



Meredith L. Rockwell

Final Analysis
Legislative Service Commission

Am. Sub. H.B. 444
127th General Assembly
(As Passed by the General Assembly)

Reps. J. Stewart, Szollosi, Luckie, Bolon, Book, Boyd, Brady, Brown, Budish, Celeste, Chandler, DeBose, Domenick, Driehaus, Dyer, Evans, Fende, Foley, Garrison, Gerberry, Goyal, Harwood, Heard, Koziura, Letson, Lundy, J. McGregor, Newcomb, Okey, Patton, Sayre, Slesnick, D. Stewart, Ujvagi, B. Williams, S. Williams, Yuko

Sens. D. Miller, Goodman, Harris, Patton, Seitz, Wagoner, Fedor, Boccieri

Effective date: April 7, 2009

ACT SUMMARY

- Removes the requirement that an individual or business entity perform specified construction work *for compensation* in order to be considered a contractor for the purposes of the Construction Industry Licensing Board Law.
- Requires an individual or business entity to have employees who are tradespersons, rather than to employ tradespersons, to be considered a contractor for the purposes of that law.
- Requires the Construction Industry Licensing Board to obtain the affirmative vote of four members before taking action against a licensee.
- Allows the appropriate section of the Ohio Construction Industry Licensing Board to investigate and fine an unlicensed individual for acting as or claiming to be a contractor that is licensed under the Construction Industry Licensing Board Law.
- Specifies notice and hearing requirements the appropriate section of the Board must follow regarding an alleged violation of the prohibition of acting as or claiming to be a type of contractor that is licensed under the Construction Industry Licensing Board Law without a license.

- Specifies that an individual must have attained a score on the examination that the appropriate section authorizes for the licensed trade within the 12 months preceding the individual's application for licensure in order to receive a license.
- Renames the Plumbing Section of the Board the Plumbing and Hydronics Section.
- Exempts sales by insurers or subrogees who sell motor vehicles that have come into their possession through the operation of the terms of an insurance contract from the prohibition against auctioning a motor vehicle without a license.
- Creates a rebuttable presumption that the plans, drawings, specifications, or data submitted for approval of a plan under the Building Standards Law are in compliance with the rules adopted by the Board of Building Standards as they relate to accessibility, for purposes of enforcement by the Ohio Civil Rights Commission.
- Requires the Board of Building Standards to provide statewide training on the rules adopted by the Board as they relate to accessibility.

CONTENT AND OPERATION

Construction Industry Licensing Board

Background

Under continuing law, no person can act as or claim to be a type of contractor that is licensed under the Construction Industry Licensing Board Law (R.C. Chapter 4740.) unless that person holds or has been assigned a license issued pursuant to that law for the type of contractor that person is acting as or claiming to be (sec. 4740.13(A), not in the act). The following types of contractors are licensed under the Construction Industry Licensing Board Law: (1) a heating, ventilating, and air conditioning contractor, (2) a refrigeration contractor, (3) an electrical contractor, (4) a plumbing contractor, and (5) a hydronics contractor (sec. 4740.01(A)).

Definition of contractor

Under law retained in part by the act, "contractor" means any individual or business entity that satisfies both of the following:

(1) For compensation, directs, supervises, or 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 trades and who offers, identifies, advertises, or otherwise holds out or represents that the individual or business entity is permitted or qualified to perform, direct, supervise, 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;

(2) Performs or employs tradespersons who perform construction, improvement, renovation, repair, or maintenance on a construction project with respect to the contractor's trades. (Sec. 4740.01(B).)

The act redefines "contractor" by removing "for compensation" from (1) above and by specifying that an individual or business must otherwise supervise or direct tradespersons as described under (2) above, rather than requiring that an individual or business employ tradespersons, as under prior law. (Sec. 4740.01(B).)

Definition of tradesperson

Under law retained in part by the act, "tradesperson" means an individual employed by a contractor 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. The act instead states that a tradesperson is any individual who is supervised or directed by a contractor or who is otherwise employed by a contractor and who engages in the activities described above. (R.C. 4740.01(D).)

Sanctions against licensees

Continuing law permits the appropriate section of the Ohio Construction Industry Licensing Board to take specified actions against licensees who violate the Construction Industry Licensing Board Law. The act adds the requirement that the Board obtain an affirmative vote of four of its members before taking such action. (R.C. 4740.10(A).)

Sanctions against unlicensed individuals

Under continuing law, a person who acts as or claims to be a type of contractor that is licensed under the Construction Industry Licensing Board Law without such a license is guilty of a minor misdemeanor on the first violation and a fourth-degree misdemeanor on subsequent violations (sec. 4740.99, not in the act). Additionally, upon the request of the appropriate section of the Board, continuing

law permits the Attorney General to bring a civil action for appropriate relief, including but not limited to a temporary restraining order or permanent injunction, in the court of common pleas of the county where the unlicensed person resides or is acting as or claiming to be a licensed contractor (sec. 4740.13(B), not in the act).

