

As Introduced

**129th General Assembly
Regular Session
2011-2012**

H. B. No. 604

Representative Patmon

—

A B I L L

To amend sections 4722.02 and 4745.01 and to enact 1
sections 4785.01 to 4785.17, 4785.20, and 4785.99 2
of the Revised Code to require licensure of 3
residential construction contractors and to create 4
the Residential Builders' and Maintenance and 5
Alteration Contractors' Licensing Board to 6
regulate the licensure and performance of 7
residential construction contractors. 8

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

Section 1. That sections 4722.02 and 4745.01 be amended and 9
sections 4785.01, 4785.02, 4785.03, 4785.04, 4785.05, 4785.06, 10
4785.07, 4785.08, 4785.09, 4785.10, 4785.11, 4785.12, 4785.13, 11
4785.14, 4785.15, 4785.16, 4785.17, 4785.20, and 4785.99 of the 12
Revised Code be enacted to read as follows: 13

Sec. 4722.02. (A) Except as provided in division (C) of this 14
section, no home construction service supplier shall perform any 15
home construction service the cost of which equals or exceeds 16
twenty-five thousand dollars unless the supplier enters into a 17
written home construction services contract with the owner. The 18
contract shall include all agreements and conditions related to 19
the home construction service, including all of the following: 20

(1) The supplier's name, physical business address, business telephone number, and taxpayer identification number, <u>and information regarding the supplier's license issued under Chapter 4785. of the Revised Code;</u>	21 22 23 24
(2) The owner's name, address, and telephone number;	25
(3) The address or location of the property where the home construction service is to be performed;	26 27
(4) A general description of the home construction service, including the goods and services to be furnished as part of the service;	28 29 30
(5) The anticipated date or time period the home construction service is to begin and the anticipated date or time period it is to be completed;	31 32 33
(6) The total estimated cost of the home construction service;	34 35
(7) Any cost of installation, delivery, or other cost that the total estimated cost does not cover;	36 37
(8) A copy of the supplier's certificate of insurance showing general liability coverage in an amount of not less than two hundred fifty thousand dollars;	38 39 40
(9) The dated signatures of the owner and the supplier.	41
(B)(1) If the total amount of reasonably unforeseen, but necessary, excess costs of a home construction service at any time exceeds five thousand dollars over the course of the entire home construction contract, prior to performing the work related to the excess costs, the home construction service supplier shall provide an owner with a notice that contains a written or oral estimate, depending on which type the owner has designated in the contract.	42 43 44 45 46 47 48
(2) To determine the type of notice an owner requires when the costs of a home construction service exceed the estimate	49 50

provided in the contract, the contract shall include a statement 51
in substantially the following language: 52

"EXCESS COSTS 53

IF AT ANY TIME A HOME CONSTRUCTION SERVICE REQUIRES EXTRA 54
COSTS ABOVE THE COST SPECIFIED OR ESTIMATED IN THE CONTRACT THAT 55
WERE REASONABLY UNFORESEEN, BUT NECESSARY, AND THE TOTAL OF ALL 56
EXTRA COSTS TO DATE EXCEEDS FIVE THOUSAND DOLLARS OVER THE COURSE 57
OF THE ENTIRE HOME CONSTRUCTION CONTRACT, YOU HAVE A RIGHT TO AN 58
ESTIMATE OF THOSE EXCESS COSTS BEFORE THE HOME CONSTRUCTION 59
SERVICE SUPPLIER BEGINS WORK RELATED TO THOSE COSTS. INITIAL YOUR 60
CHOICE OF THE TYPE OF ESTIMATE YOU REQUIRE: 61

..... written estimate oral estimate" 62

(3) If the contract stipulates that the specified cost of the 63
home construction service is a firm price and the home 64
construction service supplier will not charge the owner with any 65
excess costs, the home construction service supplier need not 66
comply with the notice requirements of this division. 67

(C) A home construction service supplier who enters into a 68
cost-plus contract with an owner for a home construction service 69
need not comply with the requirements in divisions (A) and (B) of 70
this section. 71

Sec. 4745.01. (A) "Standard renewal procedure," as used in 72
Chapters 905., 907., 909., 911., 913., 915., 918., 921., 923., 73
927., 942., 943., 953., 1321., 3710., 3713., 3719., 3742., 3748., 74
3769., 3783., 3921., 3951., 4104., 4105., 4143., 4169., 4561., 75
4703., 4707., 4709., 4713., 4715., 4717., 4723., 4725., 4727., 76
4728., 4729., 4731., 4733., 4734., 4735., 4739., 4741., 4747., 77
4749., 4752., 4753., 4755., 4757., 4758., 4759., 4761., 4766., 78
4773., ~~and~~ 4775., and 4785. of the Revised Code, means the license 79
renewal procedures specified in this chapter. 80

(B) "Licensing agency," as used in this chapter, means any 81
department, division, board, section of a board, or other state 82
governmental unit subject to the standard renewal procedure, as 83
defined in this section, and authorized by the Revised Code to 84
issue a license to engage in a specific profession, occupation, or 85
occupational activity, or to have charge of and operate certain 86
specified equipment, machinery, or premises. 87

(C) "License," as used in this chapter, means a license, 88
certificate, permit, card, or other authority issued or conferred 89
by a licensing agency by authority of which the licensee has or 90
claims the privilege to engage in the profession, occupation, or 91
occupational activity, or to have control of and operate certain 92
specific equipment, machinery, or premises, over which the 93
licensing agency has jurisdiction. 94

(D) "Licensee," as used in this chapter, means either the 95
person to whom the license is issued or renewed by a licensing 96
agency, or the person, partnership, or corporation at whose 97
request the license is issued or renewed. 98

(E) "Renewal" and "renewed," as used in this chapter and in 99
the chapters of the Revised Code specified in division (A) of this 100
section, includes the continuing licensing procedure provided in 101
Chapter 3748. of the Revised Code and rules adopted under it and 102
in sections 1321.05 and 3921.33 of the Revised Code, and as 103
applied to those continuing licenses any reference in this chapter 104
to the date of expiration of any license shall be construed to 105
mean the due date of the annual or other fee for the continuing 106
license. 107

