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Bill Analysis
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Reps. Schneider, R. McGregor, Combs, Sayre, Chandler, Harwood, Luckie, Collier

BILL SUMMARY

- Requires individuals wishing to perform home inspections to obtain certification from the Superintendent of Real Estate and Professional Licensing in order to perform those inspections.
- Establishes criminal penalties for performing home inspections without a certification.
- Prohibits a home inspection from being performed unless it is performed pursuant to a written contract entered into between a certified home inspector and a client.
- Requires a certified home inspector to include a written report of the visual examination performed by a certified home inspector during a home inspection.
- Establishes requirements an individual must satisfy to obtain certification under the bill.
- Specifies standards of practice, inspection requirements, and conflict of interest prohibitions.
- Establishes requirements a person must satisfy to obtain preapproval for a continuing education course that the person wishes to offer.
- Limits civil actions brought under the bill to those actions available under common law.
- Specifies that the disciplinary actions against a certified home inspector are the only remedies for a violation of a conflict of interest prohibition.

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

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CONTENT AND OPERATION

Certification of home inspectors

Ohio law currently does not require licensure or registration of home inspectors. Beginning 210 days after the bill's effective date, the bill prohibits any person from conducting a home inspection or representing a qualification to conduct a home inspection for compensation unless that person is certified pursuant to the bill as a home inspector. A person who violates this prohibition is guilty of a third-degree misdemeanor on the first offense and a first-degree misdemeanor on each subsequent offense. (Secs. 4768.02(A) and 4768.99.)

The bill defines "home inspection" as the process by which a home inspector conducts a visual examination of the readily accessible components of a residential building¹ for a client. Home inspection does not include pest inspections; environmental testing; inspection of any property or structure conducted by an employee or representative of an insurer licensed to transact business in Ohio under the Insurance Law (R.C. Title 39) for purposes related to the business of insurance; or determination of compliance with applicable statutes, rules, resolutions, or ordinances, including, without limitation, building, zoning, or historic codes. A client, under the bill, is a person who enters into a contract with a certified home inspector to retain for compensation the services of that certified home inspector to conduct a home inspection and to provide a written report on the condition of a residential building. (Sec. 4768.01(A) and (B).)

Beginning 210 days after the bill's effective date, home inspections must be performed pursuant to a written contract entered into by a certified home inspector and a client. Also, after that time period elapses, all home inspections must conform to the requirements specified under "Standards of practice," "System specific inspection requirements," and "Conflict of interest prohibitions," below. (Sec. 4768.02(B) and (C).)

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

Persons not subject to the bill

The bill specifies that the prohibitions described under "**Certification of home inspectors**," above do not apply to any of the following persons when acting within the scope of practice of their respective professions:

- A person who is employed by or whose services otherwise are retained by Ohio or a political subdivision of Ohio for the purpose of enforcing building codes;
- A person holding a valid certificate to practice architecture issued under the Architects Law (R.C. Chapter 4703.);
- A person registered as a professional engineer under the Professional Engineers and Professional Surveyors Law (R.C. Chapter 4733.);
- A heating, ventilating, and air conditioning contractor, refrigeration contractor, electrical contractor, plumbing contractor, or hydronics contractor who is licensed under the Construction Industry Licensing Board Law (R.C. Chapter 4740.) or by a county under the Building Standards Law (sec. 3781.102, not in the bill), or who is licensed or registered by a municipal corporation under the Municipal Corporations--General Powers Law (sec. 715.27, not in the bill);
- A real estate broker, real estate salesperson, foreign real estate dealer, or foreign real estate salesperson who is licensed under the Real Estate Broker Law (R.C. Chapter 4735.);
- A real estate appraiser who is licensed under the Real Estate Appraiser Law (R.C. Chapter 4763.);
- A public insurance adjuster who holds a valid certificate of authority issued under the Public Insurance Adjusters Law (R.C. Chapter 3951.) or an employee or representative of an insurer licensed to transact business in Ohio under the Insurance Law (R.C. Title 39) who conducts an inspection of any property or structure for purposes related to the business of insurance;
- A commercial applicator of pesticide who is licensed under the Pesticides Law (R.C. Chapter 921.) (sec. 4768.03).

Duties of the Superintendent of Real Estate and Professional Licensing

The bill requires the Superintendent of Real Estate and Professional Licensing to exercise the powers and perform the functions and duties delegated to



the Superintendent under the bill (sec. 121.08(H)). Not later than 180 days after the bill's effective date, the Superintendent must establish the standards and procedures required under the bill (Section 4). The Superintendent must adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.) to do all of the following:

(1) Establish standards to govern disciplinary proceedings the Superintendent conducts and reinstatement of certifications the Superintendent has suspended or revoked pursuant to those proceedings;

(2) Except for initial certification and renewal fees, establish the amount of any fees required under the bill, the amount of which must be sufficient to defray all necessary expenses incurred in the administration of the bill's provisions;

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

(4) Establish the administrative reporting and review requirements for parallel inspections to assure compliance with the requirements of the bill's provisions;

(5) Establish procedures to approve an institution, organization, company, or individual who desires to provide courses or programs to enable certified home inspectors to meet the continuing education requirements specified in the bill (see "Continuing education," below);

(6) Specify the procedures for approving any continuing education curriculum required under the bill and establish procedures to assure continuing education requirements are updated periodically to make those requirements consistent with home inspection industry practices;

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

(8) Issue a home inspector certification to, or renew a home inspector certification for, any person who satisfies the requirements specified in the bill for such certification or renewal (see "Application for certification," below);

(9) Retain all certification application materials submitted to the Superintendent for a period of seven years after the date of the receipt of the materials and maintain a register of the names and addresses of all individuals to

whom the Superintendent has issued or renewed a certification for a period of seven years after the date of issuance, renewal, or expiration of a certification, whichever is later;

(10) Provide each applicant with a copy of the requirements for home inspections specified under "Standards of practice," "System specific inspection requirements," and "Conflict of interest prohibitions" below, and make those requirements available to the public by posting them on the web site maintained by the Department of Commerce;

(11) Specify the format and content of all affidavits and other documents required for the bill's administration. (Sec. 4768.04(A).)

