



Ohio Legislative Service Commission

Bill Analysis

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Reps. Patmon, Strahorn, Stebelton

BILL SUMMARY

- Prohibits, beginning 180 days after the bill's effective date, any person from engaging or attempting to engage in the practice of a residential builder, residential maintenance and alteration contractor, or salesperson unless the person is licensed pursuant to the bill.
- Specifies criminal and civil sanctions for violating that prohibition.
- Creates the Residential Builders' and Maintenance and Alteration Contractors' Board and specifies its membership.
- Prescribes duties of the Board and the Director of Commerce in relation to licensing under the bill.
- Lists requirements an individual must satisfy to receive a license as a residential builder, residential maintenance and alteration contractor, or salesperson, including that the applicant must pass an examination prescribed by the Board and Director.
- Specifies procedures to allow an entity to be licensed.
- Lists the crafts or trades in which a licensed residential maintenance and alteration contractor may engage and requires the Director to identify the craft or trade on the contractor's license.
- Specifies procedures to renew a license, and requires a licensed residential builder or residential maintenance and alteration contractor to take an examination to renew a license.
- Specifies procedures for filing complaints and conducting an investigation under the bill.

- Establishes a two-tiered disciplinary action system, and lists the reasons for which a final disciplinary action (as described in the bill) may be taken against a licensee.
- Prohibits a residential builder or residential maintenance and alteration contractor from bringing or maintaining certain actions in an Ohio court unless the builder or contractor that the builder or contractor was licensed under the bill during the performance of the act or contract.
- Requires a licensee to include the licensee's license information in a home construction services contract required under continuing law.
- Establishes fees to be charged for the administration of the bill.
- Creates the Builder Enforcement Fund and requires the Director use the Fund to enforce the bill and to reimburse the Attorney General for the reasonable cost of services provided to the Director and for expenses incurred in prosecutions for unlicensed practice or a prosecuting attorney for expenses incurred in conducting prosecutions of unlicensed practice.

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CONTENT AND OPERATION

Licensure of residential contractors, builders, and salespersons

Licensure requirement

The bill prohibits, beginning 180 days after the bill's effective date, any person from engaging or attempting to engage in the practice of a residential builder, residential maintenance and alteration contractor, or salesperson unless the person is licensed pursuant to the bill.¹ Currently, these persons are not licensed at the state level, but a possibility exists that they could be required to be licensed by a municipal corporation to conduct business within that municipal corporation's jurisdiction.

Under the bill, a residential builder means either of the following persons:

- A person who is engaged in the construction of a residential building or a combination residential and nonresidential building and who, for a fixed compensation described in the bill, undertakes with another, offers to undertake, or purports to have the capacity to undertake with another for the erection, construction, replacement, repair, alteration, or an addition to, subtraction from, improvement of, wrecking of, or demolition of, a residential building or combination residential and nonresidential building;
- A person who erects a residential building or combination residential and nonresidential building.

The bill defines a "residential maintenance and alteration contractor" as either of the following persons:

- A person who, for a fixed compensation described in the bill, undertakes with another for the repair, alteration, or an addition to, subtraction from, improvement of, wrecking of, or demolition of a residential building or combination residential and nonresidential building, the building of a garage, or laying of concrete on residential property;

¹ R.C. 4785.02(A) and Section 3.



- A person who engages in the purchase, substantial rehabilitation or improvement, and resale of a residential building, and who engages in that activity on the same building more than twice in one calendar year.

A "salesperson" means an employee or agent, other than a qualifying officer designated under the bill, of a licensed residential builder or residential maintenance and alteration contractor, who for compensation, sells or attempts to sell, negotiates or attempts to negotiate, solicits for or attempts to solicit for, obtains or attempts to obtain a contract or commitment for, or furnishes or attempts or agrees to furnish, the goods and services of a residential builder or residential maintenance and alteration contractor. "Salesperson" does not include a person working for a licensed residential builder or residential maintenance and alteration contractor who makes sales that are occasional and incidental to the person's principal employment.²

Penalties

Under the bill, whoever violates the bill's prohibition against engaging or attempting to engage in the practice of a residential builder, residential maintenance and alteration contractor, or salesperson without a license is guilty of a misdemeanor, punishable by a fine of not less than \$5,000 or more than \$25,000, imprisonment for not more than one year, or both. If the offender has been previously convicted of a violation of that prohibition, the person is guilty of a misdemeanor punishable by a fine of not less than \$5,000 or more than \$25,000, imprisonment for not more than two years, or both. In the case of an offense that causes death or serious injury, the person is guilty of a felony punishable by a fine of not less than \$5,000 or more than \$25,000, imprisonment for not more than four years, or both.³ These penalties do not align with Ohio's standard penalties for misdemeanors.