Sec. 4785.01. As used in this chapter: 108

(A) "Nonresidential building" and "residential building" have 109
the same meanings as in section 3781.06 of the Revised Code. 110

(B) "Residential builder" means either of the following: 111

(1) A person who is engaged in the construction of a 112
residential building or a combination residential and 113
nonresidential building and who, for a fixed sum, price, fee, 114
percentage, valuable consideration, or other compensation other 115
than wages for personal labor only, undertakes with another or 116
offers to undertake or purports to have the capacity to undertake 117
with another for the erection, construction, replacement, repair, 118
alteration, or an addition to, subtraction from, improvement of, 119
wrecking of, or demolition of, a residential building or 120
combination residential and nonresidential building; 121

(2) A person who erects a residential building or combination 122
residential and nonresidential building. 123

(C) "Residential maintenance and alteration contractor" means 124
either of the following: 125

(1) A person who, for a fixed sum, price, fee, percentage, 126
valuable consideration, or other compensation other than wages for 127
personal labor only, undertakes with another for the repair, 128
alteration, or an addition to, subtraction from, improvement of, 129
wrecking of, or demolition of a residential building or 130
combination residential and nonresidential building, the building 131
of a garage, or laying of concrete on residential property; 132

(2) A person who engages in the purchase, substantial 133
rehabilitation or improvement, and resale of a residential 134
building, and who engages in that activity on the same building 135
more than twice in one calendar year. 136

(D)(1) "Salesperson" means an employee or agent, other than a 137
qualifying officer, of a residential builder or residential 138
maintenance and alteration contractor licensed under this chapter, 139
who for a salary, wage, fee, percentage, commission, or other 140
consideration, sells or attempts to sell, negotiates or attempts 141

to negotiate, solicits for or attempts to solicit for, obtains or 142
attempts to obtain a contract or commitment for, or furnishes or 143
attempts or agrees to furnish, the goods and services of a 144
residential builder or residential maintenance and alteration 145
contractor. 146

(2) "Salesperson" does not include a person working for a 147
residential builder or residential maintenance and alteration 148
contractor licensed under this chapter who makes sales that are 149
occasional and incidental to the person's principal employment. 150

(E) "Wages" means money paid or to be paid on an hourly or 151
daily basis by an owner, lessor, or occupant of a residential 152
building or combination residential and nonresidential building as 153
consideration for the performance of personal labor on the 154
structure by a person who does not perform or promise to perform 155
the labor for any other fixed sum, price, fee, percentage, 156
valuable consideration, or other compensation and who does not 157
furnish or agree to furnish the material or supplies required to 158
be used in the performance of the labor or an act listed in 159
division (B) or (C) of this section. 160

Sec. 4785.02. (A) Except as otherwise provided in division 161
(B) of this section, no person shall engage or attempt to engage 162
in the practice of a residential builder, residential maintenance 163
and alteration contractor, or salesperson unless the person is 164
licensed pursuant to this chapter. 165

(B) This chapter does not apply to any of the following 166
persons: 167

(1) An authorized representative of the United States 168
government, this state, or a political subdivision of this state; 169

(2) An owner of property, with reference to a residential 170
building on the property for the owner's own use and occupancy; 171

<u>(3) An owner of rental residential property, with reference</u>	172
<u>to the maintenance and alteration of that property;</u>	173
<u>(4) An officer of the court acting within the terms of the</u>	174
<u>officer's office;</u>	175
<u>(5) A person other than a salesperson who engages solely in</u>	176
<u>the business of performing work and services under contract with a</u>	177
<u>residential builder or a residential maintenance and alteration</u>	178
<u>contractor licensed under this chapter;</u>	179
<u>(6) A person working on one undertaking or project by one or</u>	180
<u>more contracts, the aggregate contract price for which labor,</u>	181
<u>material, and any other item is less than six hundred dollars;</u>	182
<u>(7) An electrical contractor who is licensed under Chapter</u>	183
<u>4740. of the Revised Code or who holds a certificate issued by the</u>	184
<u>state fire marshal pursuant to section 3737.65 of the Revised</u>	185
<u>Code, only with respect to the electrical installation,</u>	186
<u>maintenance, or repair work performed by the contractor;</u>	187
<u>(8) A plumbing contractor licensed under Chapter 4740. of the</u>	188
<u>Revised Code only with respect to plumbing installation,</u>	189
<u>maintenance, or repair work performed by the contractor;</u>	190
<u>(9) A heating, ventilating, and air conditioning contractor</u>	191
<u>licensed under Chapter 4740. of the Revised Code, only with</u>	192
<u>respect to any heating, ventilating, and air conditioning</u>	193
<u>installation, maintenance, or repair work performed by the</u>	194
<u>contractor;</u>	195
<u>(10) A refrigeration contractor licensed under Chapter 4740.</u>	196
<u>of the Revised Code, only with respect to refrigeration</u>	197
<u>installation, maintenance, or repair work performed by the</u>	198
<u>contractor.</u>	199
<u>(C) The exemption described in division (B)(6) of this</u>	200
<u>section does not apply if the work is only a part of a larger or</u>	201

major operation, regardless of whether the operation is undertaken 202
by the same or a different residential builder or residential 203
maintenance and alteration contractor, or in which a division of 204
the operation is made in contracts of amounts less than six 205
hundred dollars to evade compliance with this chapter. 206

Sec. 4785.03. (A) There is hereby created in the department 207
of commerce the residential builders' and maintenance and 208
alteration contractors' board. The board shall consist of the 209
following nine members, who shall be appointed by the governor 210
with the advice and consent of the senate: 211

(1) Four members who are residential builders licensed under 212
this chapter; 213

(2) Two members who are maintenance and alteration 214
contractors licensed under this chapter; 215

(3) Three members who represent the general public, one of 216
whom is certified under section 3781.10 of the Revised Code to 217
inspect residential buildings. 218

(B) Each member of the board shall be at least eighteen years 219
of age and shall be a resident of this state. The director of 220
commerce is an ex officio member of the board and shall not vote 221
on any matter before the board and is not a member for purposes of 222
determining whether a quorum is present. In making appointments to 223
the board, the governor shall seek nominations from a wide range 224
of interested groups and persons, including appropriate 225
professional associations, consumer associations, labor unions, 226
and other organizations or individuals. 227