Application for certification

Effective 210 days after the bill's effective date, all persons conducting home inspections or representing a qualification to conduct home inspections for compensation must be certified by the Superintendent (sec. 4768.02(A) and Section 2).

To obtain a certification to perform home inspections, a person must submit to the Superintendent an application provided by the Superintendent, which includes a pledge the applicant signs agreeing to comply with the standard of practice and code of ethics specified in the bill and a statement that the applicant understands the type of activities that give rise to disciplinary action. In addition to any other information the Superintendent determines is relevant to receiving a certification to practice as a certified home inspector, the application must include proof of all of the following:

(1) Holding a comprehensive general liability insurance policy or a commercial general liability insurance policy as described under "Liability insurance policy requirements," below;

(2) Having performed at least ten parallel inspections in the on-site presence of a certified home inspector (see "Definitions," below);

(3) Successfully passing, within two years before the date of the application, a home inspector examination administered by the Examination Board of Professional Home Inspectors or any other national standardized home inspector examination that the Superintendent considers to be an appropriate measure of whether a person is competent to practice as a certified home inspector;

(4) Successfully completing a course of education of at least eight hours that includes instruction about compliance with the requirements specified in the

bill, inspection safety, report writing, and any other administrative matters required by the Superintendent, but need not include instruction about the technical knowledge necessary to evaluate the condition of a residential building or the functionality of its individual components;

(5) That the applicant is at least 18 years of age and has graduated from the 12th grade, received a general educational development diploma, or satisfactorily completed a program that is the equivalent to graduating from the 12th grade or receiving a general educational development diploma (sec. 4768.05(A)).

In determining whether an examination is an appropriate measure of whether a person is competent to practice as a certified home inspector under (3) immediately above, the Superintendent must determine whether the examination is valid and reliable under all applicable state and federal standards (sec. 4768.05(B)). In addition to submitting an application, an applicant also must submit an application fee of \$500 (secs. 4768.04(B) and 4768.05(A)). The bill specifies that the act of submitting an application to the Superintendent does not create, must not be construed as creating, and is not intended to indicate home inspector certification (sec. 4768.05(C)). Under the bill, the Superintendent must issue a certification only to an individual and must not issue a certification to a corporation, limited liability company, partnership, or association, although a certified home inspector may sign a home inspection report in a representative capacity on behalf of those entities (sec. 4768.04(C)). A home inspector certification issued or renewed pursuant to the bill expires two years after the date of issuance or renewal (sec. 4768.07(A)).

Grounds for refusing to issue or renew a certification

Under the bill, the Superintendent must issue a home inspector certification or renewal to any person who satisfies the requirements of the bill. The bill allows the Superintendent to refuse to issue or renew a certification to anyone who has done any of the following:

(1) Accepted compensation from more than one interested party for the same service without the written consent of all interested parties;

(2) Accepted commissions or allowances, directly or indirectly, from other parties dealing with a client in connection with the home inspection for which the certified home inspector is responsible, without the express written approval of the client or the client's representative;

(3) Repaired, replaced, or upgraded, or solicited to repair, replace, or upgrade, for compensation, systems or components specified under "**System**

specific inspection requirements" below, in a residential building within one year after completing a home inspection of that residential building;

(4) Failed to disclose promptly to a client written information about any business interest of the certified home inspector that may affect the client in connection with the home inspection;

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

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

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

(8) Violated a provision of the bill (secs. 4768.04(C) and 4768.15).

Liability insurance policy requirements

The bill requires every certified home inspector to maintain, or be covered by, a comprehensive general liability insurance policy or a commercial general liability insurance policy with coverage limits of not less than \$100,000 per occurrence and not less than a \$300,000 aggregate limit, providing coverage against liability of the certified home inspector for loss, damage, or expense as a result of an act that occurred while the certified home inspector was on the premises performing a home inspection. If the employer of a certified home inspector maintains such an insurance policy covering the certified home inspector, the certified home inspector is not required to maintain the certified home inspector's own comprehensive general liability insurance policy or commercial general liability insurance policy. (Sec. 4768.09.)

Grandfathering provision

During the period of time beginning on the bill's effective date and ending 90 days after that date, the Superintendent must issue a home inspector certification if an individual applies for certification on a form the Superintendent provides and pays the \$500 application fee, and if the applicant demonstrates proof of maintaining or being covered by a comprehensive general liability insurance policy or a commercial general liability insurance policy as described under "**Liability insurance policy requirements**" above, and proof of having

successfully completing a course of education as described in (4) under "Application for certification" above. The applicant also must submit proof by direct documentation or signed affidavit attesting to having met any one of the following requirements to demonstrate participation in the home inspection field at least 90 days before the bill's effective date: (a) having performed at least 200 home inspections for a client for compensation, (b) having successfully passed a home inspector examination described under (3) under "Application for certification," above, (c) having actively operated a home inspection business in Ohio for three years before the bill's effective date under a business name officially registered with the Secretary of State, or (d) having been employed as a home inspector for the consecutive 36 months before the bill's effective date by an inspection company or individual whose owner or manager meets the certification requirement specified in this provision. The applicant also must submit proof of signing a pledge agreeing to comply with the requirements specified under "Standards of practice," "System specific inspection requirements," and "Conflict of interest prohibitions" below and, in a written statement, acknowledge that the individual understands the grounds for any disciplinary action that may be initiated under the bill. (Section 5.)

