

**As Reported by the Senate Insurance, Commerce and Labor
Committee**

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Sub. S. B. No. 275

Senator Spada

**Cosponsors: Senators Buehrer, Coughlin, Grendell, Jacobson, Mason,
Miller, D., Mumper, Padgett, Roberts, Schuler, Seitz, Stivers**

—

A B I L L

To amend sections 1345.01, 4740.04, and 4740.14 and 1
to enact sections 1312.20, 4722.01 to 4722.14, and 2
4722.99 of the Revised Code to establish laws 3
governing the practices of home improvement 4
contractors and new residential construction 5
contractors and to provide civil remedies for 6
owners who are damaged by a contractor who 7
violates the law. 8

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

Section 1. That sections 1345.01, 4740.04, and 4740.14 be 9
amended and sections 1312.20, 4722.01, 4722.02, 4722.03, 4722.04, 10
4722.05, 4722.06, 4722.07, 4722.08, 4722.09, 4722.10, 4722.11, 11
4722.12, 4722.13, 4722.14, and 4722.99 of the Revised Code be 12
enacted to read as follows: 13

Sec. 1312.20. (A) An express warranty that a residential 14
contractor offers to an owner complies with this division if that 15
warranty is in writing and includes all of the following: 16

(1) The name and address of the residential contractor and 17

any other person who is obligated to the owner under the warranty; 18

(2) The name and address of the owner to whom the warranty is extended; 19
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(3) The period of time for which the warranty remains effective, which shall not be less than ten years for claims related to structural integrity, including, but not limited to, the foundation, roof, and basic core structure of the residence, or less than two years for all other claims; 21
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(4) A description of the portions of the warranty that extends to a subsequent owner and the terms under which any extension is effective; however, any warranty must be fully transferable during the first two years of the existence of the structure; 26
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(5) The clear and conspicuous identification of any part or portion of the home or premises that is excepted or excluded from warranty coverage; 31
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(6) An agreement to complete any construction covered by the warranty in a reasonably efficient time, in a workerlike manner, and in accordance with the state residential building code adopted pursuant to Chapter 3781. of the Revised Code; 34
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(7) Notice of the residential contractor's right under section 1312.03 of the Revised Code to offer to resolve any alleged construction defect before the owner may commence a dwelling action or arbitration proceeding against the residential contractor; 38
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(8) A condition that any warranty dispute have its first hearing under a neutral, nonbinding dispute resolution procedure provided by any of the following: 43
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(a) A local home builders trade association; 46

(b) The local better business bureau; 47

<u>(c) A local court program;</u>	48
<u>(d) Any other mediation or dispute resolution procedure agreed to by the parties.</u>	49 50
<u>(9) A provision that the owner and contractor will equally share in the cost of any dispute resolution procedure;</u>	51 52
<u>(10) Notice that the warranty is backed by either a separate policy of insurance or a performance bond in an amount equal to or greater than the contract price. Any warranty that otherwise complies with this section is required to be backed by either a separate policy of insurance or a performance bond in an amount equal to or greater than the contract price.</u>	53 54 55 56 57 58
<u>(11) Any other term or condition that does not conflict with the Revised Code.</u>	59 60
<u>No words in the contract of sale or the deed nor merger of the contract of sale into the deed shall exclude or modify any aspect of an express warranty made pursuant to this division.</u>	61 62 63
<u>(B) Except for actions based on a claim arising from a knowing misrepresentation of a material term or condition of the contract, goods, or services, no person may bring an action against a residential contractor under sections 1345.01 to 1345.13 of the Revised Code based on the construction of a residential building if the contractor provided an express warranty that complies with division (A) of this section.</u>	64 65 66 67 68 69 70
<u>(C)(1) No owner may bring a civil action for property damage, breach of contract, or other similar claims alleging a construction defect against a residential contractor who provides an express warranty that complies with division (A) of this section unless that owner first submits the complaint to the dispute resolution procedure the residential construction advisory committee establishes pursuant to section 4740.14 of the Revised Code. All applicable statutes of limitation or repose are tolled</u>	71 72 73 74 75 76 77 78

for the period of time the owner is engaged in the dispute 79
resolution procedure described in this division. 80

(2) Notwithstanding division (C)(1) of this section, an 81
action based on an intentional act or gross negligence in the 82
construction of a residential building or for personal injuries 83
directly and proximately caused by the negligence or breach of 84
contract of a residential contractor are not subject to this 85
section and shall not be submitted to the dispute resolution 86
procedure the residential construction advisory committee 87
established pursuant to section 4740.14 of the Revised Code. 88

(D) No owner may bring a claim based on a breach of warranty 89
against a residential contractor more than ten years after the 90
owner discovers a construction defect if the contractor provides 91
an express warranty that complies with division (A) of this 92
section. 93

(E) In any action for property damages, whether based in tort 94
or contract, brought against a residential contractor who offers 95
an express warranty that complies with division (A) of this 96
section for the construction of a residential building, each of 97
the following apply: 98

(1) An owner may allege that the contractor failed to perform 99
in a workerlike manner or that a contractor failed to 100
substantially comply with an applicable local building code or the 101
state residential building code. 102

(2) The burden of proof is on the owner to show that a 103
residential contractor did not perform in a workerlike manner or 104
failed to comply with a building code. 105