In addition to the criminal penalties described immediately above, a prosecuting attorney or the Attorney General may bring an action for a civil violation in a court of competent jurisdiction against an unlicensed person who has violated the prohibition against practicing without a license. The court must assess a civil fine of not less than \$5,000 and not more than \$25,000 and any additional civil damages or restitution the court considers appropriate. If the Attorney General considers it necessary, the Attorney General must intervene in and prosecute all cases arising under the bill. However, the bill does not prohibit the Director of Commerce from bringing any civil, criminal, or administrative action for the enforcement of the prohibition. The Director has standing to bring an administrative action or to directly bring an action in a court of competent

² R.C. 4785.01(B) to (D).

³ R.C. 4785.99.

jurisdiction regarding unlicensed practice of an occupation. The Attorney General or the appropriate prosecuting attorney may utilize the forfeiture provisions of Ohio's Forfeiture Law⁴ for items seized and determined to be proceeds of a crime, substituted proceeds of a crime, or the instrumentality of a crime.⁵

Exemptions

The bill does not apply to any of the following persons:

- An authorized representative of the U.S. government, Ohio, or an Ohio political subdivision;
- An owner of property, with reference to a residential building on the property for the owner's own use and occupancy;
- An owner of rental residential property, with reference to the maintenance and alteration of that property;
- An officer of the court acting within the terms of the officer's office;
- A person other than a salesperson who engages solely in the business of performing work and services under contract with a licensed residential builder or residential maintenance and alteration contractor;
- A person working on one undertaking or project by one or more contracts, the aggregate contract price for which labor, material, and any other item is less than \$600 (this exemption does not apply if the work is only a part of a larger or major operation, regardless of whether the operation is undertaken by the same or a different residential builder or residential maintenance and alteration contractor, or in which a division of the operation is made in contracts of amounts less than \$600 to evade compliance with the bill);
- An electrical contractor who is licensed under the Ohio Construction Industry Licensing Law⁶ (OCILB) or who holds a certificate issued by the State Fire Marshal pursuant to the law governing fire protection

⁴ R.C. Chapter 2981.

⁵ R.C. 4785.16.

⁶ R.C. Chapter 4740.



equipment,⁷ only with respect to the electrical installation, maintenance, or repair work performed by the contractor;

- A plumbing contractor licensed under the OCILB Law, only with respect to plumbing installation, maintenance, or repair work performed by the contractor;
- A heating, ventilating, and air conditioning contractor licensed under the OCILB Law, only with respect to any heating, ventilating, and air conditioning installation, maintenance, or repair work performed by the contractor;
- A refrigeration contractor licensed under the OCILB Law, only with respect to refrigeration installation, maintenance, or repair work performed by the contractor.⁸

Residential Builders' and Maintenance and Alteration Contractors' Board

Membership

The bill creates within the Department of Commerce the Residential Builders' and Maintenance and Alteration Contractors' Board. Except for the initial membership, the Board must consist of the following nine members, who must be appointed by the Governor with the advice and consent of the Senate:

- Four members who are licensed residential builders;
- Two members who are licensed maintenance and alteration contractors;
- Three members who represent the general public, one of whom is certified under the Building Standards – General Provisions Law to inspect residential buildings.

With respect to the initial membership, the Governor may appoint, for those members who are required to be licensed, an individual who is certified or otherwise approved by a national organization that certifies or otherwise approves individuals in the occupation to be licensed by the Board or an individual who has actively engaged in the business of a residential builder or residential maintenance and alteration contractor, taught in an educational institution that prepares applicants for licensure as a residential builder or residential maintenance and alteration contractor, or both, for

⁷ R.C. 3737.65, not in the bill.

⁸ R.C. 4785.02(B) and (C).



not less than two years immediately preceding the date of the individual's appointment. Within three years after the bill's effective date, these individuals must be licensed as required under the bill.⁹

Each Board member must be at least 18 years of age and must be an Ohio resident. The Director of Commerce is an ex officio member of the Board and must not vote on any matter before the Board and is not a member for purposes of determining whether a quorum is present.

In making appointments to the Board, the Governor must seek nominations from a wide range of interested groups and persons, including appropriate professional associations, consumer associations, labor unions, and other organizations or individuals. The Governor must make the initial Board appointments not later than 90 days after the bill's effective date.

The bill staggers the initial Board members' terms. Thereafter, each term must be for four years, ending on the same day of the same month as the term that it succeeds. Each member must hold office from the date of appointment until the end of the term for which appointed. The bill requires vacancies to be filled in the standard manner. No member may be appointed for more than two consecutive terms of four years.