Reciprocity

The bill permits the Superintendent to issue a home inspector certification to an individual who holds a license, registration, or certification as a home inspector in another jurisdiction if that individual submits an application on a form the Superintendent provides, pays the fee the Superintendent prescribes, and satisfies all of the following requirements:

(1) The individual is licensed, registered, or certified as a home inspector in a jurisdiction the Superintendent determines grants the same privileges to persons certified under the bill as Ohio grants to persons in that jurisdiction, and that jurisdiction has licensing, registration, or certification requirements that are substantially similar to, or exceed, those of this state.

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

(3) The individual agrees to all of the following in a written statement that the individual submits to the Superintendent:

- To provide the Superintendent the name and address of an agent to receive service of process in Ohio or that the individual authorizes the Superintendent to act as agent for that individual;
- That service of process in accordance with Ohio law is proper and the individual is subject to the jurisdiction of the courts of Ohio;

- That any cause of action arising out of the conduct of the individual's business in Ohio must be filed in the county in which the events that gave rise to that cause of action occurred. (Sec. 4768.08.)

Certification renewal

Any home inspector certification issued or renewed under the bill expires two years after the date of issuance or renewal (sec. 4768.07(A)). To renew a home inspector certification, a certified home inspector must file a renewal application within the 90-day period immediately preceding the date the certification expires with the Superintendent pursuant to the procedures set forth in the Standard License Renewal Procedure (R.C. Chapter 4745.), along with proof of holding or being covered by a comprehensive general liability insurance policy or a commercial general liability insurance policy as described under "**Liability insurance policy requirements**" above and proof of satisfying the continuing education requirements described under "**Continuing education**" below (secs. 4745.01 and 4768.07(B)(1)). Under the bill, the amount of any fee for renewal of a certification is \$39, and the Superintendent may adopt rules in accordance with the Administrative Procedure Act to increase the renewal fee by no more than 50% of the fee (sec. 4768.04(B)).

A certified home inspector who fails to renew a certification before its expiration may, during the three months following the expiration, renew the certification by paying a late fee in an amount the Superintendent establishes in addition to meeting the criteria for certification renewal. The bill prohibits a certified home inspector who applies for a late renewal during the three-month period from engaging in any activities the certification being renewed permits until the Superintendent notifies the certified home inspector that the certification has been renewed. A certified home inspector who fails to renew a certification prior to its expiration or during the three months following its expiration may obtain a certification by complying with the normal application procedures and meeting the standard requirements for obtaining a certification, as described under "**Applying for certification**" above. (Sec. 4768.07(B)(2) and (3).)

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

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

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

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

Under the bill, a certified home inspector who fails to submit the proof required under (2) or (3) immediately above may obtain a certification by following the normal application procedures and meeting the standard requirements for obtaining certification described under "Application for certification" above. (Sec. 4768.07(C) and (D).)

Continuing education

The bill requires a certified home inspector, during each two-year period during which a certification is valid, to successfully complete not less than 30 hours of continuing education instruction in courses or seminars directly applicable to the standards of practice described under "Standards of practice," "System specific inspection requirements," and "Conflict of interest prohibitions" below. The Superintendent can accept only those courses or seminars the Superintendent preapproves for credit toward satisfying the requirements set forth in the bill. The Superintendent must not include parallel inspections completed by a person for credit toward satisfying the continuing education requirements. (Sec. 4768.06.)

The Superintendent can approve only those courses or seminars offered by a person who satisfies the following requirements: (1) the person derives the majority of the person's gross annual revenue from providing education or training, (2) the person uses instructors who satisfy either of the following requirements: (a) if an instructor teaches in a field that requires a person to have certain credentials to practice in that field, the instructor has at least enough credentials to practice in that field, or (b) if an instructor teaches in a field that does not require a person to possess certain credentials to practice in that field, the Superintendent determines that the instructor has meaningful experience and qualifications generally recognized as necessary to successfully practice in that field, and (3) any other requirements relevant to the practice of home inspection established in rules that the Superintendent adopts. The bill permits the Superintendent to charge each person an annual fee, not to exceed \$1,500, to obtain approval to offer such courses and seminars. (Sec. 4768.06.)

Standards of practice

The bill states that the standards of practice specified in the bill are the minimum standards of practice for certified home inspectors. The Superintendent may adopt rules in accordance with the Administrative Procedure Act to establish additional standards of practice on the condition that those rules do not conflict

with the standards of practice specified in the bill. A certified home inspector must perform a home inspection in accordance with the standards of practice specified in the bill and any additional standards of practice established in rules adopted by the Superintendent. All home inspections must include a written report of the visual examination performed by the certified home inspector. (Sec. 4768.10(A).)