(F) The exclusive remedy for a breach of contract or a breach 106
of warranty by a residential contractor who provides an express 107
warranty that complies with division (A) of this section is 108
payment of the amount of actual or consequential damages caused by 109

the breach. 110

(G) Damages for emotional distress are not available against a residential contractor who provides an express warranty that complies with division (A) of this section unless the emotional distress is associated with an actual physical injury. 111
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(H) As used in this section, "workerlike manner" means that a contractor performs the residential construction as a skilled worker would do, using ordinary care and skill working in a reasonably efficient manner, consistent with the residential building standards the residential construction advisory board establishes pursuant to section 4740.14 of the Revised Code. 115
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Sec. 1345.01. As used in sections 1345.01 to 1345.13 of the Revised Code: 121
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(A)(1) "Consumer transaction" means a sale, lease, assignment, award by chance, or other transfer of an item of goods, a service, a franchise, or an intangible, to an individual for purposes that are primarily personal, family, or household, or solicitation to supply any of these things. ~~"Consumer~~ 123
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(2) "Consumer transaction" does not include any of the following transactions: 128
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(a) Transactions between persons, defined in sections 4905.03 and 5725.01 of the Revised Code, and their customers, except for transactions in connection with residential mortgages between loan officers, mortgage brokers, or nonbank mortgage lenders and their customers; ~~transactions~~ 130
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(b) Transactions between certified public accountants or public accountants and their clients; ~~transactions~~ 135
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(c) Transactions between attorneys, physicians, or dentists and their clients or patients; ~~and transactions~~ 137
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(d) Transactions between veterinarians and their patients 139

that pertain to medical treatment but not ancillary services;	140
<u>(e) Except as otherwise indicated in division (A)(3) of this</u>	141
<u>section, transactions between owners and any of the following:</u>	142
<u>(i) Home improvement contractors licensed pursuant to section</u>	143
<u>4722.02 of the Revised Code;</u>	144
<u>(ii) Home improvement contractors who are not licensed</u>	145
<u>pursuant to section 4722.02 of the Revised Code and who fulfill</u>	146
<u>the criteria described in division (E) of section 4722.08 of the</u>	147
<u>Revised Code;</u>	148
<u>(iii) New residential construction contractors who fulfill</u>	149
<u>the criteria described in division (E) of section 1312.06 of the</u>	150
<u>Revised Code;</u>	151
<u>(iv) New residential construction contractors who fulfill the</u>	152
<u>criteria described in division (B) of section 1312.20 of the</u>	153
<u>Revised Code;</u>	154
<u>(v) New residential construction contractors who provide an</u>	155
<u>express warranty pursuant to the criteria described in division</u>	156
<u>(B) of section 1312.20 of the Revised Code;</u>	157
<u>(vi) Home improvement contractors who provide home</u>	158
<u>improvement goods or services valued at less than one thousand</u>	159
<u>dollars, except that if through changes, modifications, or</u>	160
<u>additions, the value of the home improvement goods or services</u>	161
<u>exceeds one thousand dollars, the transaction shall be a consumer</u>	162
<u>transaction under this section and all of the provisions of</u>	163
<u>sections 1345.01 to 1345.13 of the Revised Code shall apply except</u>	164
<u>for any provisions requiring or relating to written contracts.</u>	165
<u>(3) A transaction described in division (A)(2)(e) of this</u>	166
<u>section shall be considered a consumer transaction under division</u>	167
<u>(A)(1) of this section if the transaction is the basis of a claim</u>	168
<u>for fraud or misrepresentation and the fraud or misrepresentation</u>	169

<u>induces an owner to enter into a contract under this chapter.</u>	170
<u>(4) For purposes of division (A)(2) of this section, "owner,"</u>	171
<u>"home improvement contractor," and "new residential construction</u>	172
<u>contractor" have the same meanings as in section 4722.01 of the</u>	173
<u>Revised Code.</u>	174
(B) "Person" includes an individual, corporation, government,	175
governmental subdivision or agency, business trust, estate, trust,	176
partnership, association, cooperative, or other legal entity.	177
(C) "Supplier" means a seller, lessor, assignor, franchisor,	178
or other person engaged in the business of effecting or soliciting	179
consumer transactions, whether or not the person deals directly	180
with the consumer. If the consumer transaction is in connection	181
with a residential mortgage, "supplier" does not include an	182
assignee or purchaser of the loan for value, except as otherwise	183
provided in section 1345.091 of the Revised Code. For purposes of	184
this division, in a consumer transaction in connection with a	185
residential mortgage, "seller" means a loan officer, mortgage	186
broker, or nonbank mortgage lender.	187
(D) "Consumer" means a person who engages in a consumer	188
transaction with a supplier.	189
(E) "Knowledge" means actual awareness, but such actual	190
awareness may be inferred where objective manifestations indicate	191
that the individual involved acted with such awareness.	192
(F) "Natural gas service" means the sale of natural gas,	193
exclusive of any distribution or ancillary service.	194
(G) "Public telecommunications service" means the	195
transmission by electromagnetic or other means, other than by a	196
telephone company as defined in section 4927.01 of the Revised	197
Code, of signs, signals, writings, images, sounds, messages, or	198
data originating in this state regardless of actual call routing.	199
"Public telecommunications service" excludes a system, including	200

its construction, maintenance, or operation, for the provision of 201
telecommunications service, or any portion of such service, by any 202
entity for the sole and exclusive use of that entity, its parent, 203
a subsidiary, or an affiliated entity, and not for resale, 204
directly or indirectly; the provision of terminal equipment used 205
to originate telecommunications service; broadcast transmission by 206
radio, television, or satellite broadcast stations regulated by 207
the federal government; or cable television service. 208