Each Board member must be paid an amount fixed by the Director of Administrative Services in accordance with the exempt employee salary schedule for each day or portion thereof spent in the discharge of the member's official duties and must be reimbursed for the member's actual and necessary expenses incurred in the discharge of those duties.¹⁰

Powers and duties

The Board must meet as often as necessary to fulfill its duties under the bill, but must meet not less than twice a year and at other dates set by the Director of Commerce. A majority of the members appointed and serving constitute a quorum. A member of a Board cannot vote by proxy. The Board annually must elect a chairperson, a vice-chairperson, and other officers the Board determines necessary. The Board may adopt bylaws for the regulation of its internal affairs. The Board must report its activities to the Director annually and at any additional time as the Director requests.¹¹

⁹ R.C. 4785.03(A) and Section 4, by reference to R.C. 3781.10, not in the bill.

¹⁰ R.C. 4785.03(B) to (D), by reference to R.C. 124.15(J), not in the bill.

¹¹ R.C. 4785.03(E) and (F).



The bill requires the Board do all of the following:

- Interpret a licensure requirement, and, if necessary, furnish aid in an investigation conducted under the bill;
- Assist the Director in implementing the bill;
- Adopt any rules as required under the bill that are necessary and appropriate in accordance with Ohio's Administrative Procedure Act;
- Impose, after a hearing conducted pursuant to Ohio's Administrative Procedure Act, any penalties that the Board determines appropriate in accordance with the bill;
- Aid the Director in interpreting a licensure requirement that is incomplete or subjective in nature to determine whether the person seeking a license or a renewal of a license has satisfied the requirements for the license or renewal;
- Develop, with the Director, the examinations required under the bill.

The examinations developed by the Board and the Director must test an applicant's or licensee's knowledge of the obligations of a residential builder or residential maintenance and alteration contractor to the public and to the applicant's or licensee's principal, and the applicant's or licensee's knowledge of the laws relating to the license for which the applicant applied or that the licensee holds. The Board and the Director, in developing the examination, may adopt an examination or test prepared by another agency if the Board and the Director determine that the examination or test serves as a basis for determining whether a person has the knowledge and skills to perform as a residential builder, residential maintenance and alteration contractor, or salesperson. Notwithstanding Ohio's Open Meetings Law, the material required by the Board and the Director to develop an examination may be considered by the Board in an executive session, if the Board satisfies the continuing law requirement that a majority of a quorum of the Board determines, by a roll call vote, to hold an executive session only at a regular or special meeting for the sole purpose of the consideration of the matter.

The Board and the Director, in determining the form of the recommended examination, must give special emphasis to an alternative form of testing that permits a person to demonstrate a special qualification the person may have that is not evident under a written examination, but is related to being a residential builder, residential maintenance and alteration contractor, or salesperson. The alternative form of testing must be structured to give weight to a person's experience, noninstitutional training,



and innate skills and must be flexible enough to enable a person with a mental or physical disability to demonstrate that the person has the requisite knowledge and skills.¹²

Additionally, a Board member, at the discretion of the Board, may attend an informal conference conducted under the bill (see "**Alternative dispute resolution**," below). The Board may adopt rules to establish the minimum standards of acceptable practice as a residential builder, residential maintenance and alteration contractor, or salesperson.¹³

Issuing a license

Requirements

The Director must issue a license to an applicant for a residential builder license, residential maintenance and alteration contractor license, or a salesperson license if the applicant does all of the following:

- Satisfactorily demonstrates to the Director that the applicant is of good moral character and is financially stable;
- Submits a copy of a driver's license, commercial driver's license, or state identification card issued under Ohio law or the equivalent law of another state, to demonstrate proof of identity;
- Passes the examination prescribed by the Board and the Director;
- Except for an applicant for a salesperson license, maintains a principal place of business in Ohio;
- Pays the following fees:
 - An application processing fee of \$15;
 - A fee of \$50 to take the complete examination for a license as a residential builder or residential maintenance and alteration contractor or a fee of \$30 to take the salesperson examination;
 - An examination review fee of \$20;

¹² R.C. 4785.04(A) and (B), by reference to R.C. 121.22(G), not in the bill.

¹³ R.C. 4785.04(C).



- A license fee of \$50.¹⁴

Notwithstanding the requirements for licensure described immediately above, a person or qualifying officer for a corporation or member of a partnership or other business association who holds a residential builder or residential maintenance and alteration contractor license is not required to retake an examination for that license when applying for an additional license. However, a residential maintenance and alteration contractor who holds a license and applies for a license as a residential builder is required to take an examination for the residential builder license.

The bill requires a residential builder or residential maintenance and alteration contractor to submit the application for a salesperson license on behalf of an employee of the builder or contractor who wishes to be licensed as a salesperson. A salesperson can be licensed in the employ of only one residential builder or residential maintenance and alteration contractor. If a licensed salesperson wishes to change employment from one residential builder or residential maintenance and alteration contractor to another, the salesperson must forward the license to the Director and the new residential builder or residential maintenance and alteration contractor must apply for a transfer and the issuance of a new license under the salesperson's new employer.