(C) Not later than ninety days after the effective date of 228
this section, the governor shall make the initial appointments to 229
the board. Of the initial appointments to the board, one member 230
representing residential builders, one member representing 231

residential maintenance and alteration contractors, and one member 232
representing the general public shall be appointed for terms of 233
four years; two members representing residential builders and one 234
member representing the general public shall be appointed for 235
terms of three years; and the remaining members shall be appointed 236
for a term of two years. Thereafter, each term shall be for four 237
years, ending on the same day of the same month as the term that 238
it succeeds. Each member shall hold office from the date of 239
appointment until the end of the term for which appointed. 240
Vacancies shall be filled in the manner provided for original 241
appointments. A member appointed to fill a vacancy prior to the 242
expiration of a term shall hold office for the remainder of that 243
term. A member shall continue in office subsequent to the 244
expiration of the term until the member's successor takes office. 245
No member may be appointed for more than two consecutive terms of 246
four years. 247

(D) Each member of the board shall be paid an amount fixed 248
pursuant to division (J) of section 124.15 of the Revised Code for 249
each day or portion thereof spent in the discharge of the member's 250
official duties and shall be reimbursed for the member's actual 251
and necessary expenses incurred in the discharge of those duties. 252

(E) The board shall meet as often as necessary to fulfill its 253
duties under this chapter, but shall meet not less than twice a 254
year and at other dates set by the director. A majority of the 255
members appointed and serving shall constitute a quorum. A member 256
of a board shall not vote by proxy. 257

(F) The board annually shall elect a chairperson, a 258
vice-chairperson, and other officers the board determines 259
necessary. The board may adopt bylaws for the regulation of its 260
internal affairs. The board shall report its activities to the 261
director annually and at any additional time as the director 262
requests. 263

<u>Sec. 4785.04. (A) The residential builders' and maintenance</u>	264
<u>and alteration contractors' board shall do all of the following:</u>	265
<u>(1) Interpret a licensure requirement of this chapter, and,</u>	266
<u>if necessary, furnish aid in an investigation conducted under</u>	267
<u>section 4785.10 of the Revised Code;</u>	268
<u>(2) Assist the director of commerce in implementing this</u>	269
<u>chapter;</u>	270
<u>(3) Adopt any rules as required under this chapter that are</u>	271
<u>necessary and appropriate in accordance with Chapter 119. of the</u>	272
<u>Revised Code;</u>	273
<u>(4) Impose, after a hearing conducted pursuant to Chapter</u>	274
<u>119. of the Revised Code, any penalties that the board determines</u>	275
<u>appropriate in accordance with sections 4785.12 and 4785.13 of the</u>	276
<u>Revised Code;</u>	277
<u>(5) Aid the director in interpreting a licensure requirement</u>	278
<u>set forth in this chapter that is incomplete or subjective in</u>	279
<u>nature to determine whether the person seeking a license or a</u>	280
<u>renewal has satisfied the requirements for the license or renewal;</u>	281
<u>(6) Develop with the director the examinations required under</u>	282
<u>sections 4785.05 and 4785.09 of the Revised Code.</u>	283
<u>(B) The examinations developed by the board and the director</u>	284
<u>pursuant to division (A)(6) of this section shall test an</u>	285
<u>applicant's or licensee's knowledge of the obligations of a</u>	286
<u>residential builder or residential maintenance and alteration</u>	287
<u>contractor to the public and to the applicant's or licensee's</u>	288
<u>principal, and the applicant's or licensee's knowledge of the laws</u>	289
<u>relating to the license for which the applicant applied or that</u>	290
<u>the licensee holds.</u>	291
<u>The board and the director, in developing the examination</u>	292
<u>under that division, may adopt an examination or test prepared by</u>	293

another agency if the board and the director determine that the 294
examination or test serves as a basis for determining whether a 295
person has the knowledge and skills to perform as a residential 296
builder, residential maintenance and alteration contractor, or 297
salesperson. Notwithstanding section 121.22 of the Revised Code, 298
the material required by the board and the director to develop an 299
examination may be considered by the board in an executive 300
session, if the board satisfies the requirements of division (G) 301
of that section. The board and the director, in determining the 302
form of the recommended examination, shall give special emphasis 303
to an alternative form of testing that permits a person to 304
demonstrate a special qualification the person may have that is 305
not evident under a written examination, but is related to being a 306
residential builder, residential maintenance and alteration 307
contractor, or salesperson. The alternative form of testing shall 308
be structured to give weight to a person's experience, 309
noninstitutional training, and innate skills and shall be flexible 310
enough to enable a person with a mental or physical disability to 311
demonstrate that the person has the requisite knowledge and 312
skills. 313

(C)(1) A member of the board, at the discretion of the board, 314
may attend an informal conference conducted under section 4785.14 315
of the Revised Code. 316

(2) The board may adopt rules to establish the minimum 317
standards of acceptable practice as a residential builder, 318
residential maintenance and alteration contractor, or salesperson. 319

Sec. 4785.05. (A) The director of commerce shall issue a 320
license to an applicant for a residential builder license, 321
residential maintenance and alteration contractor license, or a 322
salesperson license if the applicant does all of the following: 323

(1) Satisfactorily demonstrates to the director that the 324

applicant is of good moral character and is financially stable; 325

(2) Submits a copy of a driver's license, commercial driver's license, or state identification card issued pursuant to Chapter 4506. or 4507. of the Revised Code or the equivalent law of another state, to demonstrate proof of identity; 326
327
328
329

(3) Passes the examination described in divisions (A)(6) and (B) of section 4785.04 of the Revised Code; 330
331

(4) Maintains a principal place of business in this state; 332

(5) Pays the fees required under section 4785.20 of the Revised Code. 333
334

(B) An applicant for a salesperson license is not required to satisfy the requirement described in division (A)(4) of this section to receive a salesperson license. 335
336
337

(C) Notwithstanding division (A) of this section, a person or qualifying officer for a corporation or member of a partnership or other business association who holds a residential builder or residential maintenance and alteration contractor license is not required to retake an examination for that license when applying for an additional license. However, a residential maintenance and alteration contractor who holds a license and applies for a license as a residential builder is required to take an examination for the residential builder license. 338
339
340
341
342
343
344
345
346