(H) "Loan officer" has the same meaning as in section 1322.01 209
of the Revised Code, except that it does not include an employee 210
of a bank, savings bank, savings and loan association, credit 211
union, or credit union service organization organized under the 212
laws of this state, another state, or the United States; an 213
employee of a subsidiary of such a bank, savings bank, savings and 214
loan association, or credit union; or an employee of an affiliate 215
that (1) controls, is controlled by, or is under common control 216
with, such a bank, savings bank, savings and loan association, or 217
credit union and (2) is subject to examination, supervision, and 218
regulation, including with respect to the affiliate's compliance 219
with applicable consumer protection requirements, by the board of 220
governors of the federal reserve system, the comptroller of the 221
currency, the office of thrift supervision, the federal deposit 222
insurance corporation, or the national credit union 223
administration. 224

(I) "Residential mortgage" or "mortgage" means an obligation 225
to pay a sum of money evidenced by a note and secured by a lien 226
upon real property located within this state containing two or 227
fewer residential units or on which two or fewer residential units 228
are to be constructed and includes such an obligation on a 229
residential condominium or cooperative unit. 230

(J) "Mortgage broker" has the same meaning as in section 231
1322.01 of the Revised Code, except that it does not include a 232

bank, savings bank, savings and loan association, credit union, or 233
credit union service organization organized under the laws of this 234
state, another state, or the United States; a subsidiary of such a 235
bank, savings bank, savings and loan association, or credit union; 236
an affiliate that (1) controls, is controlled by, or is under 237
common control with, such a bank, savings bank, savings and loan 238
association, or credit union and (2) is subject to examination, 239
supervision, and regulation, including with respect to the 240
affiliate's compliance with applicable consumer protection 241
requirements, by the board of governors of the federal reserve 242
system, the comptroller of the currency, the office of thrift 243
supervision, the federal deposit insurance corporation, or the 244
national credit union administration; or an employee of any such 245
entity. 246

(K) "Nonbank mortgage lender" means any person that engages 247
in a consumer transaction in connection with a residential 248
mortgage, except for a bank, savings bank, savings and loan 249
association, credit union, or credit union service organization 250
organized under the laws of this state, another state, or the 251
United States; a subsidiary of such a bank, savings bank, savings 252
and loan association, or credit union; or an affiliate that (1) 253
controls, is controlled by, or is under common control with, such 254
a bank, savings bank, savings and loan association, or credit 255
union and (2) is subject to examination, supervision, and 256
regulation, including with respect to the affiliate's compliance 257
with applicable consumer protection requirements, by the board of 258
governors of the federal reserve system, the comptroller of the 259
currency, the office of thrift supervision, the federal deposit 260
insurance corporation, or the national credit union 261
administration. 262

(L) For purposes of divisions (H), (J), and (K) of this 263
section: 264

(1) "Control" of another entity means ownership, control, or power to vote twenty-five per cent or more of the outstanding shares of any class of voting securities of the other entity, directly or indirectly or acting through one or more other persons.

(2) "Credit union service organization" means a CUSO as defined in 12 C.F.R. 702.2.

Sec. 4722.01. As used in this chapter:

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

(B) "Construction project" means any home improvement or new residential construction.

(C) "Contractor" means any home improvement contractor or new residential construction contractor.

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

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

(2) Any action brought pursuant to Chapter 1345. of the Revised Code;

(3) Any action brought pursuant to this chapter.

(E) "Home improvement" means any repair, alteration, or addition to any residential building, industrialized unit, manufactured home, or mobile home, or to any dwelling unit in any type of structure. "Home improvement" does not include any of the following:

(1) Construction of a new residential building, industrialized unit, or manufactured home;

<u>(2) Work performed on a structure that contains four or more dwelling units, except for work on an individual dwelling unit within that structure;</u>	294
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<u>(3) Work performed on the common area of a condominium property.</u>	297
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<u>(F) "Home improvement contractor" means any person who performs or offers to perform any home improvement for compensation.</u>	299
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<u>(G) "Industrialized unit," "manufactured home," and "residential building" have the same meanings as in section 3781.06 of the Revised Code.</u>	302
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<u>(H) "Mobile home" has the meaning as in section 4501.01 of the Revised Code.</u>	305
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<u>(I) "New residential construction" means any original construction of a residential building.</u>	307
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<u>(J) "New residential construction contractor" means any person who performs or offers to perform any new residential construction for compensation.</u>	309
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<u>(K) "Owner" means the person who contracts with a contractor for a construction project. "Owner" may include the owner of the property, a tenant who occupies the dwelling unit on which the construction project is performed, or a person the owner authorizes to act on the owner's behalf to contract for a construction project, and any other person who contracts for a construction project.</u>	312
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<u>Sec. 4722.02. (A) The Ohio construction industry licensing board shall issue licenses to home improvement contractors in a manner prescribed by the board in rules it adopts under division (B) of this section. Any home improvement contractor may apply for a license by filing with the board a written application,</u>	319
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accompanied by the filing fee established pursuant to rules the 324
board adopts under division (B)(1) of this section. A home 325
improvement contractor is not required to maintain a license 326
issued pursuant to this section to perform construction projects 327
in this state. 328

