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Senator Spada

**Cosponsors: Senators Coughlin, Grendell, Jacobson, Mumper, Padgett,
Roberts, Stivers, Schaffer**

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A B I L L

To enact sections 4722.01 to 4722.08 of the Revised 1
Code to establish laws governing the practices of 2
home improvement contractors and to provide civil 3
remedies for home owners who are damaged by a home 4
improvement contractor who violates the law. 5
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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 4722.01, 4722.02, 4722.03, 4722.04, 7
4722.05, 4722.06, 4722.07, and 4722.08 of the Revised Code be 8
enacted to read as follows: 9

Sec. 4722.01. As used in this chapter: 10

(A) "Construction defect" means a deficiency that arises 11
directly or indirectly from a home improvement. 12

(B) "Dwelling action" means any of the following actions, 13
brought against a home improvement contractor, for damages or the 14
loss of use of real property, caused by a construction defect: 15

(1) A civil action in contract or tort for damages or 16
indemnity; 17

(2) Any action brought pursuant to Chapter 1345. of the 18

<u>Revised Code;</u>	19
<u>(3) Any action brought pursuant to this chapter.</u>	20
<u>(C) "Home improvement" means any repair, alteration, or</u>	21
<u>addition to any residential building, industrialized unit,</u>	22
<u>manufactured home, or mobile home, or to any dwelling unit in any</u>	23
<u>type of structure. "Home improvement" does not include any of the</u>	24
<u>following:</u>	25
<u>(1) Construction of a new residential building,</u>	26
<u>industrialized unit, or manufactured home;</u>	27
<u>(2) Work performed on a structure that contains four or more</u>	28
<u>dwelling units, except for work on an individual dwelling unit</u>	29
<u>within that structure;</u>	30
<u>(3) Work performed on the common area of a condominium</u>	31
<u>property.</u>	32
<u>(D) "Home improvement contractor" means any person who</u>	33
<u>performs or offers to perform any home improvement for</u>	34
<u>compensation.</u>	35
<u>(E) "Industrialized unit," "manufactured home," and</u>	36
<u>"residential building" have the same meanings as in section</u>	37
<u>3781.06 of the Revised Code.</u>	38
<u>(F) "Mobile home" has the meaning as in section 4501.01 of</u>	39
<u>the Revised Code.</u>	40
<u>(G) "Owner" means the person who contracts with a home</u>	41
<u>improvement contractor for a home improvement. "Owner" may include</u>	42
<u>the owner of the property, a tenant who occupies the dwelling unit</u>	43
<u>on which the home improvement is performed, or a person the owner</u>	44
<u>authorizes to act on the owner's behalf to contract for a home</u>	45
<u>improvement, and any other person who contracts for a home</u>	46
<u>improvement.</u>	47

Sec. 4722.02. (A) No home improvement contractor shall 48
perform any home improvement the cost of which equals or exceeds 49
one thousand dollars unless that person enters into a written 50
contract with the owner. The contract shall include all agreements 51
and conditions related to the home improvement, including all of 52
the following: 53

(1) The home improvement contractor's name, physical business 54
address, business telephone number, taxpayer identification 55
number, and physical home address; 56

(2) The owner's name, address, and telephone number; 57

(3) The address of the property where the home improvement is 58
to be performed; 59

(4) A detailed description of the home improvement, including 60
the goods and services to be furnished as part of the home 61
improvement; 62

(5) The date or time period the home improvement is to begin 63
and the date or time period it is to be completed; 64

(6) The total cost of the home improvement; 65

(7) Any cost of installation, delivery, or other cost that 66
the total cost does not cover; 67

(8) The dated signatures of the owner and the home 68
improvement contractor; 69

(9) A notice of applicable right to cure provisions in 70
substantially the following language: 71

"RIGHT TO CURE 72

IN THE EVENT THAT THE HOME IMPROVEMENT THAT IS THE SUBJECT OF 73
THIS CONTRACT RESULTS IN A CONSTRUCTION DEFECT, THE HOME 74
IMPROVEMENT CONTRACTOR NAMED IN THIS CONTRACT WILL HAVE THE RIGHT 75
TO CURE THE CONSTRUCTION DEFECT IN A MANNER CONSISTENT WITH 76

CHAPTER 4722. OF THE REVISED CODE IF THE CONSTRUCTION DEFECT 77
ARISES FROM A HOME IMPROVEMENT. GENERALLY THE RIGHT TO CURE 78
PROVISIONS PROVIDE THE HOME IMPROVEMENT CONTRACTOR THIRTY (30) 79
DAYS TO CURE ANY CONSTRUCTION DEFECT, BUT SEE THE APPLICABLE 80
SECTIONS OF THE REVISED CODE TO DETERMINE SPECIFIC TIME AND NOTICE 81
REQUIREMENTS." 82

