

(127th General Assembly)
(Amended Substitute House Bill Number 444)

AN ACT

To amend sections 3781.111, 4517.21, 4740.01, 4740.02, 4740.04, and 4740.10 and to enact section 4740.16 of the Revised Code to make changes to the construction industry licensing laws, to discipline unlicensed contractors, eliminate unlicensed contractor activity, to provide that an insurer or subrogee may sell through a licensed motor vehicle auction owner a motor vehicle that comes into its possession through the operation of an insurance contract, to create a rebuttable presumption for purposes of enforcement of the Ohio Civil Rights Commission that items submitted for plan approval under the Board Building Standards rules are in compliance with the Board's rules relating to accessibility, and to require the Board to provide statewide training on accessibility rules.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 3781.111, 4517.21, 4740.01, 4740.02, 4740.04, and 4740.10 be amended and section 4740.16 of the Revised Code be enacted to read as follows:

Sec. 3781.111. (A) In addition to the powers conferred by any other section of the Revised Code, the board of building standards shall adopt standards and rules to facilitate the reasonable access and use by all persons with a disability of all buildings and the facilities of buildings for which plans are submitted for approval under section 3791.04 of the Revised Code. No standard or rule shall be applied to any building the plans or drawings, specifications, and date of which have been approved prior to the time that the standard or rule takes effect.

(B)(1) Except as otherwise provided in this section, the standards and rules adopted by the board pursuant to this section shall be in accordance

with the "Americans with Disabilities Act of 1990," 104 Stat. 327, 42 U.S.C.A. 12101, as amended, and the "Fair Housing Amendments Act of 1988," 102 Stat. 1619, 42 U.S.C.A. 3601, as amended.

(2) For purposes of enforcement by the Ohio civil rights commission only, approval of a plan as required under section 3791.04 of the Revised Code creates a rebuttable presumption that the plans, drawings, specifications, or data submitted are in compliance with the rules adopted by the board pursuant to this section as they relate to accessibility.

(C) All signs posted to designate special parking locations for persons with a disability and persons with disabilities that limit or impair the ability to walk in accordance with division (E) of section 4511.69 of the Revised Code and the standards and rules adopted pursuant to this section shall be mounted on a fixed or movable post or otherwise affixed in a vertical position at a height so that the sign is clearly visible to the driver of a vehicle when parked in such a location. If a new sign or a replacement sign designating a special parking location is posted on or after ~~the effective date of this amendment~~ October 14, 1999, there also shall be affixed upon the surface of that sign or affixed next to the designating sign a notice that states the fine applicable for the offense of parking a motor vehicle in the special designated parking location if the motor vehicle is not legally entitled to be parked in that location.

(D) As used in this section, "disability" has the same meaning as in section 4112.01 of the Revised Code. As used in division (C) of this section, "persons with disabilities that limit or impair the ability to walk" has the same meaning as in division (A)(1) of section 4503.44 of the Revised Code.

(E) No owner of a building or facility where special parking locations for persons with a disability must be designated in accordance with the standards and rules adopted pursuant to this section shall fail to properly mark the special parking locations as required by those standards and rules or fail to maintain the markings of the special parking locations, including the erection and maintenance of the fixed or movable signs.

(F) The board annually shall provide statewide training on the rules adopted by the board pursuant to this section as they relate to accessibility for nonresidential building department personnel certified by the board who approve, review plans, and inspect nonresidential construction.

Sec. 4517.21. (A) No motor vehicle auction owner licensed under Chapter 4517. of the Revised Code shall:

(1) Engage in the sale of motor vehicles at retail from the same licensed location;

(2) Knowingly permit the auctioning of a motor vehicle if the motor vehicle auction owner has reasonable cause to believe it is not being offered for sale by the legal owner of the motor vehicle;

(3) Knowingly permit the sale of a motor vehicle to any person except the following:

(a) A motor vehicle dealer licensed in this state or any other jurisdiction, or any other person licensed pursuant to Chapter 4517. of the Revised Code or a substantially similar statute of any other jurisdiction;

(b) A person who purchases a motor vehicle from a licensed motor vehicle dealer at an auction of motor vehicles conducted at the licensed motor vehicle dealer's place of business in accordance with division (B) of this section;

(c) A person who purchases a classic motor vehicle, as defined in section 4517.021 of the Revised Code, at an auction conducted at the established place of business of a licensed motor vehicle auction owner where only classic motor vehicles are being auctioned.

