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Representative Slaby

**Cosponsors: Representatives Grossman, Combs, McGregor, Roegner,
Bubp, Letson, Amstutz, Barnes, Blair, Blessing, Boose, Huffman, Milkovich,
Rose, Sears, Stebelton, Winburn, Young Speaker Batchelder**

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A B I L L

To amend section 1345.01 and to enact sections 1
4722.01 to 4722.06 of the Revised Code to make 2
changes relative to residential construction and 3
the Consumer Sales Practices Act and to establish 4
laws governing the practices of home construction 5
service suppliers. 6

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

Section 1. That section 1345.01 be amended and sections 7
4722.01, 4722.02, 4722.03, 4722.04, 4722.05, and 4722.06 of the 8
Revised Code be enacted to read as follows: 9

Sec. 1345.01. As used in sections 1345.01 to 1345.13 of the 10
Revised Code: 11

(A) "Consumer transaction" means a sale, lease, assignment, 12
award by chance, or other transfer of an item of goods, a service, 13
a franchise, or an intangible, to an individual for purposes that 14
are primarily personal, family, or household, or solicitation to 15
supply any of these things. "Consumer transaction" does not 16
include transactions between persons, defined in sections 4905.03 17

and 5725.01 of the Revised Code, and their customers, except for 18
transactions involving a loan made pursuant to sections 1321.35 to 19
1321.48 of the Revised Code and transactions in connection with 20
residential mortgages between loan officers, mortgage brokers, or 21
nonbank mortgage lenders and their customers; transactions 22
involving a home construction services contract as defined in 23
section 4722.01 of the Revised Code; transactions between 24
certified public accountants or public accountants and their 25
clients; transactions between attorneys, physicians, or dentists 26
and their clients or patients; and transactions between 27
veterinarians and their patients that pertain to medical treatment 28
but not ancillary services. 29

(B) "Person" includes an individual, corporation, government, 30
governmental subdivision or agency, business trust, estate, trust, 31
partnership, association, cooperative, or other legal entity. 32

(C) "Supplier" means a seller, lessor, assignor, franchisor, 33
or other person engaged in the business of effecting or soliciting 34
consumer transactions, whether or not the person deals directly 35
with the consumer. If the consumer transaction is in connection 36
with a residential mortgage, "supplier" does not include an 37
assignee or purchaser of the loan for value, except as otherwise 38
provided in section 1345.091 of the Revised Code. For purposes of 39
this division, in a consumer transaction in connection with a 40
residential mortgage, "seller" means a loan officer, mortgage 41
broker, or nonbank mortgage lender. 42

(D) "Consumer" means a person who engages in a consumer 43
transaction with a supplier. 44

(E) "Knowledge" means actual awareness, but such actual 45
awareness may be inferred where objective manifestations indicate 46
that the individual involved acted with such awareness. 47

(F) "Natural gas service" means the sale of natural gas, 48

exclusive of any distribution or ancillary service. 49

(G) "Public telecommunications service" means the 50
transmission by electromagnetic or other means, other than by a 51
telephone company as defined in section 4927.01 of the Revised 52
Code, of signs, signals, writings, images, sounds, messages, or 53
data originating in this state regardless of actual call routing. 54
"Public telecommunications service" excludes a system, including 55
its construction, maintenance, or operation, for the provision of 56
telecommunications service, or any portion of such service, by any 57
entity for the sole and exclusive use of that entity, its parent, 58
a subsidiary, or an affiliated entity, and not for resale, 59
directly or indirectly; the provision of terminal equipment used 60
to originate telecommunications service; broadcast transmission by 61
radio, television, or satellite broadcast stations regulated by 62
the federal government; or cable television service. 63

(H)(1) "Loan officer" means an individual who for 64
compensation or gain, or in anticipation of compensation or gain, 65
takes or offers to take a residential mortgage loan application; 66
assists or offers to assist a buyer in obtaining or applying to 67
obtain a residential mortgage loan by, among other things, 68
advising on loan terms, including rates, fees, and other costs; 69
offers or negotiates terms of a residential mortgage loan; or 70
issues or offers to issue a commitment for a residential mortgage 71
loan. "Loan officer" also includes a loan originator as defined in 72
division (E)(1) of section 1322.01 of the Revised Code. 73

(2) "Loan officer" does not include an employee of a bank, 74
savings bank, savings and loan association, credit union, or 75
credit union service organization organized under the laws of this 76
state, another state, or the United States; an employee of a 77
subsidiary of such a bank, savings bank, savings and loan 78
association, or credit union; or an employee of an affiliate that 79
(a) controls, is controlled by, or is under common control with, 80

such a bank, savings bank, savings and loan association, or credit union and (b) is subject to examination, supervision, and regulation, including with respect to the affiliate's compliance with applicable consumer protection requirements, by the board of governors of the federal reserve system, the comptroller of the currency, the office of thrift supervision, the federal deposit insurance corporation, or the national credit union administration.