If a residential builder or residential maintenance and alteration contractor has more than one place of business in Ohio, the Director must issue a branch license to the residential builder or residential maintenance and alteration contractor for each place of business maintained. A residential builder or residential maintenance and alteration contractor must submit an application to the Director for each branch office.¹⁵

Change in information

A residential builder or residential maintenance and alteration contractor licensed under the bill must report to the Director a change of name or address or a change of members or addresses of the partnership, association, or corporation holding a license under the bill within 30 days after the change occurs. If the change results in a new document, the Director must charge a change of name, address, or employer fee of \$10.¹⁶

¹⁴ R.C. 4785.05(A) and (B) and 4785.20.

¹⁵ R.C. 4785.05(C) to (E) and 4785.06(B).

¹⁶ R.C. 4785.05(F) and 4785.20.



Business licensure – qualifying officers

If a corporation, partnership, association, limited liability company, or other entity applies for a license under the bill, the applicant must designate one of its officers, partners, members, or managing agents as a qualifying officer who, upon taking and passing the examination and satisfying the bill's other requirements, must receive a license to act for the entity. The qualifying officer also must obtain and maintain a license under the bill as an individual.

The qualifying officer is responsible for exercising the supervision or control of the building or construction operations necessary to secure full compliance with the bill and the rules adopted under it. The Director is prohibited from issuing a license to a corporation, partnership, association, limited liability company, or other entity unless each partner, trustee, director, officer, or member or a person exercising control of the entity is at least 18 years of age and satisfies the requirements for a license described under "**Requirements**" above other than those requirements relating to knowledge and experience. If an individual licensee is also a qualifying officer, the Director must list the individual's name and license number on any license issued to the individual as a qualifying officer. In the case of a license issued under this provision, each officer, partner, member, or managing agent, regardless of whether the person is the qualifying officer, must provide a copy of the person's driver's license, commercial driver's license, or state identification card for use by the Director only for identification purposes.

The license issued to an entity is suspended when a license or license application of a qualifying officer, partner, trustee, director, officer, member, or a person exercising control of the entity is suspended, revoked, or denied. The suspension remains in effect until the Board determines that the disability created by the suspension, revocation, or denial has been removed. If a licensee's qualifying officer ceases to be the licensee's qualifying officer, the licensee's license is suspended. However, upon request, the Director may permit the license to remain in force for a reasonable time to permit the qualification of a new qualifying officer.¹⁷

Reciprocity

Notwithstanding the requirement that an applicant for a residential builder or residential maintenance contractor license maintain a principal place of business in Ohio (see "**Requirements**," above), the bill permits the Director to issue a license to an applicant who does not have a principal place of business in Ohio if the applicant otherwise complies with the bill. The Director must not issue a license to a foreign corporation (a corporation for profit formed under the laws of another state) unless the

¹⁷ R.C. 4785.07.

corporation is authorized to do business in Ohio by the Secretary of State. The applicant must file an irrevocable consent to service of process. The consent must be signed by the applicant or by an applicant's authorized officer, member, or partner and must be notarized. If the applicant is a corporation, the consent must be accompanied by a certified copy of the resolution of the corporation authorizing the consent. A process or pleading served upon the Director is sufficient service upon the licensee and must be in duplicate. The Director immediately must forward by registered mail one copy of the process or pleading to the main office of the licensee served.¹⁸

Types of contracting

A person issued a license as a residential maintenance and alteration contractor under the bill is authorized to engage in the following crafts or trades:

- Carpentry;
- Concrete;
- Swimming pool installation;
- Waterproofing a basement;
- Excavation;
- Insulation work;
- Masonry work;
- Painting and decorating;
- Roofing;
- Siding and gutters;
- Screen or storm sash installation;
- Tile and marble work;
- House wrecking.

The Director must specify on the license the particular craft or trade for which the licensee is qualified to perform. However, the bill does not prohibit a residential maintenance and alteration contractor from taking and executing a contract involving

¹⁸ R.C. 4785.08, by reference to R.C. 1701.01, not in the bill.

the use of two or more crafts or trades if the performance of the work in the craft or trade other than the craft or trade for which the contractor is licensed is incidental and supplemental to the performance of work in the craft or trade for which the contractor is licensed.¹⁹

