



Antitrust Referral Analysis Submission by Person Affected by Board or Commission Action

Contact Name: Michael R. Parks

Company (if applicable): N/A

Date: 23 Feb. 2020

Referral Topic: Home Inspector Standards of Practice

ORC 107.56 provides a mechanism through which boards or commissions, or someone affected by an action by a board or commission, may refer to the Common Sense Initiative Office an action that may be subject to state or federal antitrust law. Please send this form, a complete copy of the action or proposed action, and evidence that this form was transmitted to the board or commission taking or proposing the action as required by ORC 107.56 (C)(2), and any other appropriate documentation to the CSI Office at CSISReferrals@governor.ohio.gov.

Referral Information

1. Name of board or commission taking or proposing to take action:

Ohio Home Inspector Board

2. Does this action/proposed action deny an application for licensure?

No.

3. Does this referral pertain to a disciplinary action by the licensing board or commission taken against you or your company?

No.

4. What is the action/proposed action being taken?

1. To **'require'** Home Inspectors licensed under R.C. 4764 to perform electrical inspections in violation R.C. 3783.

Specifically:

1301:17-1-17 Standards of Practice

T.4 Service grounding;

T.5 Interior parts or components of a service panels and subpanels;

2. The OBBS offered this for inclusion in the Canon of Ethics.

8. Licensees shall not characterize their inspection results in a home inspection report as representing a determination of compliance with Ohio Residential, Mechanical, Plumbing, or Electrical Codes, determining the existence of serious hazards as defined in Ohio Administrative Code 4101:8-01, or recommending the method or process for remediation.

This recommendation has morphed into this:

1301:17-1-16	Canon of Ethics
Article 1 – General Standards	
8. Licensees shall not represent a determination of compliance with Ohio Residential, Mechanical, Plumbing or Electrical Codes, specifically the existence of serious hazards as defined in OAC 4101:8-2-01. Licensees may recommend a client seek further evaluation and repair or remediation of suspected safety hazards by a certified or licensed professional. Such recommendation shall be in the home inspection report.	
As adopted by the Ohio Home Inspection Board Jan. 30, 2020 EFF. TBA	

Does this protect the public or the home inspectors? The original language was crafted by those responsible for protecting the public's safety in buildings both public and private.

5. Please describe the relevant factual background you wish to include in this referral (e.g., history, context).

3783.01 Building standards - electrical safety standards definitions.

As used in sections 3783.01 to 3783.08, inclusive, of the Revised Code:

(B) The "practice of electrical inspection" includes any ascertainment of compliance with the Ohio building code, or the electrical code of a political subdivision of this state by a person, who, for compensation, inspects the construction and installation of electrical conductors, fittings, devices, and fixtures for light, heat or power services equipment, or the installation, alteration, replacement, maintenance, or repair of any electrical wiring and equipment that is subject to any of the aforementioned codes.

3783.06 Certificate required.

No person shall engage in the practice of electrical inspection in this state unless he is the holder of a certificate of competency as an electrical safety inspector issued under Chapter 3783. of the Revised Code. Any person practicing or offering to practice electrical inspection shall show proof of his certification upon request as provided by rules of the board of building standards.

4764.01 Definitions.

As used in this chapter:

(C) "Home inspection" means the process by which a home inspector conducts a visual examination of the readily accessible components of a residential building 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 this state under Title XXXIX of the Revised Code 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.

