

As Introduced

**128th General Assembly
Regular Session
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H. B. No. 557

Representatives Murray, Patten

Cosponsor: Representative Foley

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A B I L L

To enact sections 4722.01 to 4722.08 of the Revised Code to establish laws governing the practices of home improvement contractors and to provide civil remedies for home owners who are damaged by a home improvement contractor who violates the law.

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

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

Sec. 4722.01. As used in this chapter:

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

(B) "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;

<u>(3) Any action brought pursuant to this chapter.</u>	19
<u>(C) "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:</u>	20 21 22 23 24
<u>(1) Construction of a new residential building, industrialized unit, or manufactured home;</u>	25 26
<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>	27 28 29
<u>(3) Work performed on the common area of a condominium property.</u>	30 31
<u>(D) "Home improvement contractor" means any person who performs or offers to perform any home improvement for compensation.</u>	32 33 34
<u>(E) "Industrialized unit," "manufactured home," and "residential building" have the same meanings as in section 3781.06 of the Revised Code.</u>	35 36 37
<u>(F) "Mobile home" has the meaning as in section 4501.01 of the Revised Code.</u>	38 39
<u>(G) "Owner" means the person who contracts with a home improvement contractor for a home improvement. "Owner" may include the owner of the property, a tenant who occupies the dwelling unit on which the home improvement is performed, or a person the owner authorizes to act on the owner's behalf to contract for a home improvement, and any other person who contracts for a home improvement.</u>	40 41 42 43 44 45 46
<u>Sec. 4722.02. (A) No home improvement contractor shall perform any home improvement the cost of which equals or exceeds</u>	47 48

one thousand dollars unless that person enters into a written 49
contract with the owner. The contract shall include all agreements 50
and conditions related to the home improvement, including all of 51
the following: 52

(1) The home improvement contractor's name, physical business 53
address, business telephone number, taxpayer identification 54
number, and physical home address; 55

(2) The owner's name, address, and telephone number; 56

(3) The address of the property where the home improvement is 57
to be performed; 58

(4) A detailed description of the home improvement, including 59
the goods and services to be furnished as part of the home 60
improvement; 61

(5) The date or time period the home improvement is to begin 62
and the date or time period it is to be completed; 63

(6) The total cost of the home improvement; 64

(7) Any cost of installation, delivery, or other cost that 65
the total cost does not cover; 66

(8) The dated signatures of the owner and the home 67
improvement contractor; 68

(9) A notice of applicable right to cure provisions in 69
substantially the following language: 70

"RIGHT TO CURE 71

IN THE EVENT THAT THE HOME IMPROVEMENT THAT IS THE SUBJECT OF 72
THIS CONTRACT RESULTS IN A CONSTRUCTION DEFECT, THE HOME 73
IMPROVEMENT CONTRACTOR NAMED IN THIS CONTRACT WILL HAVE THE RIGHT 74
TO CURE THE CONSTRUCTION DEFECT IN A MANNER CONSISTENT WITH 75
CHAPTER 4722. OF THE REVISED CODE IF THE CONSTRUCTION DEFECT 76
ARISES FROM A HOME IMPROVEMENT. GENERALLY THE RIGHT TO CURE 77

PROVISIONS PROVIDE THE HOME IMPROVEMENT CONTRACTOR THIRTY (30) 78
DAYS TO CURE ANY CONSTRUCTION DEFECT, BUT SEE THE APPLICABLE 79
SECTIONS OF THE REVISED CODE TO DETERMINE SPECIFIC TIME AND NOTICE 80
REQUIREMENTS." 81

(10) A notice stating whether or not the home improvement 82
contractor has performance bonds or other insurance beyond the 83
insurance required by section 4722.07 of the Revised Code that 84
will cover losses incurred through defects or breach of contract 85
terms by the home improvement contractor. 86

(B)(1) To determine the type of notice an owner requires when 87
the costs of a home improvement exceed the estimate provided in 88
the contract, the contract shall include a statement in 89
substantially the following language: 90

"EXCESS COSTS 91

IF AT ANY TIME A HOME IMPROVEMENT REQUIRES EXTRA COSTS ABOVE 92
THE COST SPECIFIED OR ESTIMATED IN THE CONTRACT THAT WERE 93
UNFORESEEN, BUT REASONABLY NECESSARY, AND THE TOTAL OF ALL EXTRA 94
COSTS TO DATE EXCEEDS TEN PER CENT OF THE CONTRACT COST, YOU HAVE 95
A RIGHT TO AN ESTIMATE OF THOSE EXCESS COSTS BEFORE THE HOME 96
IMPROVEMENT CONTRACTOR BEGINS WORK RELATED TO THOSE COSTS. INITIAL 97
YOUR CHOICE OF THE TYPE OF ESTIMATE YOU REQUIRE: 98
..... written estimate oral estimate" 99

(2) If the total amount of unforeseen, but reasonably 100
necessary, excess costs of a home improvement at any time exceeds 101
ten per cent of the cost estimated or specified in the contract, 102
prior to performing the work related to the excess costs, the home 103
improvement contractor shall provide an owner with the type of 104
notice the owner has designated in the contract. 105