Information in a home construction service contract

Under continuing law, no home construction service supplier (a person who contracts with an owner to provide home construction services for compensation and who maintains in force a general liability insurance policy in an amount of not less than \$250,000) can perform any home construction service the cost of which equals or exceeds \$25,000, unless the supplier enters into a written home construction service contract with the owner. Continuing law specifies the information that must be included in that contract. The bill adds that the contract must include information regarding the supplier's license issued under the bill. Failure to include that information may result in penalties similar to those assessed for violations of the Consumer Sales Practices Act.²⁰

Cause of action by a builder or contractor

With respect to contracts entered into on or after the bill's effective date, the bill prohibits a residential builder or residential maintenance and alteration contractor from bringing or maintaining an action in an Ohio court for the collection of compensation for the performance of an act or contract for which a license is required under the bill without proving that the builder or contractor was licensed under the bill during the performance of the act or contract. Similarly, the bill prohibits a residential builder or residential maintenance and alteration contractor from imposing or taking any legal or other action to impose a lien on real property unless that builder or contractor was licensed under the bill during the performance of the act or contract.²¹

Renewal

A license issued under the bill is valid for a period of three years after the date the license is issued. The license must be renewed in accordance with the Standard Renewal Procedure, except that the Director must cause to be mailed the notice and renewal application for a residential builder or residential maintenance and alteration contractor license on or before the 60th day prior to the expiration of the license, rather

¹⁹ R.C. 4785.06(A).

²⁰ R.C. 4722.02(A) and R.C. 4722.01 and 4722.07, not in the bill.

²¹ R.C. 4785.15.

than 30 days prior as required under that Procedure. The Director must renew a salesperson license if the licensee so requests and pays the renewal fee of \$50. To renew a residential builder license or residential maintenance and alteration contractor license, a licensee must do all of the following:

- State in the renewal application that the licensee has a current copy of the Residential Building Code in effect in the area where the licensee performs work;
- Pass the examination prescribed by the Board and the Director;
- Pay the following fees:
 - A fee of \$50 to take the complete examination for renewal of a license as a residential builder or residential maintenance and alteration contractor;
 - An examination review fee of \$20;
 - A renewal fee of \$50.

For purposes of the Standard Renewal Procedure, the Director must not accept a renewal application for a residential builder or residential alteration and maintenance contractor license until the licensee passes the required examination.²²

Complaints and investigations

Any person may file a complaint with the Director that alleges that a person has violated the bill or a rule adopted or order issued under it. A complaint must be filed not later than 18 months after the latest of the following events regarding a residential building or a combination of residential and nonresidential building:

- In the case of a residential maintenance and alteration contract, completion of the contract or occupancy or purchase of the building;
- In the case of a project involving construction of a new residential building or requiring an occupancy permit, issuance of the certificate of occupancy or temporary certificate of occupancy or closing.

A person must describe in writing the factual basis for the allegation. The person must send a copy of the initial complaint to the licensee identified in the complaint

²² R.C. 4745.01, 4785.09, and 4785.20, by reference to R.C. 4745.02, not in the bill.

concurrent with the submission of the complaint to the Director. If the complaint is filed by an owner of a building, the Director must proceed with an investigation only if the owner demonstrates that the owner provided notice to the licensee describing reasonable times and dates that the building was accessible for any needed repairs and submits proof acceptable to the Director that the repairs were not made within 60 days after the date the notice was sent. The Director may waive this requirement if the Director determines that a waiver is necessary to safeguard the building or to protect an occupant's health and safety. If the Director waives the requirements, the Director may utilize any remedy available under "**Initial disciplinary actions**" below.²³

The Director, upon receipt of a complaint, immediately must begin an investigation of the allegations of the complaint and must open a correspondence file. The Director must make a written acknowledgment of the complaint within 15 days after receipt of the complaint to the person making the complaint. If the complaint is made by the Director, the Director must designate one or more of the Director's employees to act as the person making the complaint. The Director must conduct the investigation.

The Director must request the appropriate building official to inspect the property that is the subject of the complaint. Upon receipt of a building inspection report issued to the Director by a state or local building enforcement official that verifies or confirms the substance of a complaint, the Director must send by certified mail a copy of the verified complaint to the licensee. If the Director does not send a copy of the verified complaint within 30 days after receipt of the building inspection report, the Board is prohibited from assessing a fine against the licensee as described under "**Final disciplinary actions**" below, but the Director may pursue restitution, license suspension, or any other remedies provided.

If the owner and a licensed residential builder or residential maintenance and alteration contractor have agreed contractually on mutually acceptable performance guidelines relating to workmanship, the Director must consider those guidelines in the Director's evaluation of the complaint. The guidelines must be consistent with the Residential Building Code adopted by the Board of Building Standards.