Under the bill, a certified home inspector must inspect readily accessible systems and components and installed systems and components specifically listed in the bill (see "**System specific inspection requirements**" below), and report, in writing, on (1) those systems and components inspected that, in the professional opinion of the certified home inspector, are significantly deficient, (2) the reasons the systems or components are significantly deficient, (3) the certified home inspector's recommendation for subsequent action, and (4) any systems or components that are present at the time of the home inspection and of which an inspection is required under this section but was not performed, and the reason those systems or components were not inspected. The standards of practice listed in the bill do not limit the ability of a certified home inspector from including other inspection services or inspecting systems or components in addition to those required under the bill, specifying repairs, or, if a client requests, excluding systems and components from an inspection. (Sec. 4768.10(B).)

The bill states that inspections performed in accordance with the bill's requirements are predominantly visual in nature, are not considered technically exhaustive, and do not involve dismantling property, extensively using advanced techniques of evaluation, taking measurements, using instruments, testing components not specified under "**System specific inspection requirements**" below, or making calculations. A certified home inspector is not required to identify concealed conditions or latent defects. The bill states that these inspections exclude any item that is concealed or not readily accessible to the certified home inspector. Additionally, the bill states that an inspection performed pursuant to the bill is not an express or implied warranty or guarantee of the adequacy, performance, or useful life of any item, component, or system in, on, or about the inspected property. A certified home inspector is not required to perform any action or make any determination, under the bill, unless specifically stated under "**System specific inspection requirements**" below, unless a lawful authority requires additional actions or determinations. (Sec. 4768.11(A).)

Under the bill, a certified home inspector is not required to determine any of the following:

- The condition of systems or components that are not readily accessible;
- The remaining life of any system or components;

- The strength, adequacy, effectiveness, or efficiency of any system or component;
- The cause of any condition or deficiency;
- Any methods, materials, or costs of correction;
- Any future conditions including, but not limited to, the failure of systems and components;
- The suitability of the property for any specialized use;
- Compliance with any regulatory requirements;
- The market value of the residential building or its marketability;
- The advisability of the purchase of the residential building;
- The presence of any potentially hazardous plants or animals including, but not limited to, wood destroying organisms or of diseases harmful to humans;
- The presence of any environmental hazards including, but not limited to, toxins, carcinogens, noise, and contaminants in the soil, water, or air;
- The effectiveness of any system installed or methods used to control or remove suspected hazardous substances;
- The operating costs of any system or component;
- Any acoustical properties of any system or component;
- The property boundary lines or any encroachments on the property (sec. 4768.11(B)).

Under the bill, a certified home inspector is not required to (a) offer or perform any act or service contrary to law, (b) offer or perform any engineering services, (c) offer or perform any work in any trade or any professional service other than home inspection, (d) offer any warranties or guarantees of any kind, (e) perform any procedure or operation that will, in the opinion of the certified home inspector, likely be dangerous to the certified home inspector or other persons or damage the property or its systems or components, (f) move any suspended ceiling tiles, floor coverings, personal property, furniture, equipment, plants, soil, snow, ice, or debris, (g) dismantle any system or component, except as required under

the bill, (h) use any special instruments or testing devices, including amp meters, moisture meters, gas detectors, or similar equipment, or (i) determine or evaluate any magnetic fields (sec. 4768.11(C)).

A certified home inspector is not required to operate any system or component that is shut down or otherwise inoperable or that does not respond to normal operating controls, or any shut-off valves. Additionally, a certified home inspector is not required to enter any area that will, in the opinion of the certified home inspector, likely be dangerous to the certified home inspector or other persons or damage the property or its systems or components, or any attics that are not readily accessible or any area within the confines of a foundation and between the ground and the underside of the first floor immediately above the foundation that is not readily accessible by the certified home inspector. (Sec. 4768.11(D) and (E).)

Under the bill, a certified home inspector is not required to inspect (1) any underground items including, but not limited to, any underground storage tanks or other underground indications of their presence, whether abandoned or active, (2) any uninstalled systems or components, (3) any item that is ornamental in nature and that is not required for the operation of the essential systems and components of a residential building, (4) any systems or components located in areas that the certified home inspector does not enter in accordance with the requirements listed under "*Specific system inspection requirements*" below, (5) any detached structures other than the principal garage or carport, (6) any common elements or common areas in multi-unit housing such as condominium properties or cooperative housing, (7) any household systems and components that are not required to be inspected under "*Specific system inspection requirements*" below, including, but not limited to, appliances other than kitchen appliances, alarm systems, intercoms, speaker systems, radio controlled devices, security devices, central vacuum equipment, and lawn irrigation systems, or (8) any recreational facilities, equipment, or associated accessories (sec. 4768.11(F)).

System specific inspection requirements

The tables below list the activities a certified home inspector must perform with regard to each system or component of a residential building for which the bill specifies inspection requirements, and, if applicable, activities a certified home inspector is not required to perform with respect to that system or component. The activities must be performed in accordance with the standards of practice described above. An activity listed in the right column does not necessarily correspond with an activity listed in the left column.