(D) A residential builder or residential maintenance and alteration contractor shall submit the application for a salesperson license on behalf of an employee of the builder or contractor who wishes to be licensed as a salesperson. 347
348
349
350

(E) If a residential builder or residential maintenance and alteration contractor has more than one place of business in this state, the director shall issue a branch license to the residential builder or residential maintenance and alteration 351
352
353
354

contractor for each place of business maintained. A residential 355
builder or residential maintenance and alteration contractor shall 356
submit an application to the director for each branch office. 357

(F) A residential builder or residential maintenance and 358
alteration contractor licensed under this chapter shall report to 359
the director a change of name or address or a change of members or 360
addresses of the partnership, association, or corporation holding 361
a license under this chapter within thirty days after the change 362
occurs. 363

Sec. 4785.06. (A)(1) A person issued a license as a 364
residential maintenance and alteration contractor under section 365
4785.05 of the Revised Code is authorized to engage in the 366
following crafts or trades: 367

(a) Carpentry; 368

(b) Concrete; 369

(c) Swimming pool installation; 370

(d) Waterproofing a basement; 371

(e) Excavation; 372

(f) Insulation work; 373

(g) Masonry work; 374

(h) Painting and decorating; 375

(i) Roofing; 376

(j) Siding and gutters; 377

(k) Screen or storm sash installation; 378

(l) Tile and marble work; 379

(m) House wrecking. 380

(2) The director of commerce shall specify on the license the 381

particular craft or trade for which the licensee is qualified to 382
perform. Nothing in this section prohibits a residential 383
maintenance and alteration contractor from taking and executing a 384
contract involving the use of two or more crafts or trades if the 385
performance of the work in the craft or trade other than the craft 386
or trade for which the contractor is licensed is incidental and 387
supplemental to the performance of work in the craft or trade for 388
which the contractor is licensed. 389

(B) A salesperson shall be licensed in the employ of only one 390
residential builder or residential maintenance and alteration 391
contractor. If a licensed salesperson wishes to change employment 392
from one residential builder or residential maintenance and 393
alteration contractor to another, the salesperson shall forward 394
the license to the director of commerce and the new residential 395
builder or residential maintenance and alteration contractor shall 396
apply for a transfer and the issuance of a new license under the 397
salesperson's new employer. 398

Sec. 4785.07. If a corporation, partnership, association, 399
limited liability company, or other entity applies for a license 400
under section 4785.05 of the Revised Code, the applicant shall 401
designate one of its officers, partners, members, or managing 402
agents as a qualifying officer who, upon taking and passing the 403
examination, and satisfying all other requirements of this 404
chapter, shall receive a license to act for the entity. The 405
qualifying officer also shall obtain and maintain a license under 406
this chapter as an individual. The qualifying officer is 407
responsible for exercising the supervision or control of the 408
building or construction operations necessary to secure full 409
compliance with this chapter and the rules adopted under it. The 410
director of commerce shall not issue a license to a corporation, 411
partnership, association, limited liability company, or other 412
entity unless each partner, trustee, director, officer, or member 413

or a person exercising control of the entity is at least eighteen 414
years of age and satisfies the requirements for a license under 415
section 4785.05 of the Revised Code other than those requirements 416
relating to knowledge and experience. If an individual licensee is 417
also a qualifying officer, the director shall list the 418
individual's name and license number on any license issued to the 419
individual as a qualifying officer. In the case of a license 420
issued under this section, each officer, partner, member, or 421
managing agent, regardless of whether the person is the qualifying 422
officer, shall provide a copy of the person's driver's license, 423
commercial driver's license, or state identification card issued 424
pursuant to Chapter 4506. or 4507. of the Revised Code or the 425
equivalent law of another state for use by the director only for 426
identification purposes. 427

The license issued to a corporation, partnership, 428
association, limited liability company, or other entity is 429
suspended when a license or license application of a qualifying 430
officer, partner, trustee, director, officer, member, or a person 431
exercising control of the entity is suspended, revoked, or denied. 432
The suspension remains in effect until the residential builders' 433
and maintenance and alteration contractors' board determines that 434
the disability created by the suspension, revocation, or denial 435
has been removed. 436

If a qualifying officer of a licensee ceases to be the 437
licensee's qualifying officer, the licensee's license is 438
suspended. However, upon request, the director may permit the 439
license to remain in force for a reasonable time to permit the 440
qualification of a new qualifying officer. 441

Sec. 4785.08. Notwithstanding division (A)(4) of section 442
4785.05 of the Revised Code, the director of commerce may issue a 443
license under that section to an applicant who does not have a 444

principal place of business in this state if the applicant 445
otherwise complies with this chapter. The director shall not issue 446
a license to a foreign corporation as defined in section 1701.01 447
of the Revised Code unless the corporation is authorized to do 448
business in this state by the secretary of state. The applicant 449
shall file an irrevocable consent to service of process. The 450
consent shall be signed by the applicant or by an authorized 451
officer, member, or partner of the applicant and shall be 452
notarized. If the applicant is a corporation, the consent shall be 453
accompanied by a certified copy of the resolution of the 454
corporation authorizing the consent. A process or pleading served 455
upon the director shall be sufficient service upon the licensee. A 456
process or pleading served upon the director under this section 457
shall be in duplicate. The director immediately shall forward by 458
registered mail one copy of the process or pleading to the main 459
office of the licensee served. 460

Sec. 4785.09. A license issued under section 4785.05 or 461
4785.08 of the Revised Code is valid for a period of three years 462
after the date the license is issued. The license shall be renewed 463
in accordance with the standard renewal procedure under Chapter 464
4745. of the Revised Code, except that, notwithstanding section 465
4745.02 of the Revised Code, the director of commerce shall cause 466
to be mailed the notice and renewal application for a residential 467
builder or residential maintenance and alteration contractor 468
license on or before the sixtieth day prior to the expiration of 469
the license. The director shall renew a salesperson license if the 470
licensee so requests and pays the fee listed in section 4785.20 of 471
the Revised Code. To renew a residential builder license or 472
residential maintenance and alteration contractor license, a 473
licensee shall do all of the following: 474