In furtherance of an investigation, the Director may request that the Attorney General petition a court of competent jurisdiction to issue a subpoena requiring a person to appear before the Director and be examined with reference to a matter within

²³ R.C. 4785.10(A) and (B).

the scope of the investigation and to produce books, papers, or documents pertaining to the investigation.²⁴

The Director must conclude an investigation within 30 days after the complaint is filed. The Director may take additional time if the Director gives the parties to the complaint written notice of the extension before the initial 30-day period expires.²⁵

Disciplinary actions

Initial disciplinary actions

If the investigation conducted under the bill does not disclose a violation of the bill or a rule adopted or an order issued under it, the Director must close the complaint. The Director must forward the reasons for closing the complaint to the parties, who then may provide additional information to reopen the complaint. If the investigation discloses evidence of a violation, the Director must prepare the appropriate action against the person, which may be any of the following: (1) a formal complaint, (2) a cease and desist order, (3) summary suspension, or (4) a citation.²⁶

Formal complaints

If the Director issues a formal complaint under the bill, the Director must serve the formal complaint upon the parties to the complaint. At the same time, the Director must serve the respondent with a notice that includes both of the following:

- An offer to choose one of the following: an opportunity to meet with the Director to negotiate a settlement of the matter (see "**Alternative dispute resolution**" below) or an opportunity for a hearing under Ohio's Administrative Procedure Act;
- A description of the process for the informal conference and for such a hearing.

The respondent, within 15 days after the receipt of notice described immediately above, must select one of the options. If a respondent does not select one of those options within that time period, then the Director must proceed with a hearing held under Ohio's Administrative Procedure Act.²⁷

²⁴ R.C. 4785.10(C) to (G).

²⁵ R.C. 4785.11(A).

²⁶ R.C. 4785.11(A).

²⁷ R.C. 4785.11(B).

Cease and desist orders

If a cease and desist order has been issued under the bill, the person ordered to cease and desist may request a hearing in accordance with Ohio's Administrative Procedure Act. Upon a violation of a cease and desist order, the Attorney General may apply in a court with appropriate jurisdiction to restrain and enjoin, temporarily or permanently, or both, the person from further violating the order.²⁸

Summary suspensions

The bill permits the Director to issue a summary suspension under the bill based on an affidavit by a person familiar with the facts set forth in the affidavit, or, if appropriate, based upon an affidavit on information and belief that an imminent threat to the public health, safety, and welfare exists.²⁹

Citations

A citation issued under the bill must contain all of the following information:

- The date of the citation;
- The name and title of the individual issuing the citation;
- The name and address of the respondent;
- A notice that the respondent is being cited for a violation of the bill or rules adopted or orders issued under it;
- A brief description of the conduct or conditions that are considered to be a violation and a reference to the section of law or rule or the order the respondent is alleged to have violated;
- The proposed penalties or actions required for compliance, including the payment of a fine that must not exceed \$100 for each violation;
- A space for the respondent to sign as a receipt for the citation;
- A space for the respondent to indicate that the respondent accepts the citation and agrees to comply or to indicate that the respondent contests the violation contained in the citation;

²⁸ R.C. 4785.11(C).

²⁹ R.C. 4785.11(D).

- A notice that the respondent must accept or reject the terms of the citation within 30 days after the date of receipt of the citation;
- A brief description of the hearing process under Ohio's Administrative Procedure Act and the process for settlement through an informal conference as described under "**Alternative dispute resolution**" below.

The bill permits the Director to send a citation to a respondent by certified mail, return receipt requested, or an employee of the Department of Commerce to deliver the citation in person. If a respondent accepts the conditions set forth in a citation, the respondent, within 30 days after receiving the citation, must sign the citation and return it to the Director along with any fine or other material required to be submitted by the terms of the citation. The citation and accompanying material must be placed in the person's records with the Director, indicating the nature of the violation and that the person accepted the conditions imposed. A citation has the same force and effect as a final order issued by the Board and may be disclosed to the public. If no further disciplinary actions are placed upon the person's record within five calendar years after the date the citation is issued, the Director must remove the citation and accompanying material from the records. If a respondent so chooses, a one-page explanation prepared by the respondent must be placed in the Director's files and must be disclosed each time the issuance of the citation is disclosed.

If a respondent does not admit to the violation cited, the respondent may state that fact on the citation and return one copy to the Director within the 30 days after the date of receipt of the citation. Upon receiving a copy of the citation not admitting to the violation, the Director must implement the process described under "**Formal complaints**," above, with the citation serving as the formal complaint.