Site of a home inspection

(sec. 4768.10(C))

<i>Activities that a certified home inspector must perform with respect to the site of a home inspection</i>	<i>Activities that a certified home inspector is not required to perform with respect to the site of a home inspection</i>
<p>Inspect (a) the building perimeter, land grading, window wells, and surface water drainage on the site, (b) the walkways, patios, driveways, and grade steps leading to entrances of the residential building being inspected, (c) the retaining walls and other items contiguous with the residential building, and (d) the trees or vegetation on the site if those trees or vegetation are likely to adversely affect the residential building.</p> <p>Include in the certified home inspector's report a description of any site conditions specified in (a) to (d) above that adversely affect the residential building.</p>	<p>Inspect the fences or privacy walls; outbuildings or recreational facilities, seawalls, break-walls, or docks; or the erosion control and earth stabilization measures.</p>
<p>Describe the types of materials and conditions of the various components described immediately above.</p>	<p>Evaluate the condition of trees, shrubs or other vegetation; soil, geological, geotechnical, or hydrological conditions or potential changes thereto; or the site engineering or property boundaries.</p>

Structural system of a residential building

(sec. 4768.10(D))

<i>Activities that a certified home inspector must perform with respect to the structural system of a residential building</i>	<i>Activities that a certified home inspector is not required to perform with respect to the structural system of a residential building</i>
<p>Inspect (a) the foundation for indications of settlement, flooding, moisture, or water penetration, (b) the condition of grade slab, load bearing walls, posts, piers, beams, joists, and trusses, (c) the framing, subfloors, stairs, and other structural components, and (d) the foundation,</p>	<p>Enter a subfloor crawl space that has an entrance or headroom of less than 24 inches or that has obstructions or other detrimental conditions or areas that, in the certified home inspector's opinion, may contain conditions or materials hazardous to the health and safety of the certified</p>

<i>Activities that a certified home inspector must perform with respect to the structural system of a residential building</i>	<i>Activities that a certified home inspector is not required to perform with respect to the structural system of a residential building</i>
basement, or crawlspace insulation, ventilation, and vapor barriers.	home inspector. Offer an opinion as to the adequacy of any structural system or component described in (a) to (c) in the column to the left.
Describe the types of and materials used in the foundation, floor structure, wall structure, ceiling structure, ventilation, and insulation of the residential building; the grade slab, basement, or crawl space ventilation and vapor barriers; the condition of the various structural components described under (a) to (c) immediately above; and any absence of insulation in any unfinished spaces of the foundation, floors, walls, or ceilings.	Move stored items or debris or perform an excavation to gain access to an area.
	Provide any engineering or architectural services. Disturb any insulation or vapor retarders.

Exterior of a residential building

(sec. 4768.10(E))

<i>Activities that a certified home inspector must perform with respect to the exterior of a residential building</i>
Inspect (a) the exterior wall covering, flashing, trim, and protective coatings, (b) all exterior doors and windows, (c) the eaves, soffits, and fascias where visible, (d) any attached deck, balcony, stoop, steps, porch, and all railings associated with those items, and (e) the visible exterior portions of chimneys.
Describe the types of and materials comprising the exterior components inspected and the condition of the various exterior components.

Roof system

(sec. 4768.10(F))

<i>Activities that a certified home inspector must perform with respect to a roof system</i>	<i>Activities that a certified home inspector is not required to perform with respect to a roof system</i>
Inspect (a) the roof covering and visible flashing, (b) any components used to carry water off a roof and away from a residential building, (c) the skylights, chimneys, and roof penetrations, (d) the roof framing, sheathing, and decking, (e) the attic insulation and ventilation, and (f) the attic ventilation equipment if readily accessible.	Inspect antennas, lightning arresters, or other installed accessories; interiors of flues or chimneys that are not readily accessible; internal gutter and downspout systems and related underground drainage piping; or thermostats and humidistats for attic ventilation equipment.
Describe the type of roof covering, gutters, and downspouts; the type of roof structure and sheathing; the type of attic insulation and its approximate thickness; and any evidence of and the location of water penetration.	Walk on or access a roof if damage to the roof or roofing material could occur or it is unsafe for the certified home inspector to do so.
Include in the certified home inspector's report a description of the methods used to inspect the roof covering and attic space, the presence and type of roof or attic ventilation, and the location and extent of any observed moisture penetration.	Remove snow, ice, debris, or other objects that prohibit the observation of the roof surfaces. Operate powered roof ventilators.
	Determine the remaining life expectancy of any roof coverings, the presence or absence of hail damage, whether any manufacturers' defects are present, the number of layers of roof covering, or the adequacy of the roof ventilation.
	Enter attic spaces that have a headroom of less than 48 inches, the measurement of which includes any insulation covering the ceiling joists or bottom truss cord, or if obstructions or other detrimental conditions exist.
	Break or otherwise damage the surface finish or weather seal on or around access panels and covers.

Garage or carport

(sec. 4768.10(G))

<i>Activities that a certified home inspector is required to perform with respect to a garage or carport</i>
Inspect (a) the exterior and interior walls and ceilings, floors, windows, doors, roof, and foundation, (b) the electrical system and components of that system, (c) the plumbing system and components of that system, (d) the heating system or unit, and (e) the garage door opening system.
Describe the type of and materials that make up the door, exterior walls, roof, and other items to be inspected; and the garage door opening system and operation, including any automatic reverse mechanism.

Electrical system

(sec. 4768.10(H))

<i>Activities that a certified home inspector must perform with respect to an electrical system</i>	<i>Activities that a certified home inspector is not required to perform with respect to an electrical system</i>
Inspect (a) the entrance of the primary service from masthead to main panel, (b) the service entrance conductors, cables, and raceways, (c) the service equipment and main disconnects, (d) the service grounding, (e) the interior components of service panels and subpanels, (f) the conductors, (g) the overcurrent protection devices, (h) a representative number of installed lighting fixtures, switches, and receptacles, and (i) the ground fault circuit interrupters and smoke detectors.	Inspect any remote control devices used to operate the electrical system <i>unless</i> the system has only one remote device, in which case the certified home inspector must inspect that device in addition to the components and systems described in (a) to (i) in the column to the left.
Describe the types and location of primary service and overcurrent protection devices, the amperage and voltage rating of the service provided, the locations of main disconnect and subpanels.	Inspect any alarm system and the components of that system; any low voltage wiring or system, and any components of that system; any ancillary wiring system and any components of that system that are not a part of the primary electrical distribution system; or any electrical equipment not readily accessible.