(4) Knowingly permit the sale of a motor vehicle by any person who is not licensed pursuant to Chapter 4517. of the Revised Code, except by insurers and subrogees selling only those motor vehicles that have come into their possession through the operation of the terms of an insurance contract;

(5) Knowingly permit any person to violate section 4517.19 of the Revised Code;

(6) Deny reasonable inspection of the motor vehicle auction owner's business records, relating to the sale of motor vehicles, to the registrar of motor vehicles or the attorney general, when requested in writing to do so. The motor vehicle auction owner shall maintain for a period of six years from the date of the sale of a motor vehicle at least the following information:

(a) The year, make, model and vehicle identification number of the motor vehicle;

(b) The name and address of the selling dealer;

(c) The name and address of the buying dealer;

(d) The date of the sale;

(e) The purchase price;

(f) The odometer reading of the motor vehicle at the time of sale and an odometer disclosure statement from the seller that complies with subchapter IV of the "Motor Vehicle Information and Cost Savings Act," 86 Stat. 961 (1972), 15 U.S.C. 1981.

A motor vehicle auction owner may supplement the required information with any additional information the motor vehicle auction

owner considers appropriate.

(7) Knowingly permit a dealer whose license has been suspended or revoked, or a person whose application for a license to operate as a dealer has been denied, to participate as a buyer or seller at the motor vehicle auction owner's auction after notification by the registrar of the suspension or revocation of a license, or denial of an application for a license. The registrar shall notify each auction owner by certified mail, return receipt requested, within five business days of the suspension or revocation of a license, or the denial of an application for license. Any motor vehicle auction owner who has knowledge of the presence at the motor vehicle auction owner's auction of a dealer whose license has been suspended or revoked, or of a person whose application for a license to operate as a dealer has been denied, shall immediately cause the removal of the person from the auction.

(8) Knowingly accept a motor vehicle for sale or possible sale by a dealer whose license has been suspended or revoked, during the period of suspension or revocation, or by a person whose application for a license to operate as a dealer has been denied, after notification by the registrar, in accordance with division (G) of this section, of the suspension or revocation of the license, or denial of an application for a license.

(9) Knowingly permit the auctioning of a motor vehicle whose ownership is not evidenced at the time of auctioning by a current certificate of title or a manufacturer's certificate of origin, and all title assignments that evidence the seller's ownership of the motor vehicle, without first giving clear and unequivocal notice of the lack of such evidence.

(B) Notwithstanding any provision of Chapter 4517. of the Revised Code to the contrary, a licensed motor vehicle auction owner, in addition to engaging in the business of auctioning motor vehicles at the auction owner's established place of business, may engage in the business of auctioning a licensed motor vehicle dealer's motor vehicles at that licensed motor vehicle dealer's established place of business, provided such dealer's place of business is not owned, operated, or in any way managed by a motor vehicle auction owner or subsidiary. The motor vehicle auction owner is not required to obtain an additional license for each dealer's premises at which the motor vehicle auction owner is engaging in the business of auctioning motor vehicles, regardless of whether the dealer's premises are located in another county, but the motor vehicle auction owner is required to have a certified copy of the auction owner's license available for inspection when the auction owner is engaging in the business of auctioning motor vehicles at an established place of business of a licensed motor vehicle dealer.

(C) Whoever violates this section is guilty of a misdemeanor of the fourth degree.