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

(J)(1) "Mortgage broker" means any of the following:

(a) A person that holds that person out as being able to assist a buyer in obtaining a mortgage and charges or receives from either the buyer or lender money or other valuable consideration readily convertible into money for providing this assistance;

(b) A person that solicits financial and mortgage information from the public, provides that information to a mortgage broker or a person that makes residential mortgage loans, and charges or receives from either of them money or other valuable consideration readily convertible into money for providing the information;

(c) A person engaged in table-funding or warehouse-lending mortgage loans that are residential mortgage loans.

(2) "Mortgage broker" does not include a bank, savings bank, savings and loan association, credit union, or credit union service organization organized under the laws of this state, another state, or the United States; a subsidiary of such a bank,

savings bank, savings and loan association, or credit union; an 112
affiliate that (a) controls, is controlled by, or is under common 113
control with, such a bank, savings bank, savings and loan 114
association, or credit union and (b) is subject to examination, 115
supervision, and regulation, including with respect to the 116
affiliate's compliance with applicable consumer protection 117
requirements, by the board of governors of the federal reserve 118
system, the comptroller of the currency, the office of thrift 119
supervision, the federal deposit insurance corporation, or the 120
national credit union administration; or an employee of any such 121
entity. 122

(K) "Nonbank mortgage lender" means any person that engages 123
in a consumer transaction in connection with a residential 124
mortgage, except for a bank, savings bank, savings and loan 125
association, credit union, or credit union service organization 126
organized under the laws of this state, another state, or the 127
United States; a subsidiary of such a bank, savings bank, savings 128
and loan association, or credit union; or an affiliate that (1) 129
controls, is controlled by, or is under common control with, such 130
a bank, savings bank, savings and loan association, or credit 131
union and (2) is subject to examination, supervision, and 132
regulation, including with respect to the affiliate's compliance 133
with applicable consumer protection requirements, by the board of 134
governors of the federal reserve system, the comptroller of the 135
currency, the office of thrift supervision, the federal deposit 136
insurance corporation, or the national credit union 137
administration. 138

(L) For purposes of divisions (H), (J), and (K) of this 139
section: 140

(1) "Control" of another entity means ownership, control, or 141
power to vote twenty-five per cent or more of the outstanding 142
shares of any class of voting securities of the other entity, 143

directly or indirectly or acting through one or more other persons. 144
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(2) "Credit union service organization" means a CUSO as defined in 12 C.F.R. 702.2. 146
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Sec. 4722.01. As used in this chapter: 148

(A) "Commencement" means the date on which all parties have signed a home construction service contract. 149
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(B) "Cost-plus contract" means a contract entered into between an owner and a home construction service supplier under which payment to the supplier is based on the cost of a product plus the supplier's rate for labor to install the product. 151
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(C) "Home construction service" means the construction of a residential building. "Home construction service" does not include construction performed on a structure that contains four or more dwelling units, except for work on an individual dwelling unit within that structure, or construction performed on the common area of a condominium property. 155
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(D) "Home construction service contract" means a contract between an owner and a supplier to perform home construction services, including services rendered based on a cost-plus contract, for an amount exceeding twenty-five thousand dollars. 161
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(E) "Home construction service supplier" or "supplier" means a person who provides home construction services for compensation and who maintains in force a general liability insurance policy in an amount of not less than two hundred fifty thousand dollars. 165
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(F) "Owner" means the person who contracts with a home construction service supplier. "Owner" may include the owner of the property, a tenant who occupies the dwelling unit on which the home construction service is performed, or a person the owner authorizes to act on the owner's behalf to contract for a home 169
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construction service, and any other person who contracts for a 174
home construction service. 175

(G) "Residential building" means a one-, two-, or 176
three-family dwelling and any accessory construction incidental to 177
the dwelling. "Residential building" does not include any of the 178
following: 179

(1) An industrialized unit as described in section 3781.06 of 180
the Revised Code; 181

(2) A manufactured home as described in section 3781.06 of 182
the Revised Code; 183

(3) A mobile home as described in section 4501.01 of the 184
Revised Code. 185

(H) "Workmanlike manner" means the home construction service 186
supplier has engaged in construction that meets or exceeds the 187
minimum quantifiable standards promulgated by a local home 188
builders association operating in the area in which the home 189
construction services are being performed or, if there is no local 190
home builders association operating in that area, the Ohio home 191
builders association. 192