<i>Activities that a certified home inspector must perform with respect to an electrical system</i>	<i>Activities that a certified home inspector is not required to perform with respect to an electrical system</i>
Identify the electrical conductors or wires by their general type, including non-metallic sheathed cable, armored cable, or a knob and tube.	Measure amperage, voltage, or impedance.
Include in the certified home inspector's report a description of the presence of solid conductor aluminum branch circuit wiring, the absence of smoke detectors, and any visible condition that may constitute a safety or fire hazard.	Insert any tool, probe, or testing device into any main panel or subpanel.
	<p>Activate any electrical system or branch circuits that are not energized.</p> <p>Operate any overload protection devices.</p> <p>Dismantle any electrical device or control or move objects, furniture, or appliances to gain access to any electrical component.</p>

Plumbing system

(sec. 4768.10(I))

<i>Activities that a certified home inspector must perform with respect to a plumbing system</i>	<i>Activities that a certified home inspector is not required to perform with respect to a plumbing system</i>
Inspect the visible water supply and distribution systems including all fixtures and faucets, and conduct tests to determine whether a sufficient water flow to provide an uninterrupted supply of water to the highest, unrestricted tap exists when a single, intermediate, unrestricted tap is operated simultaneously with the highest, unrestricted tap.	Inspect (1) any system that is shut down or secured, (2) any plumbing components that are not readily accessible, (3) any plumbing fixture overflow system to verify system function, (4) any fire sprinkler system or lawn sprinkler system, (5) any water conditioning equipment, including softener and filter systems, (6) the interiors of flues or chimneys that are not readily accessible, (7) any wells, well pumps, or any water storage related equipment, (8) any private waste disposal system including cesspools, septic tanks, drain fields, and related piping and equipment, or (9) any solar water

<i>Activities that a certified home inspector must perform with respect to a plumbing system</i>	<i>Activities that a certified home inspector is not required to perform with respect to a plumbing system</i>
	heating system.
Inspect the visible drain, waste, and vent systems, including all fixtures associated with those systems, and conduct tests to determine whether a drain empties in a reasonable amount of time and is not subject to overflow when one of the drain's supply faucets is operating.	Except as provided under " <i>Activities a certified home inspector must perform with respect to a plumbing system,</i> " operate any main, branch, safety, shut-off, or fixture valves except faucets or any sump pump that is equipped with internal or water dependant switches.
Inspect the domestic hot water heating equipment, its fuel source and vent systems, flues, and chimneys; the oil, propane, or natural gas storage or distribution systems including all appliance valves and connectors.	Determine the quantity, quality, or temperature of the water supply.
Inspect the drainage pump system and operate that system if possible.	Determine whether the water supply and the waste disposal system are public or private.
Describe the types of and materials used for the water supply, drain, waste, and vent piping; the water heating equipment, including its capacity and energy source; and the location of the main water and main fuel shut-off valves.	Open any sealed sanitary sumps.

Heating system

(sec. 4768.10(J))

<i>Activities that a certified home inspector must perform with respect to a heating system</i>	<i>Activities that a certified home inspector is not required to perform with respect to a heating system</i>
Inspect the installed heating equipment, including normal operating controls, heating distribution, and any blower motors, filters or pumps, and open only those access panels used for homeowner maintenance.	Inspect the interiors of flues or chimneys that are not readily accessible, the heat exchanger, any solar space heating system, or any heating system accessories, including but not limited to, humidifiers, dehumidifiers, air purifiers, motorized dampers, or heat reclaimers.

<i>Activities that a certified home inspector must perform with respect to a heating system</i>	<i>Activities that a certified home inspector is not required to perform with respect to a heating system</i>
Inspect the fuel source, ventilation system, flue, chimney, and any permanently installed auxiliary heating unit.	Determine the capacity, adequacy, efficiency, or distribution balance of the heating system.
Describe the heating method the system uses by its distinguishing characteristics, including fuel type and source, heating equipment, and distribution system; and the operation, if possible, of the heating system using the normally accessible control devices.	Activate or operate any heating system that does not respond to normal operating controls or has been shut down, or a heat pump in the heating mode when the ambient temperature is above 65 degrees Fahrenheit.
Include in the certified home inspector's report a notation indicating the absence of a radiator, convector unit, radiant panel, heat pipe, ductwork, grill, register, or other device from which heat is intended to be emitted in any of the rooms or spaces used for sitting, sleeping, bathing, eating, or cooking, or that include a toilet.	Dismantle any equipment, controls, or gauges.
	Evaluate the type of material contained in insulation or wrapping of pipes, ducts, jackets, and boilers.

Air conditioning system

(sec. 4768.10(K))

<i>Activities that a certified home inspector must perform with respect to an air conditioning system</i>	<i>Activities that a certified home inspector is not required to perform with respect to an air conditioning system</i>
Inspect any installed central and through wall cooling equipment, including exterior units, normal operating controls, refrigerant lines, condensate removal, and electrical disconnects.	Inspect any gas-fired refrigeration systems, portable cooling units, or window mounted air-conditioning units.
Open only access panels used for homeowner maintenance.	Determine the capacity, adequacy, efficiency, or distribution balance of the cooling system.

