

As Introduced

**127th General Assembly
Regular Session
2007-2008**

H. B. No. 437

Representative Schindel

**Cosponsors: Representatives Adams, Flowers, Gibbs, Jones, Stebelton,
Zehringer**

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A BILL

To enact sections 4722.01 to 4722.07 of the Revised 1
Code to establish the Ohio Home Improvement 2
Contractor Law, to deem that specified violations 3
of the law constitute a violation of the Ohio 4
Consumer Sales Practices Act, and to provide civil 5
remedies for owners who are damaged by a 6
contractor who violates the law. 7

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 4722.01, 4722.02, 4722.03, 4722.04, 8
4722.05, 4722.06, and 4722.07 of the Revised Code be enacted to 9
read as follows: 10

Sec. 4722.01. As used in this chapter: 11

(A) "Home improvement" means any repair, alteration, or 12
addition to any one-, two-, or three-family residential structure 13
or to any dwelling unit in any type of structure. "Home 14
improvement" does not include any of the following: 15

(1) Construction of a new one-, two-, or three-family 16
residential structure; 17

(2) Work performed on a structure that contains four or more 18

dwelling units, except for work on an individual dwelling unit 19
within that structure; 20

(3) Work performed on the common area of a condominium 21
property. 22

(B) "Home improvement contractor" means any person who 23
performs any home improvement or offers to perform any home 24
improvement for compensation. 25

(C) "Owner" means the person who contracts with a home 26
improvement contractor for a home improvement. "Owner" may include 27
the owner of the property, a tenant who occupies the dwelling unit 28
on which the home improvement is performed, or a person the owner 29
authorizes to act on the owner's behalf to contract for a home 30
improvement, and any other person who contracts for a home 31
improvement. 32

Sec. 4722.02. (A) No person shall perform any home 33
improvement unless that person enters into a written contract with 34
the owner. The contract shall include all agreements and 35
conditions related to the home improvement, including all of the 36
following: 37

(1) The contractor's name, business street address, and 38
telephone number; 39

(2) The owner's name, address, and telephone number; 40

(3) The address of the property where the home improvement is 41
to be performed; 42

(4) A detailed description of the home improvement, including 43
the goods and services to be furnished as part of the home 44
improvement; 45

(5) The date or time period the home improvement is to begin 46
and the date or time period it is to be completed; 47

<u>(6) The total cost of the home improvement;</u>	48
<u>(7) Any cost of installation, delivery, or other cost that the total cost does not cover;</u>	49 50
<u>(8) The dated signatures of the owner and the contractor.</u>	51
<u>(B)(1) To determine the type of notice an owner requires when the costs of a home improvement exceed the estimate provided in the contract, the contract shall include a statement in substantially the following language:</u>	52 53 54 55
<u>"EXCESS COSTS</u>	56
<u>IF AT ANY TIME A HOME IMPROVEMENT REQUIRES EXTRA COSTS ABOVE THE COST SPECIFIED OR ESTIMATED IN THE CONTRACT, AND THE TOTAL OF ALL EXTRA COSTS TO DATE EXCEEDS TEN PER CENT OF THE CONTRACT COST, YOU HAVE A RIGHT TO AN ESTIMATE OF THOSE EXCESS COSTS BEFORE THE CONTRACTOR BEGINS WORK RELATED TO THOSE COSTS. INITIAL YOUR CHOICE OF THE TYPE OF ESTIMATE YOU REQUIRE:</u>	57 58 59 60 61 62
<u>..... written estimate oral estimate"</u>	63
<u>(2) If the total amount of excess costs of a home improvement at any time exceeds ten per cent of the cost estimated or specified in the contract, prior to performing the work related to the excess costs, the contractor shall provide an owner with the type of notice the owner has designated in the contract.</u>	64 65 66 67 68
<u>(3) If the contract stipulates that the specified cost of the home improvement is a firm price and the contractor will not charge the owner with any excess costs, the contractor need not comply with the notice requirements of this division.</u>	69 70 71 72
<u>(4) An owner is not liable for any excess costs unless the contractor complies with this section's notice requirements.</u>	73 74
<u>Sec. 4722.03. (A) No home improvement contractor shall do any of the following:</u>	75 76