(B) The Ohio construction industry licensing board shall 329
adopt rules in accordance with Chapter 119. of the Revised Code to 330
establish all of the following: 331

(1) Fees for license issuance and renewal, including late 332
fees, subject to the approval of the controlling board. 333

(2) Continuing education requirements for license renewal, 334
including a requirement that a licensed home improvement 335
contractor satisfactorily complete not less than ten hours of 336
continuing education courses per year. 337

(3) A code of ethics for home improvement contractors. 338

(4) Standards for minimal best practices of licensed home 339
improvement contractors that the licensed home improvement 340
contractors shall follow, including, but not limited to, rules 341
specifying unfair contractor practices. 342

(5) Disciplinary procedures for contractors who violate the 343
minimal best practices rules adopted by the board pursuant to 344
division (B)(4) of this section. 345

(6) Requirements by which an arbitration procedure, if any, 346
may be certified for use between contractors and owners to address 347
disputes, to assure that an arbitration procedure does not contain 348
unconscionable provisions, and to require the use of neutral 349
arbitrators. 350

(7) Any other requirement that is necessary and proper for 351
the implementation of this section. 352

(C) The Ohio construction industry licensing board has the 353

same powers as those described in divisions (A), (B), and (C) of 354
section 4740.10 of the Revised Code to discipline and investigate 355
a licensee who violates this chapter. 356

(D) Any person who wishes to make a complaint against a 357
person who, on the date the action or event upon which the 358
complaint is based held a valid license issued pursuant to this 359
section, shall submit the complaint in writing to the Ohio 360
construction industry licensing board within ten years after the 361
date the owner has knowledge of the event upon which the complaint 362
is based. 363

(E) Any contractor holding a valid, unexpired license may 364
renew the license by submitting an application to the Ohio 365
construction industry licensing board not more than ninety 366
calendar days before the expiration of the license, along with the 367
renewal fee the board establishes pursuant to rules it adopts 368
under division (B)(1) of this section and proof of compliance with 369
the applicable continuing education requirements. 370

(F) Upon application and within one calendar year after a 371
license has expired, the board may waive any of the requirements 372
for renewal of a license upon finding that an applicant 373
substantially meets the renewal requirements or that failure to 374
timely apply for renewal is due to excusable neglect. If the board 375
waives requirements for renewal of a license, the board may impose 376
conditions upon the licensee and assess a late renewal fee of not 377
more than double the usual renewal fee. The board shall not 378
reissue a license to an applicant until after that applicant has 379
satisfied every condition the board imposed upon that applicant 380
for reissuance of a license. 381

(G) Any person who previously held a license issued pursuant 382
to division (A) of this section that subsequently had that 383
licensed revoked by the board pursuant to a disciplinary action 384
under division (C) of this section or pursuant to rules adopted 385

under division (B)(5) of this section shall not engage in 386
construction projects in this state. 387

Sec. 4722.03. (A) No contractor shall perform any 388
construction project the cost of which equals or exceeds one 389
thousand dollars unless that person enters into a written contract 390
with the owner. The contract shall include all agreements and 391
conditions related to the construction project, including all of 392
the following: 393

(1) The contractor's name, physical business address, 394
business telephone number, and, if licensed under section 4722.02 395
of the Revised Code, license number, but if not licensed, also the 396
contractor's taxpayer identification number and physical home 397
address; 398

(2) The owner's name, address, and telephone number; 399

(3) The address of the property where the construction 400
project is to be performed; 401

(4) A detailed description of the construction project, 402
including the goods and services to be furnished as part of the 403
construction project; 404

(5) The date or time period the construction project is to 405
begin and the date or time period it is to be completed; 406

(6) The total cost of the construction project; 407

(7) Any cost of installation, delivery, or other cost that 408
the total cost does not cover; 409

(8) The dated signatures of the owner and the contractor; 410

(9) A notice of applicable right to cure provisions in 411
substantially the following language: 412

"RIGHT TO CURE 413

IN THE EVENT THAT THE CONSTRUCTION PROJECT THAT IS THE 414

SUBJECT OF THIS CONTRACT RESULTS IN A CONSTRUCTION DEFECT, THE 415
CONTRACTOR NAMED IN THIS CONTRACT WILL HAVE THE RIGHT TO CURE THE 416
CONSTRUCTION DEFECT IN A MANNER CONSISTENT WITH CHAPTER 1312. OF 417
THE REVISED CODE IF THE CONSTRUCTION DEFECT ARISES FROM NEW 418
RESIDENTIAL CONSTRUCTION, OR CHAPTER 4722. OF THE REVISED CODE IF 419
THE CONSTRUCTION DEFECT ARISES FROM A HOME IMPROVEMENT. GENERALLY 420
THE RIGHT TO CURE PROVISIONS PROVIDE THE CONTRACTOR SIXTY (60) 421
DAYS TO CURE ANY CONSTRUCTION DEFECT, BUT SEE THE APPLICABLE 422
SECTIONS OF THE REVISED CODE TO DETERMINE SPECIFIC TIME AND NOTICE 423
REQUIREMENTS."; 424

(10) A notice stating whether or not the contractor has 425
performance bonds or other insurance beyond the insurance required 426
by section 4722.11 of the Revised Code that will cover losses 427
incurred through defects or breach of contract terms by the 428
contractor. 429

(B)(1) To determine the type of notice an owner requires when 430
the costs of a construction project exceed the estimate provided 431
in the contract, the contract shall include a statement in 432
substantially the following language: 433