Sec. 4722.02. (A) Except as provided in division (C) of this 193
section, no home construction service supplier shall perform any 194
home construction service the cost of which equals or exceeds 195
twenty-five thousand dollars unless the supplier enters into a 196
written home construction services contract with the owner. The 197
contract shall include all agreements and conditions related to 198
the home construction service, including all of the following: 199

(1) The supplier's name, physical business address, business 200
telephone number, and taxpayer identification number; 201

(2) The owner's name, address, and telephone number; 202

(3) The address or location of the property where the home 203

<u>construction service is to be performed;</u>	204
<u>(4) A general description of the home construction service,</u>	205
<u>including the goods and services to be furnished as part of the</u>	206
<u>service;</u>	207
<u>(5) The anticipated date or time period the home construction</u>	208
<u>service is to begin and the anticipated date or time period it is</u>	209
<u>to be completed;</u>	210
<u>(6) The total estimated cost of the home construction</u>	211
<u>service;</u>	212
<u>(7) Any cost of installation, delivery, or other cost that</u>	213
<u>the total estimated cost does not cover;</u>	214
<u>(8) A copy of the supplier's certificate of insurance showing</u>	215
<u>general liability coverage in an amount of not less than two</u>	216
<u>hundred fifty thousand dollars;</u>	217
<u>(9) The dated signatures of the owner and the supplier.</u>	218
<u>(B)(1) If the total amount of unforeseen, but reasonably</u>	219
<u>necessary, excess costs of a home construction service at any time</u>	220
<u>exceeds ten per cent of the cost estimated or specified in the</u>	221
<u>contract, prior to performing the work related to the excess</u>	222
<u>costs, the home construction service supplier shall provide an</u>	223
<u>owner with a notice that contains a written or oral estimate,</u>	224
<u>depending on which type the owner has designated in the contract.</u>	225
<u>(2) To determine the type of notice an owner requires when</u>	226
<u>the costs of a home construction service exceed the estimate</u>	227
<u>provided in the contract, the contract shall include a statement</u>	228
<u>in substantially the following language:</u>	229
<u>"EXCESS COSTS</u>	230
<u>IF AT ANY TIME A HOME CONSTRUCTION SERVICE REQUIRES EXTRA</u>	231
<u>COSTS ABOVE THE COST SPECIFIED OR ESTIMATED IN THE CONTRACT THAT</u>	232
<u>WERE UNFORESEEN, BUT REASONABLY NECESSARY, AND THE TOTAL OF ALL</u>	233

EXTRA COSTS TO DATE EXCEEDS TEN PER CENT OF THE CONTRACT COST, YOU 234
HAVE A RIGHT TO AN ESTIMATE OF THOSE EXCESS COSTS BEFORE THE HOME 235
CONSTRUCTION SERVICE SUPPLIER BEGINS WORK RELATED TO THOSE COSTS. 236
INITIAL YOUR CHOICE OF THE TYPE OF ESTIMATE YOU REQUIRE: 237
..... written estimate oral estimate" 238

(3) If the contract stipulates that the specified cost of the 239
home construction service is a firm price and the home 240
construction service supplier will not charge the owner with any 241
excess costs, the home construction service supplier need not 242
comply with the notice requirements of this division. 243

(C) A home construction service supplier who enters into a 244
cost-plus contract with an owner for a home construction service 245
need not comply with the requirements in divisions (A) and (B) of 246
this section. 247

Sec. 4722.03. (A) No home construction service supplier shall 248
do any of the following: 249

(1) Prior to commencing work related to the home construction 250
service, fail to enter into a written contract that complies with 251
this chapter; 252

(2) After entering into a contract with an owner and prior to 253
commencing any work that is related to an excess cost, fail to 254
provide an estimate of the excess costs as this chapter requires; 255

(3) After entering into a contract with an owner, do any of 256
the following: 257

(a) Fail to disclose, prior to the owner's acceptance of any 258
goods or work related to an excess cost, that in failing to 259
approve an excess cost, completion of the work may not be possible 260
and a charge may be imposed for any disassembly, reassembly, or 261
partially completed work, which shall be directly related to the 262
actual labor or parts involved; 263

<u>(b) Charge for any excess cost that the owner has not approved;</u>	264 265
<u>(c) Represent that repairs or work have been performed when such is not the fact;</u>	266 267
<u>(d) Fail to perform the home construction service in a competent, workmanlike manner as defined in section 4722.01 of the Revised Code;</u>	268 269 270
<u>(e) Fail to tender to the owner, within a reasonable time and upon the owner's request, any replaced parts, unless the parts are to be rebuilt or sold by the home construction service supplier, 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;</u>	271 272 273 274 275 276
<u>(f) Fail to provide a full refund within a reasonable time period for any goods or services that the home construction service supplier 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 supplier has received payment;</u>	277 278 279 280 281 282
<u>(g) Fail to provide to the owner, within a reasonable time and upon the owner's request, a written, itemized receipt for any item of goods that is left with, or turned over to, the home construction service supplier for repair or services. The receipt shall include all of the following:</u>	283 284 285 286 287
<u>(i) The identity of the person who will perform the repair or services;</u>	288 289
<u>(ii) The name and dated signature of the person or representative who actually accepts the goods;</u>	290 291
<u>(iii) A description, including make and model number or other features that will reasonably identify the goods that are turned</u>	292 293