<i>Activities that a certified home inspector must perform with respect to an air conditioning system</i>	<i>Activities that a certified home inspector is not required to perform with respect to an air conditioning system</i>
Describe the cooling method the system uses by its distinguishing characteristics, including its energy source, cooling equipment, and distribution methods, and the operation of the air conditioning system using the normally accessible controls.	Check the pressure of the system coolant or determine the presence of any leakage.
	Operate any air conditioning equipment or systems, or heat pump equipment in cooling mode, if the exterior temperature is below 65 degrees Fahrenheit or was below 65 degrees Fahrenheit during the 24-hour period immediately preceding the inspection, when circumstances are not conducive to the safe operation of the system, or when damage to any equipment may result.
	Activate or operate a cooling system that does not respond to normal operating controls or has been shut down.
	Check the electrical current drawn by the unit or system.
	Disassemble any components or equipment.

Interior of a residential building

(sec. 4768.10(L))

<i>Activities that a certified home inspector must perform with respect to the interior of a residential building</i>	<i>Activities that a certified home inspector is not required to perform with respect to the interior of a residential building</i>
Inspect the walls, ceilings, floors, steps, stairways, balconies, railings, and countertops; a representative number of installed cabinets, doors, windows, outlets, light switches, and light fixtures; the bath and kitchen exhaust ventilation systems; and, except as otherwise specified under " <i>Activities that a certified home inspector</i>	Inspect (1) the paint, wallpaper, and other finish treatments, (2) any carpeting or window treatments, (3) any household appliances that are designed to be portable, (4) any central vacuum system, or (5) any permanently installed kitchen appliances to determine the quality or level of performance or efficiency of those

<i>Activities that a certified home inspector must perform with respect to the interior of a residential building</i>	<i>Activities that a certified home inspector is not required to perform with respect to the interior of a residential building</i>
<i>is not required to perform with respect to the interior of a residential building,"</i> inspect any permanently installed kitchen appliances.	appliances.
Describe the types of and materials used in the walls, ceilings, floors, cabinets, and countertops; the types of permanently installed kitchen appliances; and the types of, materials used in, and the operation of a representative number of windows and doors, and the hardware used in those windows and doors.	
Include in the certified home inspector's report a description of any evidence of water intrusion.	

Fireplace or solid fuel-burning appliance

(sec. 4768.10(M))

<i>Activities that a certified home inspector must perform with respect to a fireplace or solid fuel-burning appliance</i>	<i>Activities that a certified home inspector is not required to perform with respect to a fireplace or solid fuel-burning appliance</i>
Inspect the fireplace system components, including fireboxes, dampers, and hearths; any visible ventilation systems, flues, and chimneys; and any wood stoves or fireplace inserts.	Inspect the interiors of flues or chimneys; the firescreens, doors, seals, or gaskets; the automatic fuel feed device; the mantel and fireplace surrounds; the combustion make-up air device; or the heat distribution assist, regardless of whether the assist is gravity controlled or fan assisted.
Describe the fireplace or solid fuel-burning appliance and the chimney.	Ignite a fire in the fireplace or stove to determine the adequacy of draft.
	Perform a chimney smoke test.
	Evaluate the installation or adequacy of any inserts, wood-burning stoves, or other modifications in a fireplace, stove, or chimney.

<i>Activities that a certified home inspector must perform with respect to a fireplace or solid fuel-burning appliance</i>	<i>Activities that a certified home inspector is not required to perform with respect to a fireplace or solid fuel-burning appliance</i>
	Determine the clearance to any combustibles located in concealed areas.
	Move any fireplace inserts or stove or firebox contents.

Conflict of interest prohibitions

The bill requires a certified home inspector to perform services and express opinions only within the certified home inspector's areas of education, training, or experience. A certified home inspector cannot disclose inspection results or client information without client approval. The bill requires a certified home inspector to report substantive and willful violations of the bill's provisions to the Superintendent. Under the bill, a certified home inspector must avoid all conflicts of interest or activities that compromise, or appear to compromise, the professional independence and objectivity or inspection integrity of the certified home inspector. The bill prohibits a certified home inspector from doing any of the following:

- (1) Inspect a property for compensation in which the certified home inspector has, or expects to have, a financial interest;
- (2) Inspect a property under a contingency arrangement that specifies that any compensation or future referrals are dependent on reported findings or on the sale of the property;
- (3) Directly or indirectly compensate any real estate agent or any other party who has a financial interest in the closing or settlement of any real estate transactions for referring that certified home inspector to potential clients, or for including that certified home inspector in a list of recommended certified home inspectors or preferred providers, or for any similar arrangement;
- (4) Accept compensation for a home inspection from more than one party without a written agreement to do so that is signed by all parties;
- (5) Conduct a home inspection or prepare a home inspection report for which the certified home inspector's fee is contingent upon the conclusions in the report;

(6) Accept compensation, directly or indirectly, for recommending contractors, services, or products to a client or another party who has an interest in the inspected property. (Sec. 4768.12.)

Enforcement

The bill requires the Superintendent to investigate complaints upon receipt of a complaint alleging a violation of the bill's provisions. The Superintendent has the authority to employ investigators and auditors to assist in investigating complaints and conducting investigations, audits, and other inquiries that the Superintendent considers appropriate to enforce the bill. The investigators and auditors may review and audit, during normal business hours, the certified home inspector's business records that are directly related to complaints. All information related to investigations and audits must be kept confidential and is not a public record under the Public Records Law (sec. 149.43, not in the bill). (Sec. 4768.13.)