"EXCESS COSTS 434

IF AT ANY TIME A CONSTRUCTION PROJECT REQUIRES EXTRA COSTS 435
ABOVE THE COST SPECIFIED OR ESTIMATED IN THE CONTRACT WHICH WERE 436
UNFORESEEN, BUT REASONABLY NECESSARY, AND THE TOTAL OF ALL EXTRA 437
COSTS TO DATE EXCEEDS TEN PER CENT OF THE CONTRACT COST, YOU HAVE 438
A RIGHT TO AN ESTIMATE OF THOSE EXCESS COSTS BEFORE THE CONTRACTOR 439
BEGINS WORK RELATED TO THOSE COSTS. INITIAL YOUR CHOICE OF THE 440
TYPE OF ESTIMATE YOU REQUIRE: 441

..... written estimate oral estimate" 442

(2) If the total amount of unforeseen, but reasonably 443
necessary excess costs of a construction project at any time 444
exceeds ten per cent of the cost estimated or specified in the 445

contract, prior to performing the work related to the excess 446
costs, the contractor shall provide an owner with the type of 447
notice the owner has designated in the contract. 448

(3) If the contract stipulates that the specified cost of the 449
construction project is a firm price and the contractor will not 450
charge the owner with any excess costs, the contractor need not 451
comply with the notice requirements of this division. 452

(4) An owner is not liable for any excess costs unless the 453
costs were unforeseen, but reasonably necessary, and unless the 454
contractor complies with this section's notice requirements. 455

Sec. 4722.04. No contractor shall do any of the following: 456

(A) Prior to commencing work related to the construction 457
project, fail to enter into a written contract that complies with 458
this chapter; 459

(B) After entering into a contract with an owner and prior to 460
commencing any work that is related to an excess cost, fail to 461
provide an estimate of the excess costs as this chapter requires; 462

(C) After entering into a contract with an owner, do any of 463
the following: 464

(1) Fail to disclose, prior to the owner's acceptance of any 465
goods or work related to an excess cost, that in failing to 466
approve an excess cost, completion of the work may not be possible 467
and a charge may be imposed for any disassembly, reassembly, or 468
partially completed work, which shall be directly related to the 469
actual labor or parts involved; 470

(2) Charge for any excess cost that the owner has not 471
approved; 472

(3) Represent that repairs or work have been performed when 473
such is not the fact; 474

(4) Fail to provide the owner, upon the owner's request, a written itemized list of repairs performed or services rendered, including a list of parts or materials and a statement of whether they are used, manufactured, or rebuilt, if not new, the cost to the owner, the amount charged for labor, and the identity of the individual performing the repair or service; 475
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(5) Fail to tender to the owner any replaced parts, unless the parts are to be rebuilt or sold by the contractor, or returned to the manufacturer in connection with a warranted repair or service, and the intended reuse or return is made known to the owner prior to commencing any repair or services; 481
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(6) Fail to provide a full refund for any goods or services that the contractor has failed to deliver in accordance with the terms and conditions of the contract required by section 4722.03 of the Revised Code and for which the contractor has received payment; 486
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(7) Fail to provide to the owner, upon the owner's request, a written, itemized receipt for any item of goods that are left with, or turned over to, the contractor for repair or services. The receipt shall include all of the following: 491
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(a) The identity of the person who will perform the repair or services; 495
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(b) The name and dated signature of the person or representative who actually accepts the goods; 497
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(c) A description including make and model number or other features that will reasonably identify the goods that are turned over and the repair or services that are to be performed. 499
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(D) Make the performance of any construction project contingent upon a consumer's waiver of any rights this chapter provides; 502
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(E) Represent that repairs, services, or work is necessary 505
when such is not the fact; 506

(F) Represent that an item of goods or any part thereof that 507
is being inspected or diagnosed for a construction project is in a 508
dangerous condition, or that its continued use may be harmful, 509
when such is not the fact; 510

(G) Materially understate or misstate the estimated cost of 511
the construction project; 512

(H) Fraudulently misrepresent any aspect of the transaction 513
or the nature or the quality of the work or materials; 514

(I) Fail at the time any owner signs or initials any document 515
to provide the owner with a copy of the document; 516

(J) Fail to disclose to the owner prior to the commencement 517
of any repair or service, that any part of the repair or service 518
will be performed by a person other than the contractor or 519
employee of the contractor if the contract disclaims any warranty 520
of the repair or service that the other person performs; 521

(K) Represent that repairs or services must be performed away 523
from the property on which the construction project is being 524
performed when that is not the fact. 525

Sec. 4722.05. (A) A home improvement contractor who is not 526
licensed under section 4722.02 of the Revised Code may take as a 527
down payment not more than ten per cent of the contract price 528
before the home improvement contractor's performance that is 529
required by the contract is completed, except a home improvement 530
contractor may take as a down payment not more than seventy-five 531
per cent of the total cost of any special order item that is 532
otherwise not returnable or usable before the home improvement 533
contractor's performance that is required by the contract is 534

completed. 535

(B) A contractor shall begin work on the date or within the 536
time period the contract specifies and shall complete the 537
construction project pursuant to any agreed-upon schedule unless 538
delay is due to reasonable cause beyond the contractor's control. 539
In no case shall an owner be required to pay more than ten per 540
cent of the value of the work completed by the contractor. 541