Sec. 4740.01. As used in this chapter:

(A) "License" means a license the Ohio construction industry licensing board issues to an individual as a heating, ventilating, and air conditioning contractor, refrigeration contractor, electrical contractor, plumbing contractor, or hydronics contractor.

(B) "Contractor" means any individual or business entity that satisfies both of the following:

(1) ~~For compensation, directs~~ 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~~ otherwise supervises or directs tradespersons who perform construction, improvement, renovation, repair, or maintenance on a construction project with respect to the contractor's trades.

(C) "Licensed trade" means a trade performed by a heating, ventilating, and air conditioning contractor, a refrigeration contractor, an electrical contractor, a plumbing contractor, or a hydronics contractor.

(D) "Tradesperson" means ~~an~~ any individual who is supervised or directed by a contractor or who is otherwise employed by a contractor and who engages in construction, improvement, renovation, repair, or maintenance of buildings or structures without assuming responsibility for the means, method, or manner of that construction, improvement, renovation, repair, or maintenance.

(E) "Construction project" means a construction project involving a building or structure subject to Chapter 3781. of the Revised Code and the rules adopted under that chapter, but not an industrialized unit or a residential building as defined in section 3781.06 of the Revised Code.

Sec. 4740.02. (A) There is hereby created within the department of commerce, the Ohio construction industry licensing board, consisting of seventeen residents of this state. The board shall have an administrative section, a plumbing and hydronics section, an electrical section, and a heating, ventilating, air conditioning, and refrigeration section. The director of commerce shall appoint all members of the board. The director or the director's designee shall serve as a member of the administrative section and

the director shall appoint to the section to represent the public, one member who is not a member of any group certified by any section of the board. Each section, other than the administrative section, shall annually elect a member of its section to serve a one-year term on the administrative section.

(B) The plumbing and hydronics section consists of five members, one of whom is a plumbing inspector employed by the department of commerce, a municipal corporation, or a health district, two of whom are plumbing contractors who have no affiliation with any union representing plumbers, and two of whom are plumbing contractors who are signatories to agreements with unions representing plumbers.

The plumbing and hydronics section has primary responsibility for the licensure of plumbing contractors and hydronics contractors.

(C) The electrical section consists of five members, one of whom is an electrical inspector employed by the department of commerce, a municipal corporation, or a county, two of whom are electrical contractors who have no affiliation with any union representing electricians, and two of whom are electrical contractors who are signatories to agreements with unions representing electricians.

The electrical section has primary responsibility for the licensure of electrical contractors.

(D) The heating, ventilating, air conditioning, and refrigeration section consists of five members, one of whom is a heating, ventilating, air conditioning, and refrigeration inspector employed by either the department of commerce or a municipal corporation; two of whom are heating, ventilating, and air conditioning contractors or refrigeration contractors who have no affiliation with any union representing heating, ventilating, and air conditioning tradespersons or refrigeration tradespersons; and two of whom are heating, ventilating, and air conditioning contractors or refrigeration contractors who are signatories to agreements with unions representing heating, ventilating, and air conditioning tradespersons or refrigeration tradespersons.

The heating, ventilating, air conditioning, and refrigeration section has primary responsibility for the licensure of heating, ventilating, and air conditioning contractors and refrigeration contractors.

(E) Within ninety days after July 31, 1992, initial appointments shall be made to the board. Of the initial appointments to the board, two appointments in each section, other than the administrative section, are for terms ending one year after July 31, 1992, and two are for terms ending two years after July 31, 1992. All other appointments to the board are for terms ending three years after July 31, 1992. Thereafter, terms of office are for

three years, each term ending on the same day of the same month of the year as did the term that it succeeds. Each member shall hold office from the date of appointment until the end of the term for which the member was appointed. Members may be reappointed. Vacancies shall be filled in the manner provided for original appointments. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall hold office as a member for the remainder of that term. A member shall continue in office subsequent to the expiration of a term until a successor takes office or until a period of sixty days has elapsed, whichever occurs first.