(A) State in the renewal application that the licensee has a 475

current copy of the residential building code in effect in the 476
area where the licensee performs work; 477

(B) Pass the examination described in divisions (A)(6) and 478
(B) of section 4785.04 of the Revised Code; 479

(C) Pay the fees listed in section 4785.20 of the Revised 480
Code for the examination and renewal. 481

For purposes of section 4745.02 of the Revised Code, the 482
director shall not accept a renewal application for a residential 483
builder or residential alteration and maintenance contractor 484
license until the licensee passes the required examination. 485

Sec. 4785.10. (A) Any person may file a complaint with the 486
director of commerce that alleges that a person has violated this 487
chapter or a rule adopted or order issued under it. A complaint 488
shall be filed not later than eighteen months after the latest of 489
the following events regarding a residential building or a 490
combination of residential and nonresidential building: 491

(1) In the case of a residential maintenance and alteration 492
contract, completion of the contract or occupancy or purchase of 493
the building; 494

(2) In the case of a project involving construction of a new 495
residential building or requiring an occupancy permit, issuance of 496
the certificate of occupancy or temporary certificate of occupancy 497
or closing. 498

(B) A person shall describe in writing in the complaint 499
submitted to the director the factual basis for the allegation. 500
The person shall send a copy of the initial complaint to the 501
licensee identified in the complaint concurrent with the 502
submission of the complaint to the director. 503

(C) If the complaint is filed by an owner of a building, the 504
director shall proceed with an investigation only if the owner 505

demonstrates that the owner provided notice to the licensee 506
describing reasonable times and dates that the building was 507
accessible for any needed repairs and submits proof acceptable to 508
the director that the repairs were not made within sixty days 509
after the date the notice was sent. The director may waive the 510
requirements of this division if the director determines that a 511
waiver is necessary to safeguard the building or to protect an 512
occupant's health and safety. If the director waives the 513
requirements, the director may utilize any remedy available under 514
division (A) of section 4785.11 of the Revised Code. 515

(D) The director, upon receipt of a complaint, immediately 516
shall begin an investigation of the allegations of the complaint 517
and shall open a correspondence file. The director shall make a 518
written acknowledgment of the complaint within fifteen days after 519
receipt of the complaint to the person making the complaint. If 520
the complaint is made by the director, the director shall 521
designate one or more employees of the director to act as the 522
person making the complaint. The director shall conduct the 523
investigation. 524

(E) The director shall request the appropriate building 525
official to inspect the property that is the subject of the 526
complaint. Upon receipt of a building inspection report issued to 527
the director by a state or local building enforcement official 528
that verifies or confirms the substance of a complaint, the 529
director shall send by certified mail a copy of the verified 530
complaint to the licensee. If the director does not send a copy of 531
the verified complaint within thirty days after receipt of the 532
building inspection report, the residential builders' and 533
maintenance and alteration contractors' board shall not assess a 534
fine against the licensee under section 4785.13 of the Revised 535
Code, but the director may pursue restitution, license suspension, 536
or other remedies provided under that section. 537

(F) If the owner and a licensed residential builder or residential maintenance and alteration contractor have agreed contractually on mutually acceptable performance guidelines relating to workmanship, the director shall consider those guidelines in the director's evaluation of the complaint. The guidelines shall be consistent with the residential building code adopted pursuant to Chapter 3781. of the Revised Code. 538
539
540
541
542
543
544

(G) In furtherance of an investigation, the director may request that the attorney general petition a court of competent jurisdiction to issue a subpoena requiring a person to appear before the director and be examined with reference to a matter within the scope of the investigation and to produce books, papers, or documents pertaining to the investigation. 545
546
547
548
549
550

Sec. 4785.11. (A) The director of commerce shall conclude an investigation conducted under section 4785.10 of the Revised Code within thirty days after the complaint is filed. The director may take additional time if the director gives the parties to the complaint written notice of the extension before the initial thirty-day period expires. 551
552
553
554
555
556

If the investigation does not disclose a violation of this chapter or a rule adopted or an order issued under it, the director shall close the complaint. The director shall forward the reasons for closing the complaint to the parties, who then may provide additional information to reopen the complaint. 557
558
559
560
561

If the investigation discloses evidence of a violation, the director shall prepare the appropriate action against the person, which may be any of the following: 562
563
564

(1) A formal complaint; 565

(2) A cease and desist order; 566

(3) Summary suspension; 567

<u>(4) A citation.</u>	568
<u>(B)(1) If the director issues a formal complaint under</u>	569
<u>division (A)(1) of this section, the director shall serve the</u>	570
<u>formal complaint upon the parties to the complaint. At the same</u>	571
<u>time, the director shall serve the respondent with a notice that</u>	572
<u>includes both of the following:</u>	573
<u>(a) An offer to choose one of the following:</u>	574
<u>(i) An opportunity to meet with the director to negotiate a</u>	575
<u>settlement of the matter;</u>	576
<u>(ii) An opportunity for a hearing under Chapter 119. of the</u>	577
<u>Revised Code.</u>	578
<u>(b) A description of the process for an informal conference</u>	579
<u>under section 4785.14 of the Revised Code and for a hearing under</u>	580
<u>Chapter 119. of the Revised Code.</u>	581
<u>(2) The respondent, within fifteen days after the receipt of</u>	582
<u>notice described in division (B)(1) of this section, shall select</u>	583
<u>one of the options described in that division. If a respondent</u>	584
<u>does not select one of those options within that time period, then</u>	585
<u>the director shall proceed with a hearing held under Chapter 119.</u>	586
<u>of the Revised Code.</u>	587
<u>(C) If a cease and desist order has been issued under</u>	588
<u>division (A)(2) of this section, the person ordered to cease and</u>	589
<u>desist may request a hearing in accordance with Chapter 119. of</u>	590
<u>the Revised Code. Upon a violation of a cease and desist order,</u>	591
<u>the attorney general may apply in a court with appropriate</u>	592
<u>jurisdiction to restrain and enjoin, temporarily or permanently,</u>	593
<u>or both, the person from further violating the cease and desist</u>	594
<u>order.</u>	595
<u>(D) The director may issue a summary suspension under</u>	596
<u>division (A)(3) of this section based on an affidavit by a person</u>	597

familiar with the facts set forth in the affidavit, or, if 598
appropriate, based upon an affidavit on information and belief 599
that an imminent threat to the public health, safety, and welfare 600
exists. 601