Sec. 4722.06. (A) No owner shall commence arbitration 542
proceedings or file a dwelling action against a home improvement 543
contractor unless, at least sixty days before commencing the 544
proceedings or filing the action, the owner provides the home 545
improvement contractor with written notice of the construction 546
defect that would be the basis of the arbitration proceedings or 547
the dwelling action. The notice shall be in writing and mailed, 548
sent by telegram, delivered in person, or sent by any means the 549
home improvement contractor has indicated communications may be 550
sent, including facsimile transmission and electronic mail. The 551
notice shall substantially comply with the requirements set forth 552
in division (B) of this section. 553

(B) Any notice that an owner provides to a home improvement 554
contractor pursuant to this section shall substantially do all of 555
the following: 556

(1) Assert a claim involving a construction defect by 557
itemizing and describing those construction defects; 558

(2) Include or attach a copy of any documentation concerning 559
the construction defects prepared by a person who inspected the 560
building for the owner; 561

(3) Include the name, address, and telephone number of the 562
owner and the home improvement contractor and the address of the 563
building that is the subject of the claim. 564

(C) After receiving a notice of defects, a home improvement contractor may request an owner to provide a description of the cause of the defects and the nature and extent of repairs necessary to remedy the defects. An owner may provide this information if the owner has knowledge of the cause of the defects and the repairs necessary to remedy those defects. 565
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(D) If a home improvement contractor files a mechanics lien or commences any type of arbitration proceedings or legal action against an owner, this section does not apply, and the owner immediately may counterclaim, commence arbitration proceedings, or file a dwelling action against the home improvement contractor. 571
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Sec. 4722.07. (A) A home improvement contractor shall provide the owner with a good faith written response to any notice provided pursuant to section 4722.06 of the Revised Code. The response shall be provided within twenty-one days after the owner mailed the notice, delivered it by personal delivery, or transmitted it by telegram, facsimile, or electronic mail. In the response, the home improvement contractor shall offer to take one of the following actions: 576
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(1) Inspect the building that is the subject of the claim; 584

(2) Compromise and settle the claim without an inspection; 585

(3) Dispute the claim. 586

(B) If a home improvement contractor fails to respond as required by division (A) of this section or disputes the claim, an owner is deemed to have complied with this section and may commence arbitration proceedings or file a dwelling action without further notice to the home improvement contractor. 587
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(C) If an owner rejects a home improvement contractor's offer to inspect the property or to compromise and settle a claim, the owner shall notify the home improvement contractor of that 592
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rejection within fourteen days after receiving the home 595
improvement contractor's offer. The rejection notice shall be in 596
writing and include a reason for the rejection. 597

(D) After providing a rejection notice, an owner has complied 598
with this section and may commence arbitration proceedings or file 599
a dwelling action without further notice to the contractor. 600

Sec. 4722.08. (A) If an owner accepts a home improvement 601
contractor's offer to inspect the building, the owner shall notify 602
the home improvement contractor of that acceptance within fourteen 603
days after receipt of the notice described in division (A) of 604
section 4722.07 of the Revised Code. After accepting the offer to 605
inspect, the owner shall allow the home improvement contractor 606
reasonable access to the building during normal working hours. The 607
home improvement contractor shall inspect the building within 608
fourteen days after the owner notifies the home improvement 609
contractor that the owner accepts the offer to inspect the 610
building. The home improvement contractor shall take reasonable 611
measures to determine the nature and cause of the construction 612
defects and the appropriate remedy. The measures the contractor 613
takes may include, but are not limited to, testing. 614

(B) Within ten days after a home improvement contractor 615
conducts an inspection as described in division (A) of this 616
section, the home improvement contractor shall provide the owner 617
with one of the following: 618

(1) A written offer to remedy the defects at no cost to the 619
owner, an inspection report, a prediction of the additional 620
construction work necessary to remedy each defect, and a timetable 621
for completing the work necessary to remedy the defects; 622

(2) A written offer to settle the claim; 623

(3) A written statement asserting that the home improvement 624

contractor does not intend to remedy the defects. 625

(C) An owner has complied with sections 4722.06, 4722.07, 4722.08, 4722.09, and 4722.10 of the Revised Code and may commence arbitration proceedings or file a dwelling action without further notice to the home improvement contractor if any of the following occur: 626
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(1) The home improvement contractor does not inspect the property within fourteen days after the owner notifies the home improvement contractor that the owner accepts the offer to inspect. 631
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(2) Within ten days after the home improvement contractor conducts the inspection, the home improvement contractor does not provide a written response as required under division (B) of this section. 635
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(3) The home improvement contractor notifies the owner that the home improvement contractor does not intend to remedy the defects. 639
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(4) The home improvement contractor fails to remedy the defects in the manner the home improvement contractor describes or within the timetable the home improvement contractor provides. 642
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(D) If a home improvement contractor makes or provides for any repair or replacement to remedy a construction defect, the home improvement contractor may take reasonable steps to document the repair or replacement and to inspect the repair or replacement or have it inspected. 645
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(E) If an owner accepts an offer that a home improvement contractor makes in compliance with sections 4722.06, 4722.07, 4722.08, 4722.09, and 4722.10 of the Revised Code to compromise and settle the claim, to remedy the defects, or to settle the claim, and the contractor fulfills that offer in compliance with sections 4722.06, 4722.07, 4722.08, 4722.09, and 4722.10 of the 650
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Revised Code, the owner is barred from bringing a dwelling action 656
or commencing arbitration proceedings for the claim, except for 657
claims of fraud or misrepresentation and the fraud or 658
misrepresentation induces an owner to enter into a contract. 659