<u>(1) Prior to commencing work related to the home improvement,</u>	77
<u>fail to enter into a written contract that complies with this</u>	78
<u>chapter;</u>	79
<u>(2) Prior to commencing any work that is related to an excess</u>	80
<u>cost, fail to provide an estimate of the excess costs as this</u>	81
<u>chapter requires;</u>	82
<u>(3) Make the performance of any home improvement contingent</u>	83
<u>upon a consumer's waiver of any rights this chapter provides;</u>	84
<u>(4) Fail to disclose, prior to the owner's acceptance of any</u>	85
<u>goods or work related to an excess cost, that in failing to</u>	86
<u>approve an excess cost, completion of the work may not be possible</u>	87
<u>and a charge may be imposed for any disassembly, reassembly, or</u>	88
<u>partially completed work, which shall be directly related to the</u>	89
<u>actual labor or parts involved;</u>	90
<u>(5) Charge for any excess cost that the owner has not</u>	91
<u>approved;</u>	92
<u>(6) Represent that repairs, services, or work is necessary</u>	93
<u>when such is not the fact;</u>	94
<u>(7) Represent that repairs or work have been performed when</u>	95
<u>such is not the fact;</u>	96
<u>(8) Represent that an item of goods or any part thereof that</u>	97
<u>is being inspected or diagnosed for a home improvement is in a</u>	98
<u>dangerous condition, or that its continued use may be harmful,</u>	99
<u>when such is not the fact;</u>	100
<u>(9) Materially understate or misstate the estimated cost of</u>	101
<u>the home improvement;</u>	102
<u>(10) Fraudulently misrepresent any aspect of the transaction</u>	103
<u>or the nature or the quality of the work or materials;</u>	104
<u>(11) Fail to provide the owner with a written itemized list</u>	105
<u>of repairs performed or services rendered, including a list of</u>	106

parts or materials and a statement of whether they are used, 107
manufactured, or rebuilt, if not new, the cost to the owner, the 108
amount charged for labor, and the identity of the individual 109
performing the repair or service; 110

(12) Fail to tender to the owner any replaced parts, unless 111
the parts are to be rebuilt or sold by the contractor, or returned 112
to the manufacturer in connection with a warranted repair or 113
service, and the intended reuse or return is made known to the 114
owner prior to commencing any repair or services; 115

(13) Fail to provide to the owner, upon the owner's request, 116
a written, itemized receipt for any item of goods that are left 117
with, or turned over to, the contractor for repair or services. 118
The receipt shall include all of the following: 119

(a) The identity of the person who will perform the repair or 120
services; 121

(b) The name and dated signature of the person or 122
representative who actually accepts the goods; 123

(c) A description including make and model number or other 124
features that will reasonably identify the goods that are turned 125
over and the repair or services that are to be performed. 126

(14) Fail at the time any owner signs or initials any 127
document to provide the owner with a copy of the document; 128

(15) Fail to disclose to the owner prior to the commencement 129
of any repair or service, that any part of the repair or service 130
will be performed by a person other than the home improvement 131
contractor or employee of the contractor if the contract disclaims 132
any warranty of the repair or service that the other person 133
performs; 134

(16) Represent that repairs or services must be performed 135
away from the property on which the home improvement is being 136

performed when that is not the fact. 137

(B) A violation of this section is deemed to be a violation 138
of the Ohio consumer sales practices act, sections 1345.01 to 139
1345.13 of the Revised Code, notwithstanding any provisions of 140
those sections to the contrary. All the penalties and remedies 141
available under that act are available to an owner who is harmed 142
by a violation of this section. 143

Sec. 4722.04. A home improvement contractor shall begin work 144
on the date or within the time period the contract specifies and 145
shall complete the home improvement pursuant to any agreed-upon 146
schedule if the owner makes payments as the schedule requires. In 147
no case shall a contractor fail to complete the amount of work 148
that is in proportion to the payments an owner has made unless the 149
delay is due to reasonable cause beyond the contractor's control. 150

Sec. 4722.05. (A) If a home improvement contractor fails to 151
fulfill any obligation this chapter imposes, the owner may deliver 152
a written notice of that failure to the contractor, specifying the 153
act or omission that constitutes noncompliance and the specific 154
obligation that was not met. The notice shall state that if the 155
contractor does not fulfill the obligation, the owner has 156
authority to terminate the contract upon the date specified in the 157
notice, to be not less than thirty days after the delivery of the 158
notice. 159

(B) If the contractor fails to remedy the condition or 160
fulfill the obligation specified in the notice by the date 161
specified in the notice, the owner may terminate the contract by 162
delivering a notice of termination to the contractor, specifying 163
that the contract is terminated. At any time prior to delivery of 164
the notice of termination, the contractor may remedy the condition 165
and the owner may not subsequently terminate the contract. 166

(C) If a contractor who receives a notice pursuant to 167
division (A) of this section believes that the obligation 168
described in that notice has been fulfilled, the contractor may 169
initiate a civil action for injunctive relief or damages in a 170
court of common pleas. 171

Sec. 4722.06. A home improvement contractor shall maintain an 172
adequate amount of general liability insurance. 173

Sec. 4722.07. (A) An owner may initiate a civil action in a 174
court of common pleas for damages due to any breach of contract or 175
for breach of any duty this chapter imposes. The court may grant 176
an injunction, a temporary restraining order, actual damages, or 177
other appropriate relief for a violation of this chapter. 178

(B) The court may award the owner treble damages if it finds 179
a home improvement contractor fraudulently committed an act or 180
practice that violates this chapter. 181

(C) In any action pursuant to this chapter, the court may 182
award to the prevailing party a reasonable attorney's fee limited 183
to the work reasonably performed, if either of the following 184
applies: 185

(1) The owner complaining of the act or practice that 186
violated this chapter has brought or maintained an action that is 187
groundless, and the owner filed or maintained the action in bad 188
faith; 189

(2) The home improvement contractor knowingly committed an 190
act or practice that violates this chapter. 191