(E)(1) A citation issued pursuant to division (A)(4) of this 602
section shall contain all of the following: 603

(a) The date of the citation; 604

(b) The name and title of the individual issuing the 605
citation; 606

(c) The name and address of the respondent, indicating that 607
the respondent is being cited for a violation of this chapter or 608
rules adopted or orders issued under it; 609

(d) A brief description of the conduct or conditions that are 610
considered to be a violation and a reference to the section of the 611
chapter, the rule, or the order the respondent is alleged to have 612
violated; 613

(e) The proposed penalties or actions required for 614
compliance, including the payment of a fine that shall not exceed 615
one hundred dollars for each violation; 616

(f) A space for the respondent to sign as a receipt for the 617
citation; 618

(g) A space for the respondent to indicate that the 619
respondent accepts the citation and agrees to comply or to 620
indicate that the respondent contests the violation contained in 621
the citation; 622

(h) A notice that the respondent must accept or reject the 623
terms of the citation within thirty days after the date of the 624
citation; 625

(i) A brief description of the hearing process under Chapter 626
119. of the Revised Code and the process for settlement through an 627

informal conference as described in section 4785.14 of the Revised Code. 628
629

(2) The director may send a citation to a respondent by certified mail, return receipt requested, or an employee of the department of commerce may deliver the citation in person. 630
631
632

(3) If a respondent accepts the conditions set forth in a citation, the respondent, within thirty days after receiving the citation, shall sign the citation and return it to the director along with any fine or other material required to be submitted by the terms of the citation. The citation and accompanying material shall be placed in the person's records with the director, indicating the nature of the violation and that the person accepted the conditions imposed. A citation issued under this section shall have the same force and effect as a final order issued by the residential builders' and maintenance and alteration contractors' board and may be disclosed to the public. If no further disciplinary actions are placed upon the person's record within five calendar years after the date the citation is issued, the director shall remove the citation and accompanying material from the records. If a respondent so chooses, a one-page explanation prepared by the respondent shall be placed in the director's files and shall be disclosed each time the issuance of the citation is disclosed. 633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650

(4) If a respondent does not admit to the violation cited, the respondent may state that fact on the citation and return one copy to the director within the thirty days after the date of the citation. Upon receiving a copy of the citation not admitting to the violation, the director shall implement the process described in division (B) of this section, with the citation serving as the formal complaint. 651
652
653
654
655
656
657

(5) The signing of a citation as an indication that the citation was received by the respondent shall be considered to be 658
659

only a receipt of, not an admission to, the violation cited. 660

Sec. 4785.12. (A) If a licensee or respondent fails to appear 661
or participate in or defend any action, the residential builders' 662
and maintenance and alteration contractors' board shall issue an 663
order granting by default the relief requested, based upon proof 664
submitted to and findings made by a hearing examiner after a 665
hearing conducted under Chapter 119. of the Revised Code. 666

(B) Within sixty days after receipt of a hearing examiner's 667
report, the board shall meet and make a determination of the 668
penalties or disciplinary action to be assessed under section 669
4785.13 of the Revised Code. The board shall make the 670
determination based on the hearing examiner's report. If the board 671
does not determine the appropriate penalty to be assessed or 672
action to be taken within that time period, the director of 673
commerce may determine the appropriate penalty and issue a final 674
order. A member of the board who has participated in an 675
investigation of a complaint filed with the director or who has 676
attended an informal conference under section 4785.14 of the 677
Revised Code shall not participate in making a final determination 678
regarding that complaint. 679

Sec. 4785.13. (A) A licensee or applicant who commits one or 680
more of the following actions may be subject to any of the 681
disciplinary actions set forth in division (B) of this section: 682

(1) Abandonment without legal excuse of a contract, 683
construction project, or operation relating to an activity 684
described in division (B), (C), or (D) of section 4785.01 of the 685
Revised Code that is engaged in or undertaken by the licensee; 686

(2) Diversion of funds or property received for prosecution 687
or completion of a specific construction project or operation, or 688
for a specified purpose in the prosecution or completion of a 689

construction project or operation, and the funds or property are 690
applied or used for another construction project or operation, 691
obligation, or purposes; 692

(3) Failure to account for or remit money coming into the 693
person's possession that belongs to others; 694

(4) A willful departure from or disregard of plans or 695
specifications in a material respect and prejudicial to another, 696
without consent of the owner or an authorized representative and 697
without the consent of the person entitled to have the particular 698
construction project or operation completed in accordance with the 699
plans and specifications; 700

(5) A willful violation of the building laws of this state or 701
of a political subdivision of this state; 702

(6) In a residential maintenance and alteration contract, 703
failure to furnish to a lender the purchaser's signed completion 704
certificate executed upon completion of the work to be performed 705
under the contract; 706

(7) If an individual is a licensed residential builder or 707
licensed residential maintenance and alteration contractor, 708
failure to notify the director of commerce within ten days after a 709
change in the control or direction of the licensee's business 710
resulting from a change in the licensee's partners, directors, 711
officers, or trustees, or a change in the control or direction of 712
the licensee's business resulting from any other occurrence or 713
event; 714

(8) Failure to deliver to the purchaser the entire agreement 715
of the parties, including any finance or other charge arising out 716
of or incidental to the agreement if the agreement involves 717
repair, alteration, or addition to, subtraction from, improvement 718
of, wrecking of, or demolition of a residential building or 719
combination of residential and nonresidential building, or the 720

building of a garage or laying of concrete on residential 721
property; 722

(9) If the licensee is a salesperson, failure to pay over 723
immediately upon receipt money received by the salesperson, in 724
connection with a transaction governed by this chapter to the 725
residential builder or residential maintenance and alteration 726
contractor under whom the salesperson is licensed; 727