Hearings and disciplinary actions

If, upon examining the results of an investigation the Superintendent determines that a certified home inspector has violated the bill's provisions or engaged in any activity for which the Superintendent may refuse to issue or renew a license, the Superintendent, in accordance with the notice and hearing requirements prescribed in the Administrative Procedure Act, must order the disciplinary action the Superintendent considers appropriate, which may include any one or more of the following:

- (1) A reprimand;
- (2) Suspension of the certification until the certified home inspector complies with conditions the Superintendent establishes;
- (3) Suspension of the certification for a specific period of time;
- (4) Revocation of the certification (sec. 4768.14(A)).

The bill requires the Superintendent to appoint a hearing officer to conduct adjudication hearings in accordance with the Administrative Procedure Act. The Superintendent must appoint a person who has been admitted to the practice of law in Ohio and has experience in the area of home inspections to serve as the hearing officer. In accordance with the Administrative Procedure Act, after conducting a hearing, a hearing officer must submit to the Superintendent a report of the hearing and a recommendation for the action to be taken against the certified home inspector. All parties may file objections to the report and recommendations as permitted under the Act, and the Superintendent must issue an order in accordance with the procedures prescribed in the Act.

Under the bill, the decision of the Superintendent is final, subject to review under the Administrative Procedure Act and appeal to the Franklin County Court of Common Pleas. (Sec. 4768.14.)

Injunctions

The bill specifies that the Superintendent may apply to any court of common pleas to enjoin a violation of the bill's provisions. Upon a showing by the Superintendent that a person has violated or is violating the bill's provisions, the court must grant an injunction, restraining order, or other appropriate relief. (Sec. 4768.16.)

Child support orders

On receipt of a notice that a certified home inspector is in default under a child support order under the procedures established under existing law, the bill requires the Superintendent to comply with the requirements of that law or rules adopted pursuant to it with respect to a certification issued under the bill (sec. 4768.19).

Civil actions

Except as provided below, the bill states that nothing in the bill can be construed to create or imply a private cause of action against a certified home inspector for a violation of the bill if that action is not otherwise maintainable under common law (sec. 4768.17(A)). The bill states that the remedies provided under "**Enforcement,**" "**Hearings and disciplinary actions,**" and "**Grounds for refusing to issue or renew a certification**" above are the exclusive remedies for alleged violations of the prohibitions specified under "**Conflict of interest prohibitions,**" above (sec. 4768.17(D)).

Under the bill, an action for damages that is based on professional services that were rendered or that should have been rendered by a certified home inspector must not be brought, commenced, or maintained unless the action is filed within one year after the date that the home inspection is performed. Before bringing, commencing, or maintaining an action, a client must notify the certified home inspector of the alleged deficiencies and must allow the certified home inspector the opportunity to review and remedy the alleged deficiencies. The statute of limitations specified in the bill is tolled for the period that begins on the date the client notifies the certified home inspector of the alleged deficiencies and that ends on the date that the certified home inspector reviews, declines to review, remedies, or declines to remedy the alleged deficiencies, whichever comes later. (Sec. 4768.17(B) and (C).)

Fund

The bill creates the Home Inspectors Fund in the state treasury. The Superintendent must deposit all money collected under the bill into that fund and use it solely to pay costs associated with administering and enforcing the bill's provisions (sec. 4768.18).

Definitions

The bill also defines the following terms:

(1) "Parallel inspection" means the process by which a certified home inspector observes and evaluates an on-site home inspection performed by an applicant for a home inspector certification and reviews and verifies the applicant's compliance with the standards of practice specified under "**Standards of practice**" above, while concurrently performing the primary home inspection of the same residential building for the certified home inspector's client.

(2) "Activate" means to turn on, supply power to, or enable systems, equipment, or devices to become active by normal control means.

(3) "Alarm system" means a warning device, installed or freestanding, which includes, but is not limited to, a carbon monoxide detector, flue gas and other spillage detector, security equipment, or an ejector pump alarm.

(4) "Appliance" means a household device operated by the use of electricity or gas, but does not mean components covered under a central heating or air-conditioning system or a plumbing system.

(5) "Detrimental conditions" means any condition that, in the opinion of a certified home inspector, may be unsafe, unhealthy, or in any way harmful to the certified home inspector or to any other individuals using the residential building.

(6) "Dismantle" means to take apart or remove any component, device, or piece of equipment that would not be taken apart or removed by a client in the course of normal and routine maintenance.

(7) "Foundation" means the base upon which a structure or a wall rests that generally consists of masonry, concrete, or stone, and is partially underground.

(8) "Normal operating controls" include a thermostat, switch, or valve intended to be operated by a client.

(9) "Readily accessible" means available for visual inspection without requiring a person to move or dismantle personal property, take destructive

measures, or take any other action that will involve risk to a person or to the property.

(10) "Representative number" means a sufficient amount to serve as a typical or characteristic example of the item inspected.

(11) "Shut down" means a state in which a system or component cannot be operated by normal operating controls.

(12) "Significantly deficient" means unsafe or not functioning.

(13) "Solid fuel-burning appliances" means either a hearth and fire chamber or similarly prepared place in which a fire may be made and that is built in conjunction with a chimney; or a listed assembly of a fire chamber, its chimney, and related factory-made parts designed for unit assembly without requiring field construction.

(14) "Structural component" means a component that supports non-variable forces or weights, known as dead loads, and variable forces or weights, known as live loads.

(15) "Unsafe" means a significant risk of personal injury during normal, day-to-day use that may be due to damage, deterioration, improper installation, or a change in accepted residential construction standards. (Sec. 4768.01.)

HISTORY

ACTION	DATE
Introduced	06-05-07

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