote of a quorum of its members, may impose the disciplinary action without a hearing.<sup>17</sup>

A specialty section must direct the Administrative Section to refuse to issue any license to an applicant upon a finding by the specialty section that the applicant had another person take the required examination for the applicant or failed to pass the required examination.<sup>18</sup>

The act repeals a provision that required a person who wished to complain against a license holder to submit the complaint in writing to the specialty section within three years after the action or event upon which the complaint is based.

## **The Construction Industry Licensing Board**

### **Generally**

Each member of the Construction Industry Licensing Board is required to take an oath of office and file the oath with the Secretary of State. The act eliminates the filing requirement.<sup>19</sup>

### **The Administrative Section**

Continuing law vests the Administrative Section of the Board with the responsibility for issuing and renewing licenses, and requires a construction industry

---

<sup>17</sup> See R.C. 119.07, not in the act.

<sup>18</sup> R.C. 4740.10. The section is repealed and re-enacted by the act.

<sup>19</sup> R.C. 4740.02(F).



license to include a license number and an expiration date. The act requires that the contractor's name and the name of the contracting company associated with the individual also be included.<sup>20</sup>

### **Specialty sections**

The act refers to the three sections of the Board other than the Administrative Section, the Plumbing and Hydronics Section, the Electrical Section, and the Heating, Venting, Air Conditioning, and Refrigeration Section, as the "specialty" sections of the Board.<sup>21</sup> The act adds the term "specialty" throughout the Construction Industry Licensing Law<sup>22</sup> to denote that one of these three specialty sections is responsible for performing specified duties and for licensing and regulating a specific specialty or trade covered by that Law.<sup>23</sup>

### **License application**

Under continuing law, a person seeking a specialty contractor license must file a written application and application fee with the appropriate specialty section of the Board. The act eliminates the timeframe for filing an application, which was not more than 60 days nor less than 30 days prior to the date of the examination required for licensure.<sup>24</sup>

The act also modifies the liability insurance requirements for persons applying for specialty contractor licenses. Continuing law specifies that an applicant must maintain contractor's liability insurance in an amount the appropriate specialty section of the Board determines to qualify to take a specialty contractor licensing examination. The act removes the requirement that the insurance include complete operations coverage and requires that the insurance be maintained in only one contracting company name.<sup>25</sup>

### **Retaking examinations for licensure**

The act allows an applicant who does not pass the required examination to retake the examination not less than 60 days after the applicant's most recent

---

<sup>20</sup> R.C. 4740.04(C).

<sup>21</sup> R.C. 4740.02(A).

<sup>22</sup> R.C. Chapter 4740.

<sup>23</sup> R.C. 4740.04, 4740.05, 4740.06, 4740.07, 4740.08, 4740.09, 4740.10, 4740.13, and 4740.16.

<sup>24</sup> R.C. 4740.06(A).

<sup>25</sup> R.C. 4740.06(B).



examination. Such an applicant may retake the examination up to five times before the applicant is required to reapply for a license.<sup>26</sup>

The act also makes each specialty section of the Board responsible for designing the licensing examinations for the type of contractor the specialty section licenses to determine an applicant's competence to perform that type of contracting. Prior law required the Administrative Section to select and contract with persons to design the examination for each type of contractor.<sup>27</sup>

## **Continuing education**

Under the act, a training agency may not offer continuing education courses unless the training agency has been approved by the Administrative Section. A "training agency" is an entity approved by the Administrative Section of the Board to provide continuing education courses. Current law requires that *persons*, rather than training agencies, be approved. Similarly, training agencies, rather than persons, are prohibited from providing continuing education courses under continuing law unless they submit information required for approval of the course to the appropriate specialty section at least 30 days, but not more than one year, before offering a course.<sup>28</sup>

Under continuing law, a specialty section must establish or approve a continuing education curriculum for license renewal for each class of contractors for which the specialty section has responsibility. Continuing law requires the Administrative Section to adopt rules establishing the fees to be charged to "persons who provide continuing education courses." The fees are a flat \$25 general fee, a per course fee of \$10 plus \$1 for each credit hour, and an attendance fee of \$1 for each attendee. The act specifies that the course fee must be submitted to a specialty section for approval under the special section's authority to establish or approve a continuing education curriculum.<sup>29</sup>

## **Professional employer organizations and temporary agencies**

The act specifies that the Construction Industry Licensing Law does not prohibit a contractor from leasing, on a temporary or permanent basis, an employee from a

---

<sup>26</sup> R.C. 4740.06(D).

<sup>27</sup> R.C. 4740.04 and 4740.05.

<sup>28</sup> R.C. 4740.05(A).

<sup>29</sup> R.C. 4740.04(G).



professional employer organization or temporary agency to perform work under the contractor's direct supervision.<sup>30</sup>

---

## HISTORY

ACTION	DATE
Introduced	03-13-13
Reported, S. Commerce & Labor	01-22-14
Passed Senate (32-0)	04-02-14
Reported, H. Policy & Legislative Oversight	05-21-14
Passed House (96-0)	06-04-14

14-SB78-130.docx/ks

---

<sup>30</sup> R.C. 4740.131.