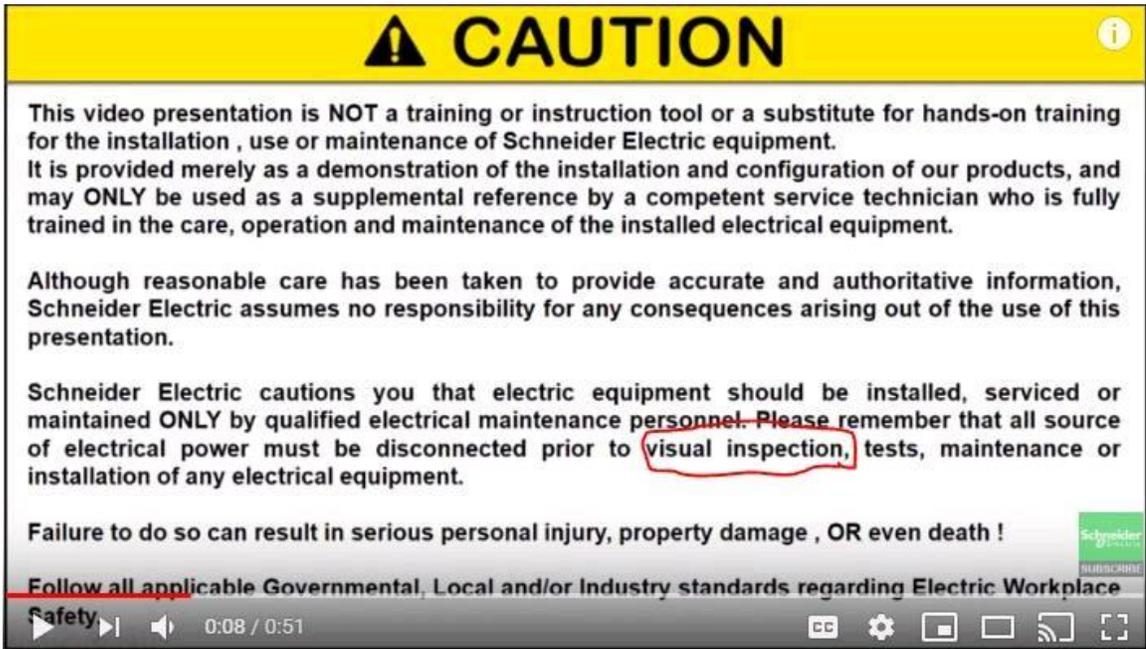
(G) "Readily accessible" means available for visual inspection without requiring a person to move or dismantle personal property, take destructive measures, or take any other action that will involve risk to a person or to the property.

Every recognized authority acknowledges the hazard of removing the dead front cover of an electrical panel when that panel is energized yet ASHI members and almost all home inspectors remove these covers to inspect the inside of a panel for

'defects'. If you wish to compete in Ohio as a home inspector, you must violate the law or loose business to those who ignore Ohio law.

4764.01 (G) clearly prohibits performing risky activities.

Note that Schneider Electric is one of the leaders in the electrical industry.



6. Please check all of the following that apply as reasons the action/proposed action is subject to review? (ORC 107.56(B)(1))? The OHIB is not listed in 107.56(A). This action may not be subject to review and may have to be litigated.

Fixes prices or limits price competition.

1. The service of performing an electrical inspection is offered for free by those licensed under R.C. 4764.02. ASHI (American Society of Home Inspectors) members are required to perform electrical inspections even though this is contrary to Ohio law. This illegal activity eliminates the practicality of anyone certified under R.C. 3783 from successfully marketing their services.
2. This is also a fraud against the consumer who is paying for a service that they are not receiving. This causes a home inspection price to be higher because home inspectors are charging for a service not being provided. This also limits any competition.

- Divides, allocates or assigns customers or potential customers or geographic markets in this state among members of the occupation regulated by the boards;
- Excludes present or potential competitors from the occupation regulated by the board;
- Limits output or supply in this state of any good or service provided by the members of the regulated occupation;
- Prohibits offering a particular **quality-level** of a product or service.

Prohibits the public from receiving the services of Electrical Safety Inspectors.

- Restricts advertising or makes it more expensive or **less effective**.

This action makes advertising fruitless. If the public turns to the real estate professional and the real estate professional says, “sure the home inspector can do that”, does anyone believe that spending money on advertising would change the public’s mind?

- Substantially reduces the number of firms or providers that can serve a particular set of customers; or

The board’s actions eliminates all individuals certified, by OBBS, to perform electrical inspections from affectively marketing theirs services. The OHIB actions mandate that home inspectors commit a fraud against the public even if they may not desire to do so. This fraud is not limited to a monetary value but misleads consumers into believing that they are living in a home that is free of electrical defects.

- Any other activity that could be subject to state or federal antitrust law if undertaken by private persons.

7. In a brief statement, explain why you believe the board or commission does not have the statutory or other legal authority to take the action/proposed action?

R.C. 3783 is under the exclusive authority of the Ohio Board of Building Standards, those who have been the only state agency responsible for certifying individuals to perform electrical safety inspections since September 11, 1970.