Sec. 4722.09. Unless otherwise indicated in sections 4722.06, 660
4722.07, 4722.08, and 4722.10 of the Revised Code, an owner has 661
complied with those sections and may commence arbitration 662
proceedings or file a dwelling action sixty days after the owner 663
mails, delivers, sends by facsimile transmission or electronic 664
mail, or otherwise provides the home improvement contractor with a 665
defect notice pursuant to division (A) of section 4722.06 of the 666
Revised Code. 667

Sec. 4722.10. (A) All applicable statutes of limitation or 668
repose are tolled from the time the owner sends a notice of defect 669
to a home improvement contractor pursuant to section 4722.06 of 670
the Revised Code until the owner has complied with this chapter. 671

(B) If an owner files a dwelling action or commences 672
arbitration proceedings without having complied with sections 673
4722.06, 4722.07, 4722.08, and 4722.09 of the Revised Code, the 674
court or arbitrator shall dismiss that action or those proceedings 675
without prejudice. The owner may again file a dwelling action or 676
commence arbitration proceedings after complying with those 677
sections. 678

(C) Sections 4722.06, 4722.07, 4722.08, and 4722.09 of the 679
Revised Code do not apply to any civil action in tort alleging 680
personal injury or wrongful death to a person resulting from a 681
construction defect. 682

(D) This section and sections 4722.06, 4722.07, 4722.08, and 683
4722.09 of the Revised Code do not apply to any dwelling action 684
arising out of a construction defect where that construction 685

defect will jeopardize the welfare, health, or safety of the owner 686
or any other occupant of the residential building or the 687
residential building has been rendered uninhabitable by the 688
construction defect. 689

Sec. 4722.11. A contractor shall maintain general liability 690
insurance in an amount not less than two hundred fifty thousand 691
dollars. 692

Sec. 4722.12. (A) An owner may initiate a civil action in a 693
court of common pleas for damages due to any breach of contract or 694
for breach of any duty this chapter imposes. The court may grant 695
an injunction, a temporary restraining order, actual damages, or 696
other appropriate relief for a violation of this chapter. 697

(B) The court may award the owner treble damages if it finds 698
a contractor knowingly committed an act or practice that violates 699
this chapter. 700

(C) In any action pursuant to this chapter, the court may 701
award to the prevailing party a reasonable attorney's fee limited 702
to the work reasonably performed, if either of the following 703
applies: 704

(1) The owner complaining of the act or practice that 705
violated this chapter has brought or maintained an action that is 706
groundless, and the owner filed or maintained the action in bad 707
faith; 708

(2) The contractor knowingly committed an act or practice 709
that violates this chapter. 710

(D) Nothing in this section limits any other action brought 711
by an owner or contractor at common law. 712

Sec. 4722.13. The attorney general may initiate criminal 713
proceedings for a prosecution under section 4722.99 of the Revised 714

Code, or any other section of the Revised Code for claims related 715
to or arising out of a construction project, by presenting 716
evidence of criminal violations to the prosecuting attorney of the 717
city or county in which the offense may be prosecuted. If the 718
prosecuting attorney notifies the attorney general in writing that 719
the prosecuting attorney does not wish to prosecute the 720
violations, or at the request of the prosecuting attorney, the 721
attorney general may proceed in the prosecution with all the 722
rights, privileges, and powers conferred by law on prosecuting 723
attorneys, including the power to appear before grand juries and 724
to interrogate witnesses before grand juries. 725

Sec. 4722.14. (A) Any instrumentality, as defined in division 726
(B)(6) of section 2981.01 of the Revised Code, of a contractor 727
convicted of an offense in connection with a construction project, 728
shall be subject to the forfeiture provisions of Chapter 2981. of 729
the Revised Code. 730

(B) If a contractor is convicted of a criminal offense in 731
connection with a construction project, the sentencing court, when 732
sentencing that contractor, shall consider and specify a plan of 733
restitution to the owner of the property harmed by the offense, 734
pursuant to any community control sanctions ordered pursuant to 735
sections 2929.15 to 2929.28 of the Revised Code. 736

Sec. 4722.99. (A) Whoever knowingly violates section 4722.03 737
of the Revised Code is guilty of a misdemeanor of the fourth 738
degree. 739

(B) Any contractor who knowingly engages in a pattern of 740
misrepresentation to consumers or knowingly and improperly 741
represents quality, timeliness, or quantity of the work that was 742
or is to be performed for a construction project is guilty of a 743
misdemeanor of the first degree. 744

(C) Whoever violates division (F) of section 4722.02 of the Revised Code is guilty of a misdemeanor of the first degree for each violation.