(3) If the contract stipulates that the specified cost of the 106
home improvement is a firm price and the home improvement 107
contractor will not charge the owner with any excess costs, the 108

home improvement contractor need not comply with the notice requirements of division (B) of this section. 109
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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. 111
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Sec. 4722.03. No home improvement contractor shall do any of the following: 115
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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; 117
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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; 120
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(C) After entering into a contract with an owner, do any of the following: 123
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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; 125
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(2) Charge for any excess cost that the owner has not approved; 131
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(3) Represent that repairs or work have been performed when such is not the fact; 133
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(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 135
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the owner, the amount charged for labor, and the identity of the individual performing the repair or service; 139
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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 home improvement 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; 141
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(6) Fail to provide a full refund for any goods or services that the home improvement contractor has failed to deliver in accordance with the terms and conditions of the contract required by section 4722.02 of the Revised Code and for which the home improvement contractor has received payment; 147
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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 is left with, or turned over to, the home improvement contractor for repair or services. The receipt shall include all of the following: 152
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(a) The identity of the person who will perform the repair or services; 156
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(b) The name and dated signature of the person or representative who actually accepts the goods; 159
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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. 161
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(D) Make the performance of any home improvement contingent upon a consumer's waiver of any rights this chapter provides; 164
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(E) Represent that repairs, services, or work is necessary when such is not the fact; 166
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(F) Represent that an item of goods or any part thereof that 168

is being inspected or diagnosed for a home improvement is in a 169
dangerous condition, or that its continued use may be harmful, 170
when such is not the fact; 171

(G) Materially understate or misstate the estimated cost of 172
the home improvement; 173

(H) Fraudulently misrepresent any aspect of the transaction 174
or the nature or the quality of the work or materials; 175

(I) Fail at the time any owner signs or initials any document 176
to provide the owner with a copy of the document; 177

(J) Fail to disclose to the owner prior to the commencement 178
of any repair or service that any part of the repair or service 179
will be performed by a person other than the home improvement 180
contractor or employee of the home improvement contractor if the 181
contract disclaims any warranty of the repair or service that the 182
other person performs; 183

(K) Represent that repairs or services must be performed away 184
from the property on which the home improvement is being performed 185
when that is not the fact. 186

Sec. 4722.04. (A) A home improvement contractor may take as a 187
down payment not more than ten per cent of the contract price 188
before the home improvement contractor's performance that is 189
required by the contract is completed, except a home improvement 190
contractor may take as a down payment not more than seventy-five 191
per cent of the total cost of any special order item that is 192
otherwise not returnable or usable before the home improvement 193
contractor's performance that is required by the contract is 194
completed. 195

(B) A home improvement contractor shall begin work on the 196
date or within the time period the contract specifies and shall 197
complete the home improvement pursuant to any agreed-upon schedule 198

unless delay is due to reasonable cause beyond the home 199
improvement contractor's control. 200

Sec. 4722.05. The failure of a home improvement contractor to 201
comply with sections 4722.02, 4722.03, and 4722.04 of the Revised 202
Code is an unfair or deceptive act or practice in violation of 203
section 1345.02 of the Revised Code. All powers and remedies 204
available to the attorney general to enforce sections 1345.01 to 205
1345.13 of the Revised Code, except those powers and remedies 206
available under division (E) of section 1345.02 of the Revised 207
Code, are available to the attorney general to enforce sections 208
4722.02, 4722.03, and 4722.04 of the Revised Code. The same 209
remedies available to consumers under section 1345.09 of the 210
Revised Code to remedy violations of section 1345.02 of the 211
Revised Code are available to owners to remedy the failure of a 212
home improvement contractor to comply with sections 4722.02, 213
4722.03, and 4722.04 of the Revised Code. 214

Sec. 4722.06. (A) No owner shall file a dwelling action or 215
commence an arbitration proceeding against a home improvement 216
contractor unless, at least thirty days before filing the action 217
or commencing the arbitration proceeding, the owner provides the 218
home improvement contractor with a written notice of the 219
construction defect that would be the basis of the dwelling action 220
or arbitration proceeding. The notice shall be in writing and 221
mailed, delivered in person, or sent by any means the home 222
improvement contractor has indicated communications may be sent, 223
including facsimile transmission and electronic mail. 224

(B) After receiving a notice of defect pursuant to division 225
(A) of this section, the home improvement contractor shall provide 226
the owner with a good faith written response. The response shall 227
be delivered to the owner not later than seven days after the home 228
improvement contractor receives the notice described in division 229

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

(C) If a home improvement contractor files a mechanics lien 244
or commences any type of arbitration proceedings or legal action 245
against an owner, this section does not apply, and the owner 246
immediately may counterclaim or file a dwelling action or commence 247
an arbitration proceeding against the home improvement contractor. 248

(D) In the event that a home improvement contractor is 249
subject to the provisions of this section and the provisions of 250
Chapter 1312. of the Revised Code, the provisions of this section 251
shall control the actions of the owner and home improvement 252
contractor, and Chapter 1312. of the Revised Code shall not apply. 253

(E) This section does not apply to any dwelling action or 254
arbitration proceeding arising out of a construction defect if 255
that construction defect will jeopardize the welfare, health, or 256
safety of the owner or any other occupant of the residential 257
building or the residential building has been rendered 258
uninhabitable by the construction defect. 259

Sec. 4722.07. A home improvement contractor engaging in any 260

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

Sec. 4722.08. (A) Any instrumentality, as defined in division 264
(B)(6) of section 2981.01 of the Revised Code, of a home 265
improvement contractor convicted of an offense in connection with 266
a home improvement shall be subject to the forfeiture provisions 267
of Chapter 2981. of the Revised Code. 268

(B) If a home improvement contractor is convicted of a 269
criminal offense in connection with a home improvement, the 270
sentencing court, when sentencing that home improvement 271
contractor, shall consider and specify a plan of restitution to 272
the owner of the property harmed by the offense pursuant to any 273
community control sanctions ordered pursuant to sections 2929.15 274
to 2929.28 of the Revised Code. 275