(F) Before entering upon the discharge of official duties, each member shall take, and file with the secretary of state, the oath of office required by Section 7 of Article XV, Ohio Constitution.

(G) Each member, except for the director or the director's designee, shall receive a per diem amount fixed pursuant to section 124.15 of the Revised Code when actually attending to matters of the board and for the time spent in necessary travel, and all actual and necessary expenses incurred in the discharge of official duties.

(H) The director of commerce may remove any member of the board the director appoints for malfeasance, misfeasance, or nonfeasance.

(I) Membership on the board and holding any office of the board does not constitute holding a public office or employment within the meaning of any section of the Revised Code, or an interest, either direct or indirect, in a contract or expenditure of money by the state or any municipal corporation, township, special district, school district, county, or other political subdivision. No member or officer of the board is disqualified from holding any public office or employment nor shall the officer or member forfeit any public office or employment by reason of holding a position as an officer or member of the board.

(J) The board, and each section of the board, shall meet only after adequate advance notice of the meeting has been given to each member of the board or section, as appropriate.

Sec. 4740.04. The administrative section of the Ohio construction industry licensing board is responsible for the administration of this chapter and shall do all of the following:

(A) Schedule the contractor examinations each of the other sections of the board directs. Each type of examination shall be held at least four times per year.

(B) Select and contract with one or more persons to do all of the following relative to the examinations:

(1) Prepare, administer, score, and maintain the confidentiality of the examinations;

(2) Be responsible for all the expenses required to fulfill division (B)(1) of this section;

(3) Charge an applicant a fee in an amount the administrative section of the board authorizes for administering the examination;

(4) Design the examination for each type of contractor to determine an applicant's competence to perform that type of contracting.

(C) Issue and renew licenses as follows:

(1) Issue a license to any individual who the appropriate section of the board determines is qualified pursuant to section 4740.06 of the Revised Code to hold a license and has attained, within the twelve months preceding the individual's application for licensure, a score on the examination that the appropriate section authorizes for the licensed trade.

(a) Each license shall include a license number and an expiration date.

(b) Each license issued to an individual who holds more than one valid license shall contain the same license number and expiration date as the original license issued to that individual.

(2) Renew licenses for individuals who meet the renewal requirements of section 4740.06 of the Revised Code.

(D) Make an annual written report to the director of commerce on proceedings had by or before the board for the previous year and make an annual statement of all money received and expended by the board during the year;

(E) Keep a record containing the name, address, the date on which the board issues or renews a license to, and the license number of, every heating, ventilating, and air conditioning contractor, refrigeration contractor, electrical contractor, plumbing contractor, and hydronics contractor issued a license pursuant to this chapter;

(F) Regulate a contractor's use and display of a license issued pursuant to this chapter and of any information contained in that license;

(G) Adopt rules in accordance with Chapter 119. of the Revised Code as necessary to properly discharge the administrative section's duties under this chapter. The rules shall include, but not be limited to, the following:

(1) Application procedures for examinations;

(2) Specifications for continuing education requirements for license renewal that address all of the following:

(a) A requirement that an individual who holds any number of valid and unexpired licenses accrue a total of ten hours of continuing education courses per year;

(b) Fees the board charges to persons who provide continuing education courses, in an amount of twenty-five dollars annually for each person approved to provide courses, not more than ten dollars plus one dollar per credit hour for each course offered, and one dollar per credit hour of instruction per attendee;

(c) A provision limiting approval of continuing education courses to one year.

(3) Requirements for criminal records checks of applicants under section 4776.03 of the Revised Code.

(H) Adopt any continuing education curriculum as the other sections of the board establish or approve pursuant to division (C) of section 4740.05 of the Revised Code;

(I) Keep a record of its proceedings and do all things necessary to carry out this chapter.