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 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 774
one valid license shall contain the same license number and 775
expiration date as the original license issued to that individual. 776

(2) Renew licenses for individuals who meet the renewal 777
requirements of section 4740.06 of the Revised Code. 778

(D) Make an annual written report to the director of commerce 779
on proceedings had by or before the board for the previous year 780
and make an annual statement of all money received and expended by 781
the board during the year; 782

(E) Keep a record containing the name, address, the date on 783
which the board issues or renews a license to, and the license 784
number of, every heating, ventilating, and air conditioning 785
contractor, refrigeration contractor, electrical contractor, 786
plumbing contractor, and hydronics contractor issued a license 787
pursuant to this chapter; 788

(F) Regulate a contractor's use and display of a license 789
issued pursuant to this chapter and of any information contained 790
in that license; 791

(G) Adopt rules in accordance with Chapter 119. of the 792
Revised Code as necessary to properly discharge the administrative 793
section's duties under this chapter. The rules shall include, but 794
not be limited to, the following: 795

(1) Application procedures for examinations; 796

(2) Specifications for continuing education requirements for 797
license renewal that address all of the following: 798

(a) A requirement that an individual who holds any number of 799
valid and unexpired licenses accrue a total of ten hours of 800
continuing education courses per year; 801

(b) Fees the board charges to persons who provide continuing 802
education courses, in an amount of twenty-five dollars annually 803

for each person approved to provide courses, not more than ten 804
dollars plus one dollar per credit hour for each course offered, 805
and one dollar per credit hour of instruction per attendee; 806

(c) A provision limiting approval of continuing education 807
courses to one year. 808

(3) Requirements for criminal records checks of applicants 809
under section 4776.03 of the Revised Code. 810

(H) Adopt any continuing education curriculum as the other 811
sections of the board establish or approve pursuant to division 812
(C) of section 4740.05 of the Revised Code; 813

(I) Keep a record of its proceedings and do all things 814
necessary to carry out this chapter; 815

(J) Fulfill the duties and obligations required by section 816
4722.02 of the Revised Code. 817

Sec. 4740.14. (A) There is hereby created within the 818
department of commerce the residential construction advisory 819
committee consisting of nine persons the director of commerce 820
appoints. Of the advisory committee's members, three shall be 821
general contractors who have recognized ability and experience in 822
the construction of residential buildings, two shall be building 823
officials who have experience administering and enforcing a 824
residential building code, one, chosen from a list of three names 825
the Ohio fire chief's association submits, shall be from the fire 826
service certified as a fire safety inspector who has at least ten 827
years of experience enforcing fire or building codes, one shall be 828
a residential contractor who has recognized ability and experience 829
in the remodeling and construction of residential buildings, one 830
shall be an architect registered pursuant to Chapter 4703. of the 831
Revised Code, with recognized ability and experience in the 832
architecture of residential buildings, and one, chosen from a list 833

of three names the Ohio municipal league submits to the director, 834
shall be a mayor of a municipal corporation in which the Ohio 835
residential building code is being enforced in the municipal 836
corporation by a certified building department. 837

(B) The director shall make appointments to the advisory 838
committee within ninety days after May 27, 2005. Terms of office 839
shall be for three years, with each term ending on the date three 840
years after the date of appointment. Each member shall hold office 841
from the date of appointment until the end of the term for which 842
the member was appointed. The director shall fill a vacancy in the 843
manner provided for initial appointments. Any member appointed to 844
fill a vacancy in an unexpired term shall hold office for the 845
remainder of that term. 846

(C) The advisory committee shall do all of the following: 847

(1) Recommend to the board of building standards a building 848
code for residential buildings. The committee shall recommend a 849
code that it models on a residential building code a national 850
model code organization issues, with adaptations necessary to 851
implement the code in this state. If the board of building 852
standards decides not to adopt a code the committee recommends, 853
the committee shall revise the code and resubmit it until the 854
board adopts a code the committee recommends as the state 855
residential building code; 856

(2) Advise the board regarding the establishment of standards 857
for certification of building officials who enforce the state 858
residential building code; 859

(3) Assist the board in providing information and guidance to 860
residential contractors and building officials who enforce the 861
state residential building code; 862

(4) Advise the board regarding the interpretation of the 863

state residential building code; 864

(5) Develop guidelines to use in determining what is a 865
"workerlike manner" in the construction and rehabilitation of 866
residential buildings as referenced in section 1312.20 of the 867
Revised Code; 868

(6) Adopt rules under Chapter 119. of the Revised Code to 869
establish dispute resolution procedures for the timely resolution 870
of disputes between an owner and a contractor regarding an alleged 871
breach of warranty or the construction of a residential building 872
when the contractor has provided an express warranty that complies 873
with division (A) of section 1312.20 of the Revised Code. The 874
rules shall specify that decisions made pursuant to these dispute 875
resolution procedures are not binding on the owner or other 876
parties involved in the dispute; 877

(7) Provide other assistance the committee considers 878
necessary. 879

(D) In making its recommendation to the board pursuant to 880
division (C)(1) of this section, the advisory committee shall 881
consider all of the following: 882

(1) The impact that the state residential building code may 883
have upon the health, safety, and welfare of the public; 884

(2) The economic reasonableness of the residential building 885
code; 886

(3) The technical feasibility of the residential building 887
code; 888

(4) The financial impact that the residential building code 889
may have on the public's ability to purchase affordable housing. 890

(E) Members of the advisory committee shall receive no salary 891
for the performance of their duties as members, but shall receive 892
their actual and necessary expenses incurred in the performance of 893

their duties as members of the advisory committee and shall 894
receive a per diem for each day in attendance at an official 895
meeting of the committee, to be paid from the industrial 896
compliance operating fund in the state treasury, using fees 897
collected in connection with residential buildings pursuant to 898
division (F)(2) of section 3781.102 of the Revised Code and 899
deposited in that fund. 900

(F) The advisory committee is not subject to divisions (A) 901
and (B) of section 101.84 of the Revised Code. 902

Section 2. That existing sections 1345.01, 4740.04, and 903
4740.14 of the Revised Code are hereby repealed. 904