(10) A notice stating whether or not the home improvement 83
contractor has performance bonds or other insurance beyond the 84
insurance required by section 4722.07 of the Revised Code that 85
will cover losses incurred through defects or breach of contract 86
terms by the home improvement contractor. 87

(B)(1) To determine the type of notice an owner requires when 88
the costs of a home improvement exceed the estimate provided in 89
the contract, the contract shall include a statement in 90
substantially the following language: 91

"EXCESS COSTS 92

IF AT ANY TIME A HOME IMPROVEMENT REQUIRES EXTRA COSTS ABOVE 93
THE COST SPECIFIED OR ESTIMATED IN THE CONTRACT WHICH WERE 94
UNFORESEEN, BUT REASONABLY NECESSARY, AND THE TOTAL OF ALL EXTRA 95
COSTS TO DATE EXCEEDS TEN PER CENT OF THE CONTRACT COST, YOU HAVE 96
A RIGHT TO AN ESTIMATE OF THOSE EXCESS COSTS BEFORE THE HOME 97
IMPROVEMENT CONTRACTOR BEGINS WORK RELATED TO THOSE COSTS. INITIAL 98
YOUR CHOICE OF THE TYPE OF ESTIMATE YOU REQUIRE: 99

..... written estimate oral estimate" 100

(2) If the total amount of unforeseen, but reasonably 101
necessary excess costs of a home improvement at any time exceeds 102
ten per cent of the cost estimated or specified in the contract, 103
prior to performing the work related to the excess costs, the home 104
improvement contractor shall provide an owner with the type of 105
notice the owner has designated in the contract. 106

(3) If the contract stipulates that the specified cost of the home improvement is a firm price and the home improvement contractor will not charge the owner with any excess costs, the home improvement contractor need not comply with the notice requirements of this division. 108
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(4) An owner is not liable for any excess costs unless the costs were unforeseen, but reasonably necessary, and unless the home improvement contractor complies with this section's notice requirements. 113
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Sec. 4722.03. No home improvement contractor shall do any of the following: 117
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(A) Prior to commencing work related to the home improvement, fail to enter into a written contract that complies with this chapter; 119
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(B) After entering into a contract with an owner and prior to commencing any work that is related to an excess cost, fail to provide an estimate of the excess costs as this chapter requires; 122
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(C) After entering into a contract with an owner, do any of the following: 125
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(1) Fail to disclose, prior to the owner's acceptance of any goods or work related to an excess cost, that in failing to approve an excess cost, completion of the work may not be possible and a charge may be imposed for any disassembly, reassembly, or partially completed work, which shall be directly related to the actual labor or parts involved; 127
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(2) Charge for any excess cost that the owner has not approved; 133
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(3) Represent that repairs or work have been performed when such is not the fact; 135
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(4) Fail to provide the owner, upon the owner's request, a 137

written itemized list of repairs performed or services rendered, 138
including a list of parts or materials and a statement of whether 139
they are used, manufactured, or rebuilt, if not new, the cost to 140
the owner, the amount charged for labor, and the identity of the 141
individual performing the repair or service; 142

(5) Fail to tender to the owner any replaced parts, unless 143
the parts are to be rebuilt or sold by the home improvement 144
contractor, or returned to the manufacturer in connection with a 145
warranted repair or service, and the intended reuse or return is 146
made known to the owner prior to commencing any repair or 147
services; 148

(6) Fail to provide a full refund for any goods or services 149
that the home improvement contractor has failed to deliver in 150
accordance with the terms and conditions of the contract required 151
by section 4722.02 of the Revised Code and for which the home 152
improvement contractor has received payment; 153

(7) Fail to provide to the owner, upon the owner's request, a 154
written, itemized receipt for any item of goods that are left 155
with, or turned over to, the home improvement contractor for 156
repair or services. The receipt shall include all of the 157
following: 158

(a) The identity of the person who will perform the repair or 159
services; 160

(b) The name and dated signature of the person or 161
representative who actually accepts the goods; 162

(c) A description including make and model number or other 163
features that will reasonably identify the goods that are turned 164
over and the repair or services that are to be performed. 165

(D) Make the performance of any home improvement contingent 166
upon a consumer's waiver of any rights this chapter provides; 167

(E) Represent that repairs, services, or work is necessary 168
when such is not the fact; 169

(F) Represent that an item of goods or any part thereof that 170
is being inspected or diagnosed for a home improvement is in a 171
dangerous condition, or that its continued use may be harmful, 172
when such is not the fact; 173

(G) Materially understate or misstate the estimated cost of 174
the home improvement; 175

(H) Fraudulently misrepresent any aspect of the transaction 176
or the nature or the quality of the work or materials; 177

(I) Fail at the time any owner signs or initials any document 178
to provide the owner with a copy of the document; 179

(J) Fail to disclose to the owner prior to the commencement 180
of any repair or service, that any part of the repair or service 181
will be performed by a person other than the home improvement 182
contractor or employee of the home improvement contractor if the 183
contract disclaims any warranty of the repair or service that the 184
other person performs; 185