(10) Aiding or abetting an unlicensed person to evade this 728
chapter, or knowingly combining or conspiring with, or acting as 729
agent, partner, or associate for an unlicensed person, allowing 730
one's license to be used by an unlicensed person, or acting as or 731
being an ostensible licensed residential builder or licensed 732
residential maintenance and alteration contractor for an 733
undisclosed person who does or has the right to control or direct, 734
or who may have the right to control or direct, directly or 735
indirectly, the operations of a licensee; 736

(11) Accepting a commission, bonus, or other valuable 737
consideration by a salesperson for the sale of goods or the 738
performance of service specified in this chapter from a person 739
other than the residential builder or residential maintenance and 740
alteration contractor under whom the person is licensed; 741

(12) Becoming insolvent, filing a bankruptcy action, becoming 742
subject to a receivership, assigning for the benefit of creditors, 743
failing to satisfy judgments or liens, or failing to pay an 744
obligation as it becomes due in the ordinary course of business; 745

(13) Performing work that does not meet the standards of the 746
applicable residential code; 747

(14) Practicing fraud or deceit in obtaining a license; 748

(15) Practicing fraud, deceit, or dishonesty as a residential 749
builder, residential maintenance and alteration contractor, or 750
salesperson; 751

<u>(16) Violating a rule of conduct of a residential builder,</u>	752
<u>residential maintenance and alteration contractor, or salesperson;</u>	753
<u>(17) Demonstrating a lack of good moral character;</u>	754
<u>(18) Committing an act of gross negligence in practicing as a</u>	755
<u>residential builder, residential maintenance and alteration</u>	756
<u>contractor, or salesperson;</u>	757
<u>(19) Practicing false advertising;</u>	758
<u>(20) Committing an act that demonstrates incompetence;</u>	759
<u>(21) Violating any other provision of this chapter or a rule</u>	760
<u>adopted under this chapter for which a penalty is not otherwise</u>	761
<u>prescribed;</u>	762
<u>(22) Failing to comply with a subpoena issued under this</u>	763
<u>chapter;</u>	764
<u>(23) Failing to respond to a citation as required by section</u>	765
<u>4785.11 of the Revised Code;</u>	766
<u>(24) Violating or failing to comply with a final order issued</u>	767
<u>by the director, including a stipulation, settlement agreement, or</u>	768
<u>a citation.</u>	769
<u>(B) The residential builders' and maintenance and alteration</u>	770
<u>contractors' board may do any of the following with respect to a</u>	771
<u>person who commits an act described in division (A) of this</u>	772
<u>section:</u>	773
<u>(1) Place a limitation on a license;</u>	774
<u>(2) Suspend a license;</u>	775
<u>(3) Deny issuance or renewal of a license;</u>	776
<u>(4) Revoke a license;</u>	777
<u>(5) Assess a fine against a licensee, not to exceed ten</u>	778
<u>thousand dollars per violation;</u>	779

<u>(6) Censure;</u>	780
<u>(7) Place a licensee on probation;</u>	781
<u>(8) Require that restitution be made, based upon proof</u>	782
<u>submitted to and findings made by the hearing examiner after a</u>	783
<u>hearing.</u>	784
<u>(C) If restitution is required to be made under division</u>	785
<u>(B)(8) of this section, the board may suspend the license of the</u>	786
<u>person required to make the restitution until the restitution is</u>	787
<u>made.</u>	788
<u>(D) A suspension, revocation, or denial of a license of a</u>	789
<u>person shall suspend, revoke, or deny any other license held or</u>	790
<u>applied for by that person issued under this chapter. A</u>	791
<u>suspension, revocation, or denial of a license held by a</u>	792
<u>qualifying officer of a corporation, partnership, association,</u>	793
<u>limited liability company, or other entity by the board shall</u>	794
<u>suspend, revoke, or deny any other license held or applied for</u>	795
<u>under this chapter by that qualifying officer.</u>	796
<u>Sec. 4785.14. (A) A residential builder or residential</u>	797
<u>maintenance and alteration contractor licensed under this chapter</u>	798
<u>may contractually provide for an alternative dispute resolution</u>	799
<u>procedure to resolve complaints filed with the director of</u>	800
<u>commerce. The procedure shall be conducted by a neutral third</u>	801
<u>party for determining the rights and responsibilities of the</u>	802
<u>parties and shall be initiated by the licensee, who shall provide</u>	803
<u>notice of the initiation of the procedure to the complainant by</u>	804
<u>certified mail not less than thirty days before the commencement</u>	805
<u>of that procedure. The procedure shall be conducted at a location</u>	806
<u>mutually agreed to by the parties.</u>	807
<u>(B) Failure of the person bringing a complaint against a</u>	808
<u>licensee to utilize a contractually provided alternative dispute</u>	809

resolution procedure shall be an affirmative defense to an action 810
brought in a court of this state against a licensee under this 811
chapter. 812

The director may initiate a proceeding against a licensee 813
under section 4785.11 of the Revised Code if the licensee has 814
contractually provided for an alternative dispute resolution 815
procedure that has not been utilized and completed, only if any of 816
the following apply: 817

(1) The licensee has not complied with a decision or order 818
issued as a result of that alternative dispute resolution 819
procedure. 820

(2) That alternative dispute resolution procedure was not 821
fully completed within ninety days after the filing of the 822
complaint with the director. 823

(3) An alternative dispute resolution procedure meeting the 824
requirements of division (A) of this section is not available to 825
the complainant. 826

(C) At any time during an investigation under section 4785.10 827
of the Revised Code or after the issuance of a formal complaint, 828
the director may bring together the parties to a complaint for an 829
informal conference. At the informal conference, the director 830
shall attempt to resolve issues raised in the complaint and may 831
attempt to aid the parties in reaching a formal settlement or 832
stipulation. 833

A member of the residential builders' and maintenance and 834
alteration contractors' board, at the discretion of the board, may 835
attend an informal conference. An informal conference may result 836
in a settlement, consent order, waiver, default, or other method 837
of settlement agreed upon by the parties and the director. A 838
settlement may include the denial, revocation, suspension, or 839
limitation of a license; fine; censure; probation; or restitution. 840

The board may reject a settlement and require a hearing under 841
Chapter 119. of the Revised Code. 842