<u>over, and the repair or services that are to be performed.</u>	294
<u>(4) Make the performance of any home construction service</u>	295
<u>contingent upon a consumer's waiver of any rights this chapter</u>	296
<u>provides;</u>	297
<u>(5) Represent that repairs, services, or work is necessary to</u>	298
<u>comply with the residential building code when such is not the</u>	299
<u>fact;</u>	300
<u>(6) Represent that an item of goods or any part thereof that</u>	301
<u>is being inspected or diagnosed for a home construction service is</u>	302
<u>in a dangerous condition, or that its continued use may be</u>	303
<u>harmful, when such is not the fact;</u>	304
<u>(7) Intentionally understate or intentionally misstate the</u>	305
<u>estimated cost of the home construction service;</u>	306
<u>(8) Fraudulently misrepresent any aspect of the transaction</u>	307
<u>or the nature or the quality of the work or materials;</u>	308
<u>(9) Fail at the time any owner signs or initials any document</u>	309
<u>to provide the owner with a copy of the document within a</u>	310
<u>reasonable time period;</u>	311
<u>(10) Fail to disclose to the owner prior to the commencement</u>	312
<u>of any repair or service that any part of the repair or service</u>	313
<u>will be performed by a person other than the home construction</u>	314
<u>service supplier or employee of the supplier if the contract</u>	315
<u>disclaims any warranty of the repair or service that the other</u>	316
<u>person performs;</u>	317
<u>(11) Represent that repairs or services must be performed</u>	318
<u>away from the property on which the home construction service is</u>	319
<u>being performed when that is not the fact.</u>	320
<u>(B) A home construction service supplier who enters into a</u>	321
<u>cost-plus contract with an owner for a home construction service</u>	322
<u>need not comply with the requirements regarding excess costs</u>	323

provided in this section. 324

Sec. 4722.04. A home construction service supplier may take 325
as a down payment not more than ten per cent of the contract price 326
before the supplier's performance that is required by the contract 327
is completed, except a supplier may take as a down payment not 328
more than seventy-five per cent of the total cost of any special 329
order item that is otherwise not returnable or usable before the 330
supplier's performance that is required by the contract is 331
completed. This section does not apply to a home construction 332
service supplier who enters into a cost-plus contract. A supplier 333
may accept payments from a construction loan in connection with a 334
home construction service contract. 335

Sec. 4722.05. All powers and remedies available to the 336
attorney general provided in sections 1345.05 to 1345.07 of the 337
Revised Code are available to the attorney general to enforce this 338
chapter. 339

Sec. 4722.06. For a violation of Chapter 4722. of the Revised 340
Code, an owner has a cause of action and is entitled to relief as 341
follows: 342

(A) Where the violation was an act prohibited by section 343
4722.02, 4722.03, or 4722.04 of the Revised Code, the owner may, 344
in an individual action, rescind the transaction or recover the 345
owner's actual economic damages plus an amount not exceeding five 346
thousand dollars in noneconomic damages. 347

(B) In any action for rescission, revocation of the 348
transaction must occur within a reasonable time after the owner 349
discovers or should have discovered the ground for it and before 350
any substantial change in condition of the subject of the 351
transaction. 352

(C) Any owner may seek a declaratory judgment, an injunction, or other appropriate relief against an act or practice that violates this chapter. 353
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(D) The court may award to the prevailing party a reasonable attorney's fee limited to the work reasonably performed, if either of the following apply: 356
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(1) The owner complaining of the act or practice that violated this chapter has brought or maintained an action that is groundless, and the owner filed or maintained the action in bad faith; 359
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(2) The home construction service supplier has knowingly committed an act or practice that violates this chapter. 363
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(E) As used in this section, "actual economic damages" means damages for direct, incidental, or consequential pecuniary losses resulting from a violation of Chapter 4722. of the Revised Code and does not include damages for noneconomic loss as defined in section 2315.18 of the Revised Code. 365
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(F) Nothing in this section shall preclude an owner from also proceeding with a cause of action under any other theory of law. 370
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Section 2. That existing section 1345.01 of the Revised Code is hereby repealed. 372
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