(K) Represent that repairs or services must be performed away 186
from the property on which the home improvement is being performed 187
when that is not the fact. 188

Sec. 4722.04. (A) A home improvement contractor may take as a 189
down payment not more than ten per cent of the contract price 190
before the home improvement contractor's performance that is 191
required by the contract is completed, except a home improvement 192
contractor may take as a down payment not more than seventy-five 193
per cent of the total cost of any special order item that is 194
otherwise not returnable or usable before the home improvement 195
contractor's performance that is required by the contract is 196
completed. 197

(B) A home improvement contractor shall begin work on the 198
date or within the time period the contract specifies and shall 199
complete the home improvement pursuant to any agreed-upon schedule 200
unless delay is due to reasonable cause beyond the home 201
improvement contractor's control. 202

Sec. 4722.05. The failure of a home improvement contractor to 203
comply with sections 4722.02, 4722.03, and 4722.04 of the Revised 204
Code is an unfair or deceptive act or practice in violation of 205
section 1345.02 of the Revised Code. All powers and remedies 206
available to the attorney general to enforce sections 1345.01 to 207
1345.13, except those powers and remedies available under section 208
1345.02(E), of the Revised Code are available to the attorney 209
general to enforce sections 4722.02, 4722.03, and 4722.04 of the 210
Revised Code. The same remedies available to consumers under 211
section 1345.09 of the Revised Code to remedy violations of 212
section 1345.02 of the Revised Code are available to owners to 213
remedy the failure of a home improvement contractor to comply with 214
sections 4722.02, 4722.03, and 4722.04 of the Revised Code. 215

Sec. 4722.06. (A) No owner shall file a dwelling action or 216
commence an arbitration proceeding against a home improvement 217
contractor unless, at least thirty days before filing the action 218
or commencing the arbitration proceeding, the owner provides the 219
home improvement contractor with a written notice of the 220
construction defect that would be the basis of the dwelling action 221
or arbitration proceeding. The notice shall be in writing and 222
mailed, sent by telegram, delivered in person, or sent by any 223
means the home improvement contractor has indicated communications 224
may be sent, including facsimile transmission and electronic mail. 225

(B) After receiving a notice of defect pursuant to division 226
(A) of this section, the home improvement contractor shall provide 227
the owner with a good faith written response. The response shall 228

be delivered to the owner not later than seven days after the home 229
improvement contractor receives the notice described in division 230
(A) of this section. The response shall notify the owner whether 231
the home improvement contractor intends to remedy the construction 232
defect or contest the construction defect. If the home improvement 233
contractor elects to remedy the defect, the home improvement 234
contractor shall have thirty days from the date the home 235
improvement contractor received the notice described in division 236
(A) of this section to complete such remedy. If the home 237
improvement contractor does not remedy the defect within thirty 238
days after the delivery of the notice stating the election to 239
remedy the defect, the owner may file a dwelling action or 240
commence an arbitration proceeding. If the home improvement 241
contractor elects to contest the construction defect, the owner 242
can immediately file a dwelling action or commence an arbitration 243
proceeding. 244

(C) If a home improvement contractor files a mechanics lien 245
or commences any type of arbitration proceedings or legal action 246
against an owner, this section does not apply, and the owner 247
immediately may counterclaim or file a dwelling action or commence 248
an arbitration proceeding against the home improvement contractor. 249

(D) In the event that a home improvement contractor is 250
subject to the provisions of this section and the provisions of 251
Chapter 1312. of the Revised Code, the provisions of this section 252
shall control the actions of the owner and home improvement 253
contractor, and Chapter 1312. of the Revised Code shall not apply. 254

(E) This section does not apply to any dwelling action or 255
arbitration proceeding arising out of a construction defect where 256
that construction defect will jeopardize the welfare, health, or 257
safety of the owner or any other occupant of the residential 258
building or the residential building has been rendered 259
uninhabitable by the construction defect. 260

Sec. 4722.07. A home improvement contractor engaging in any 261
home improvement, the cost of which equals or exceeds one thousand 262
dollars, shall maintain general liability insurance in an amount 263
not less than two hundred fifty thousand dollars. 264

Sec. 4722.08. (A) Any instrumentality, as defined in division 265
(B)(6) of section 2981.01 of the Revised Code, of a home 266
improvement contractor convicted of an offense in connection with 267
a home improvement, shall be subject to the forfeiture provisions 268
of Chapter 2981. of the Revised Code. 269

(B) If a home improvement contractor is convicted of a 270
criminal offense in connection with a home improvement, the 271
sentencing court, when sentencing that home improvement 272
contractor, shall consider and specify a plan of restitution to 273
the owner of the property harmed by the offense pursuant to any 274
community control sanctions ordered pursuant to sections 2929.15 275
to 2929.28 of the Revised Code. 276