The signing of a citation as an indication that the citation was received by the respondent must be considered to be only a receipt of, not an admission to, the violation cited.³⁰

Reasons for discipline

Under the bill, a licensee or applicant who commits one or more of the following actions may be subject to any of the disciplinary actions described under "**Final disciplinary actions**," below:

- Abandonment without legal excuse of a contract, construction project, or operation relating to an activity described in the definitions of residential

³⁰ R.C. 4785.11(E).

builder, residential maintenance and alteration contractor, or salesperson that is engaged in or undertaken by the licensee;

- Diversion of funds or property received for prosecution or completion of a specific construction project or operation, or for a specified purpose in the prosecution or completion of a construction project or operation, and the funds or property are applied or used for another construction project or operation, obligation, or purposes;
- Failure to account for or remit money coming into the person's possession that belongs to others;
- A willful departure from or disregard of plans or specifications in a material respect and prejudicial to another, without consent of the owner or an authorized representative and without the consent of the person entitled to have the particular construction project or operation completed in accordance with the plans and specifications;
- A willful violation of Ohio or political subdivision building laws;
- In a residential maintenance and alteration contract, failure to furnish to a lender the purchaser's signed completion certificate executed upon completion of the work to be performed under the contract;
- If an individual is a licensed residential builder or licensed residential maintenance and alteration contractor, failure to notify the Director within ten days after a change in the control or direction of the licensee's business resulting from a change in the licensee's partners, directors, officers, or trustees, or a change in the control or direction of the licensee's business resulting from any other occurrence or event;
- Failure to deliver to the purchaser the entire agreement of the parties, including any finance or other charge arising out of or incidental to the agreement if the agreement involves repair, alteration, or addition to, subtraction from, improvement of, wrecking of, or demolition of a residential building or combination of residential and nonresidential building, or the building of a garage or laying of concrete on residential property;
- If the licensee is a salesperson, failure to pay over immediately upon receipt money received by the salesperson, in connection with a transaction governed by the bill to the residential builder or residential

maintenance and alteration contractor under whom the salesperson is licensed;

- Aiding or abetting an unlicensed person to evade the bill, or knowingly combining or conspiring with, or acting as agent, partner, or associate for an unlicensed person, allowing one's license to be used by an unlicensed person, or acting as or being an ostensible licensed residential builder or licensed residential maintenance and alteration contractor for an undisclosed person who does or has the right to control or direct, or who may have the right to control or direct, directly or indirectly, the operations of a licensee;
- Accepting a commission, bonus, or other valuable consideration by a salesperson for the sale of goods or the performance of service specified in the bill from a person other than the residential builder or residential maintenance and alteration contractor under whom the person is licensed;
- Becoming insolvent, filing a bankruptcy action, becoming subject to a receivership, assigning for the benefit of creditors, failing to satisfy judgments or liens, or failing to pay an obligation as it becomes due in the ordinary course of business;
- Performing work that does not meet the standards of the applicable residential code;
- Practicing fraud or deceit in obtaining a license;
- Practicing fraud, deceit, or dishonesty as a residential builder, residential maintenance and alteration contractor, or salesperson;
- Violating a rule of conduct of a residential builder, residential maintenance and alteration contractor, or salesperson;
- Demonstrating a lack of good moral character;
- Committing an act of gross negligence in practicing as a residential builder, residential maintenance and alteration contractor, or salesperson;
- Practicing false advertising;
- Committing an act that demonstrates incompetence;
- Violating any other provision of the bill or a rule adopted under it for which a penalty is not otherwise prescribed;



- Failing to comply with a subpoena issued;
- Failing to respond to a citation;
- Violating or failing to comply with a final order issued by the Director, including a stipulation, settlement agreement, or a citation.³¹

Final disciplinary action

The Board, or the Director as described below, may do any of the following with respect to a person who commits an act described under "**Reasons for discipline**," above:

- Place a limitation on a license;
- Suspend a license;
- Deny issuance or renewal of a license;
- Revoke a license;
- Assess a fine against a licensee, not to exceed \$10,000 per violation;
- Censure;
- Place a licensee on probation;
- Require that restitution be made, based upon proof submitted to and findings made by the hearing examiner after a hearing.

If restitution is required to be made, the Board or Director may suspend the license of the person required to make the restitution until the restitution is made.³²

If a licensee or respondent fails to appear or participate in or defend any action, the Board must issue an order granting by default the relief requested, based upon proof submitted to and findings made by a hearing examiner after a hearing conducted under Ohio's Administrative Procedure Act. Within 60 days after receipt of a hearing examiner's report, the Board must meet and make a determination of the penalties or disciplinary action to be assessed as described immediately above. The Board must make the determination based on the hearing examiner's report. If the Board does not determine the appropriate penalty to be assessed or action to be taken within that time

³¹ R.C. 4785.13(A).