The act adds an additional sanction against unlicensed activity. The act permits the appropriate section of the Board to investigate any person who allegedly has violated the prohibition against acting as or claiming to be a type of contractor that is licensed under the Construction Industry Licensing Board Law without such a license. If, after an investigation, the appropriate section determines that reasonable evidence exists that a person has violated that prohibition, within seven days after that determination, the appropriate section must send a written notice to that person in the same manner as prescribed in the Administrative Procedure Act for licensees. The act requires the appropriate section to specify in the notice that a hearing will be held and specify the date, time, and place of the hearing. (Sec. 4740.16(A).)

The act requires the appropriate section to hold a hearing regarding the alleged violation in the same manner prescribed for an adjudication hearing under the Administrative Procedure Act. If the appropriate section, after the hearing, determines a violation has occurred, the appropriate section, upon an affirmative vote of four of its members, may impose a fine on the person, not exceeding \$1,000 per violation per day. The appropriate section's determination is an order that the person may appeal in accordance with the Administrative Procedure Act. (Sec. 4740.16(B).)

If the person who allegedly committed a violation fails to appear for a hearing, the appropriate section may request the court of common pleas of the county where the alleged violation occurred to compel the person to appear before the appropriate section for a hearing. If the appropriate section 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 appropriate section, the appropriate section 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. In addition to the civil penalty assessed pursuant to the act, the person also must pay any fee assessed by the Attorney General for collection of the civil penalty. (Sec. 4740.16(C) and (D).)

Timeline to apply for a contractor license

Under continuing law, any individual who applies for a license must file a written application with the appropriate section of the Board, accompanied with the application fee. The individual must file the application not more than 60 days

nor less than 30 days prior to the date of the examination. The appropriate section determines whether the applicant satisfies the criteria specified in continuing law to take the appropriate examination. When an applicant for licensure as a contractor in a licensed trade meets those qualifications and passes the examination, the appropriate section of the Board, within 90 days after the application was filed, must authorize the Administrative Section of the Board to license the applicant for the type of contractor's license for which the applicant qualifies. (Sec. 4740.06, not in the act.)

Continuing law requires the Administrative Section of the Board to issue a license to any individual who the appropriate section of the Board determines is qualified as described above and has attained a score on the examination that the appropriate section authorizes for the licensed trade. The act specifies that the individual must have attained that score on the examination within the 12 months preceding the individual's application for licensure in order to receive a license. (Sec. 4740.04(C)(1).)

Plumbing and Hydronics Section

The Board consists of the following sections: the Administrative Section, the Plumbing Section, the Electrical Section, and the Heating, Ventilating, Air Conditioning, and Refrigeration Section. Continuing law specifies duties that each section must perform. The Plumbing Section has primary responsibility for the licensure of plumbing contractors and hydronics contractors. The act renames the "Plumbing Section" the "Plumbing and Hydronics Section." (Sec. 4740.02.)

Motor vehicle auction sales

Under continuing law, licensed motor vehicle auction owners are prohibited from knowingly permitting the sale of a motor vehicle by any person who is not licensed under the Motor Vehicle Licensing Law (R.C. 4517.01 to 4517.19). The act exempts sales by insurers or subrogees who sell motor vehicles that have come into their possession through the operation of the terms of an insurance contract. (R.C. 4517.21(A)(4).)

Americans With Disabilities Act compliance under the building code

Under continuing law, the standards and rules adopted by the Board of Building Standards must be in accordance with the Americans With Disabilities Act of 1990 (42 U.S.C.A. 12101) and the Fair Housing Amendments Act of 1988 (42 U.S.C.A. 3601). The act creates a rebuttable presumption that the plans, drawings, specifications, or data submitted for approval of a plan under the Building Standards Law (R.C. Chapter 3791.) are in compliance with the rules adopted by the Board of Building Standards as they relate to accessibility, for

purposes of enforcement by the Ohio Civil Rights Commission only (R.C. 3781.111(B)(2)). The act requires the Board of Building Standards to annually provide statewide training on the rules the Board adopts that relate to accessibility for nonresidential building department personnel certified by the Board who approve, review plans, and inspect nonresidential construction (R.C. 3781.111(F)).

HISTORY

ACTION	DATE
Introduced	01-23-08
Reported, H. Commerce & Labor	04-09-08
Passed House (85-8)	05-07-08
Reported, S. Insurance, Commerce & Labor	12-16-08
Passed Senate (32-0)	12-17-08
House concurred in Senate amendments (91-0)	12-17-08

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