If an informal conference is not held or does not result in a 843
settlement of a complaint, a hearing pursuant to Chapter 119. of 844
the Revised Code shall be held. A member of the board may attend a 845
hearing. 846

Sec. 4785.15. (A) A residential builder or residential 847
maintenance and alteration contractor shall not bring or maintain 848
an action in a court of this state for the collection of 849
compensation for the performance of an act or contract for which a 850
license is required under this chapter without proving that the 851
residential builder or residential maintenance and alteration 852
contractor was licensed under this chapter during the performance 853
of the act or contract. 854

(B) A residential builder or residential maintenance and 855
alteration contractor shall not impose or take any legal or other 856
action to impose a lien on real property unless that builder or 857
contractor was licensed under this chapter during the performance 858
of the act or contract. 859

(C) Divisions (A) and (B) of this section apply only to 860
contracts entered into on or after the effective date of division 861
(A) of section 4785.02 of the Revised Code. 862

Sec. 4785.16. (A) A prosecuting attorney or the attorney 863
general may bring an action for a civil violation in a court of 864
competent jurisdiction against a person not licensed under this 865
chapter who has violated division (A) of section 4785.02 of the 866
Revised Code. The court shall assess a civil fine of not less than 867
five thousand dollars and not more than twenty-five thousand 868
dollars and any additional civil damages or restitution the court 869
considers appropriate. 870

(B) If the attorney general considers it necessary, the attorney general shall intervene in and prosecute all cases arising under this chapter. Nothing in this division prohibits the director of commerce from bringing any civil, criminal, or administrative action for the enforcement of division (A) section 4785.02 of the Revised Code. The director has standing to bring an administrative action or to directly bring an action in a court of competent jurisdiction regarding unlicensed practice of an occupation. 871-879

(C) The attorney general or the appropriate prosecuting attorney may utilize the forfeiture provisions of Chapter 2981. of the Revised Code for items seized and determined to be proceeds of a crime, substituted proceeds of a crime, or the instrumentality of a crime. 880-884

Sec. 4785.17. The director of commerce shall post on the web site maintained by the department of commerce any final order of the residential builders' and maintenance and alteration contractors' board and the date the order was issued. The director shall post the order within thirty days after the order is issued. 885-889

The director annually shall post on the web site the number of final orders of the board. 890-891

Sec. 4785.20. (A) The director of commerce shall charge the following fees with respect to administering this chapter: 892-893

(1) An application processing fee of fifteen dollars; 894

(2) A fee of fifty dollars to take the complete examination for a license or renewal of a license as a residential builder or residential maintenance and alteration contractor; 895-897

(3) A fee of thirty dollars to take the law and rules portion of the examination for a license or renewal of a license as a residential builder or residential maintenance and alteration 898-900

<u>contractor;</u>	901
<u>(4) A fee of thirty dollars to take the practice or trades</u>	902
<u>portion of the examination for a license or renewal of a license</u>	903
<u>as a residential builder or residential maintenance and alteration</u>	904
<u>contractor;</u>	905
<u>(5) A fee of thirty dollars to take the salesperson</u>	906
<u>examination;</u>	907
<u>(6) An examination review fee of twenty dollars;</u>	908
<u>(7) A license and renewal fee of fifty dollars;</u>	909
<u>(8) A late renewal fee of twenty dollars;</u>	910
<u>(9) A duplicate license fee of ten dollars;</u>	911
<u>(10) A change of name, address, or employer fee of ten</u>	912
<u>dollars if the change results in the issuance of a new document.</u>	913
<u>(B) There is hereby created in the state treasury the builder</u>	914
<u>enforcement fund. The director shall deposit any fees and fines</u>	915
<u>the director receives under this chapter into the fund. The</u>	916
<u>director shall use the fund to enforce this chapter and to</u>	917
<u>reimburse the attorney general for the reasonable cost of services</u>	918
<u>provided to the director and for expenses incurred in prosecutions</u>	919
<u>for unlicensed practice or a prosecuting attorney for expenses</u>	920
<u>incurred in conducting prosecutions of unlicensed practice.</u>	921
<u>Sec. 4785.99. Whoever violates division (A) of section</u>	922
<u>4785.02 of the Revised Code is guilty of a misdemeanor, punishable</u>	923
<u>by a fine of not less than five thousand dollars or more than</u>	924
<u>twenty-five thousand dollars, imprisonment for not more than one</u>	925
<u>year, or both. If the offender has been previously convicted of a</u>	926
<u>violation of that division, the person is guilty of a misdemeanor</u>	927
<u>punishable by a fine of not less than five thousand dollars or</u>	928
<u>more than twenty-five thousand dollars, imprisonment for not more</u>	929
<u>than two years, or both. In the case of an offense that causes</u>	930

death or serious injury, the person is guilty of a felony 931
punishable by a fine of not less than five thousand dollars or 932
more than twenty-five thousand dollars, imprisonment for not more 933
than four years, or both. 934

Section 2. That existing sections 4722.02 and 4745.01 of the 935
Revised Code are hereby repealed. 936

Section 3. Division (A) of section 4785.02 of the Revised 937
Code, as enacted by this act, shall take effect one hundred eighty 938
days after the effective date of this act. 939

Section 4. (A) Notwithstanding section 4785.03 of the Revised 940
Code, as enacted by this act, the Governor may appoint, as the 941
initial members of the Residential Builders' and Maintenance and 942
Alteration Contractors' Board who are required to be licensed 943
under that section, an individual who satisfies either of the 944
following qualifications: 945

(1) The individual is certified or otherwise approved by a 946
national organization that certifies or otherwise approves 947
individuals in the occupation to be licensed by the Board. 948

(2) The individual has actively engaged in the business of a 949
residential builder or residential maintenance and alteration 950
contractor, taught in an educational institution that prepares 951
applicants for licensure as a residential builder or residential 952
maintenance and alteration contractor, or both, for not less than 953
two years immediately preceding the date of the individual's 954
appointment. 955

(B) Within three years after the effective date of this act, 956
each individual appointed under division (A) of this section shall 957
be licensed as required under section 4785.02 of the Revised Code, 958
as enacted by this act. 959