³² R.C. 4785.13(B) and (C).

period, the Director may determine the appropriate penalty and issue a final order. A Board member who has participated in an investigation of a complaint filed with the Director or who has attended an informal conference as described under "**Alternative dispute resolution**" below must not participate in making a final determination regarding that complaint.³³

A suspension, revocation, or denial of a license of a person also suspends, revokes, or denies any other license held or applied for by that person issued under the bill. A suspension, revocation, or denial of a license held by a qualifying officer of an entity by the Board or Director also suspends, revokes, or denies any other license held or applied for under the bill by that qualifying officer.³⁴

Posting of final orders

The bill requires the Director to post on the web site maintained by the Department any final order of the Board and the date the order was issued. The Director must post the order within 30 days after the order is issued. The Director annually must post on the web site the number of final orders of the Board.³⁵

Alternative dispute resolution

Under the bill, a licensed residential builder or residential maintenance and alteration contractor may contractually provide for an alternative dispute resolution procedure to resolve complaints filed with the Director. The bill requires the procedure to be conducted by a neutral third party for determining the rights and responsibilities of the parties and to be initiated by the licensee, who must provide notice of the initiation of the procedure to the complainant by certified mail not less than 30 days before the commencement of that procedure. The procedure must be conducted at a location mutually agreed to by the parties.

Failure of the person bringing a complaint against a licensee to utilize a contractually provided alternative dispute resolution procedure is an affirmative defense to an action brought in an Ohio court against a licensee under the bill.

The Director may initiate a proceeding against a licensee described under "**Initial disciplinary action**" above if the licensee has contractually provided for an alternative dispute resolution procedure that has not been utilized and completed, only if any of the following apply:

³³ R.C. 4785.12.

³⁴ R.C. 4785.13(D).

³⁵ R.C. 4785.17.

- The licensee has not complied with a decision or order issued as a result of that alternative dispute resolution procedure.
- That alternative dispute resolution procedure was not fully completed within 90 days after the filing of the complaint with the Director.
- An alternative dispute resolution procedure meeting the bill's requirements is not available to the complainant.

At any time during an investigation conducted under the bill or after the issuance of a formal complaint, the Director may bring together the parties to a complaint for an informal conference. At the informal conference, the Director must attempt to resolve issues raised in the complaint and may attempt to aid the parties in reaching a formal settlement or stipulation. A Board member, at the discretion of the Board, may attend an informal conference. An informal conference may result in a settlement, consent order, waiver, default, or other method of settlement agreed upon by the parties and the Director. A settlement may include the denial, revocation, suspension, or limitation of a license; fine; censure; probation; or restitution. The Board may reject a settlement and require a hearing under Ohio's Administrative Procedure Act.

If an informal conference is not held or does not result in a settlement of a complaint, a hearing pursuant to Ohio's Administrative Procedure Act must be held. A Board member may attend the hearing.³⁶

Additional fees and the Builder Enforcement Fund

In addition to the fees described under "**Requirements**," "**Change in information**," and "**Renewal**" above, the bill requires the Director to charge the following fees with respect to administering the bill:

- A fee of \$30 to take the law and rules portion of the examination for a license or renewal of a license as a residential builder or residential maintenance and alteration contractor;
- A fee of \$30 to take the practice or trades portion of the examination for a license or renewal of a license as a residential builder or residential maintenance and alteration contractor;
- A late renewal fee of \$20;

³⁶ R.C. 4785.14.

- A duplicate license fee of \$10.

The bill creates in the state treasury the Builder Enforcement Fund. The Director must deposit any fees and fines the Director receives under the bill into the Fund. The Director must use the Fund to enforce the bill and to reimburse the Attorney General for the reasonable cost of services provided to the Director and for expenses incurred in prosecutions for unlicensed practice or a prosecuting attorney for expenses incurred in conducting prosecutions of unlicensed practice.³⁷

Conforming change

The Standard License Renewal Procedure Law currently contains a cross-reference to R.C. Ch. 4143., which does not exist under current law. The bill repeals this meaningless cross-reference.³⁸

Additional definitions

The bill also defines the following terms:

"Nonresidential building" means a building that is not a residential building or a manufactured or mobile home.

"Residential building" means a one-family, two-family, or three-family dwelling house, and any accessory structure incidental to that dwelling house and 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.³⁹

"Wages" means money paid or to be paid on an hourly or daily basis by an owner, lessor, or occupant of a residential building or combination residential and nonresidential building as consideration for the performance of personal labor on the structure by a person who does not perform or promise to perform the labor for any other fixed sum, price, fee, percentage, valuable consideration, or other compensation and who does not furnish or agree to furnish the material or supplies required to be used in the performance of the labor or an act listed in the bill.⁴⁰

³⁷ R.C. 4785.20.

³⁸ R.C. 4745.01.

³⁹ R.C. 4785.01(A), by reference to R.C. 3781.06, not in the bill.

⁴⁰ R.C. 4785.01(E).

HISTORY

ACTION

DATE

Introduced

04-23-13

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