Nothing in R.C. 4764 allows the OHIB to allow themselves (*the 5 members who adopted the rules are also Licensed Home Inspectors*) or any other individual, licensed or not, to perform any of the type of inspections regulated by OBBS.

The OHIB was not fully seated, as required by law, before the process of adopting a SOP was started and completed. The OHIB was controlled by ASHI members during this process and the public input was overwhelmingly ASHI members.

A review of the public record would also show that the ‘new’ Ohio Home Inspector SOP is nothing more than a modified ASHI document. Most of the ‘public’ input was given by ASHI members in support of adopting ASHI standards as Ohio standards.

Should the public record be reviewed, the recorded meetings, one would discover that the interests of home inspectors was placed over the public’s interests. Especially, since the two public members did not participate in any of the rule making process. They were supposed to be present to be the public’s protection. So, why were they not present during the rules making process?

8. How is the action/proposed action consistent or inconsistent with state or federal antitrust law and how does it impact competitiveness?

The OHIB is controlled by members of the two top home inspection organizations. Anyone who is not a member of one of these two organizations is subject to unfair judgement should they ever have to appear before the board. This encourages pay to play. One of the five home inspector members should be from another organization or a home inspector with no association with a club.

The OHIB took the Standards of Practice from ASHI (American Society of Home Inspectors) and copied it almost verbatim and adopted it as Ohio’s SOP. The OHIB was open to all public comment and everyone who wanted to speak could do so. The two public board members were not involved in this process. So, any objections to the ‘ASHI’ rules fell on deaf ears. This appears to have been a deliberate act to prohibit anyone other than the 5 members, who are vested in the business, to develop the rules that protect the public by regulating all home inspectors.

As someone who holds a Certificate of Competency as an Electrical Safety Inspector (R.C.3783.06), certified since 2002, I believe that I have been harmed by home inspectors performing my profession. I believe that I have ‘lost’ the ability to receive 1-4 referrals per day since April 5, 2019 by those illegally performing my profession.

Real estate agents and the public believe that home inspectors can perform what I am certified to do. This loss of 1-4 inspections per day has resulted in a loss to me of (at \$150.00 per inspection) approximately \$39,000 - \$156,000.00. I also believe that these figures are not unrealistic considering that a P.E., not allowed to perform

electrical inspections, commands \$250-\$450.00 per consultation when contacted by real estate agents regarding a Request to Remedy.

Home inspectors, specifically ASHI members, have and are currently representing to the real estate industry that they are ‘allowed’ and are ‘qualified’ to perform an inspection of the inside of an electrical panel. This is patently false. See R.C. 3783.01(B).

The OHIB was informed of my concerns prior to discussing 1301:17-1-17 and was informed by me at three separate meetings of the board that anyone performing electrical inspections was in violation of R.C. 3783. This appears in the official record.

ANY OTHER BUSINESS

The Board determined to schedule the next meeting for Thursday, December 19, 2019, at 10:00 a.m. Next, the Board scheduled the following 2020 meeting dates:
January 30, 2020, April 15, 2020, July 15, 2020, and October 28, 2020
It was determined that at this time all meetings would begin at 10:00 a.m. The Board then discussed the grandfathering deadline, status of pending rules, and approval of education.
At this time, Mr. Mike Parks was sworn in and provided testimony regarding electrical code violations relative to home inspections. The parties discussed a means to educate home inspectors regarding electrical code violations, maintaining the inspector’s responsibility to the client. As discussion continued, Staff Attorney Woodruff reminded the Board of the scope of their authority, including that the Board could take the suggestion under advisement and amend rules at a later date and time. He also cautioned the Board of any further discussion regarding this matter at today’s meeting. Thereupon, Mr. Todd Petty was sworn in and provided testimony requesting confirmation of pending licensing deadlines.

ADJOURNMENT

With no further items to discuss, the meeting was adjourned.

If this matter can not be discussed in an open meeting, then where? When?

This *illegal activity* is being pushed through so that reversing this new ‘authority’ will be very difficult to take away once given.

Electrical Contractors licensed under R.C. 4740 are not allowed to perform the activities in R.C. 3783 without additional testing, so how can this responsibility be ‘just given’ to a home inspector?