Sec. 4740.10. (A) The appropriate section of the Ohio construction industry licensing board, upon an affirmative vote of four of its members, may take any of the following actions against a licensee who violates Chapter 4740. of the Revised Code:

(1) Impose a fine on the licensee, not exceeding one thousand dollars per violation per day;

(2) Direct the administrative section to suspend the licensee's license for a period of time the section establishes;

(3) Direct the administrative section to revoke the licensee's license;

(4) Require the licensee to complete additional continuing education course work. Any continuing education course work completed pursuant to this division may not count toward any other continuing education requirements this chapter establishes.

(5) Direct the administrative section to refuse to issue or renew a license if the section finds that the applicant or licensee has done any of the following:

(a) Been convicted of a misdemeanor involving moral turpitude or a felony;

(b) Violated any provision of this chapter or the rules adopted pursuant thereto;

(c) Obtained a license or any order, ruling, or authorization of the board by fraud, misrepresentation, or deception;

(d) Engaged in fraud, misrepresentation, or deception in the conduct of business.

(B) The appropriate section of the board shall determine the length of time that a license is to be suspended and whether or when an individual

whose license has been revoked may apply for reinstatement. The appropriate section of the board may accept or refuse an application for reinstatement and may require an examination for reinstatement.

(C) The appropriate section of the board may investigate any alleged violation of this chapter or the rules adopted pursuant to it. If, after an investigation, a section determines that any person has engaged or is engaging in any practice that violates this chapter or the rules adopted pursuant to it, that section may apply to the court of common pleas of the county in which the violation occurred or is occurring for an injunction or other appropriate relief to enjoin or terminate the violation.

(D) Any person who wishes to make a complaint against a person who holds a license shall submit the complaint in writing to the appropriate section of the board within three years after the date of the action or event upon which the complaint is based.

Sec. 4740.16. (A) The appropriate section of the Ohio construction industry licensing board may investigate any person who allegedly has violated section 4740.13 of the Revised Code. If, after an investigation pursuant to section 4740.05 of the Revised Code, the appropriate section determines that reasonable evidence exists that a person has violated section 4740.13 of the Revised Code, within seven days after that determination, the appropriate section shall send a written notice to that person in the same manner as prescribed in section 119.07 of the Revised Code for licensees, except that the notice shall specify that a hearing will be held and specify the date, time, and place of the hearing.

(B) The appropriate section shall hold a hearing regarding the alleged violation in the same manner prescribed for an adjudication hearing under section 119.09 of the Revised Code. 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 one thousand dollars per violation per day. The appropriate section's determination is an order that the person may appeal in accordance with section 119.12 of the Revised Code.

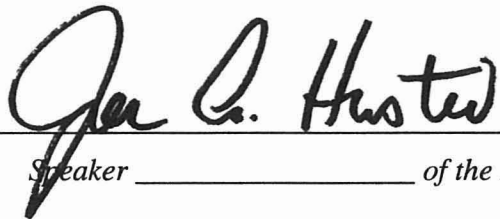
(C) If the person who allegedly committed a violation of section 4740.13 of the Revised Code fails to appear for a hearing, the appropriate section may request the court of common pleas of the county where the alleged violation occurred to compel the person to appear before the appropriate section for a hearing.

(D) If the appropriate section assesses a person a civil penalty for a violation of section 4740.13 of the Revised Code and the person fails to pay that civil penalty within the time period prescribed by the appropriate

section, the appropriate section shall 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 this section, the person also shall pay any fee assessed by the attorney general for collection of the civil penalty.

SECTION 2. That existing sections 3781.111, 4517.21, 4740.01, 4740.02, 4740.04, and 4740.10 of the Revised Code are hereby repealed.

SECTION 3. Section 3781.111 of the Revised Code is presented in this act as a composite of the section as amended by both Sub. H.B. 148 and Am. H.B. 264 of the 123rd General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.



Speaker _____ of the House of Representatives.



President _____ of the Senate.

Passed December 17, 2008

Approved January 6, 2009



Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Mark C. Flanders

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
6th day of January, A. D. 2009.

James B. ...

Secretary of State.

File No. 156

Effective Date April 7, 2009