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Bill Analysis
Legislative Service Commission

H.B. 437

127th General Assembly
(As Introduced)

Reps. Schindel, Adams, Flowers, Gibbs, Jones, Stebelton, Zehringer

BILL SUMMARY

- Prohibits any person from performing any home improvement unless that person enters into a written contract with the owner and requires the contract to include all agreements and conditions related to the home improvement, including specified information.
- Generally requires a home improvement contractor to provide written notice to the owner prior to performing work related to costs that exceed 10% of the cost estimated or specified in the contract.
- Prohibits any home improvement contractor from doing any of the following: (1) failing to enter into a written contract that complies with the bill prior to commencing work related to the home improvement, (2) failing to provide an estimate of the excess costs prior to commencing work related to an excess cost, (3) making the performance of any home improvement contingent upon a consumer's waiver of any rights the bill provides, (4) failing 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, (5) charging for any excess cost not approved by the owner, (6) representing any of the following when the represented information is not the fact: (a) that repairs, services, or work is necessary, (b) that repairs or work have been performed, or (c) that an item of goods or any part thereof that is being inspected or diagnosed for a home improvement is in a dangerous condition, or that its continued use may be harmful, (7) materially understating or misstating the estimated cost of the home improvement, (8) fraudulently misrepresenting any aspect of the transaction or the nature or quality of the work or materials, (9) failing to provide the owner with a written itemized list of repairs performed or

services rendered, (10) generally failing to tender to the owner any replaced parts, (11) failing to provide to the owner, upon request, a written, itemized receipt containing specified information for any item of goods that are left with, or turned over to, the contractor for repair or services, (12) failing at the time any owner signs or initials any document to provide the owner with a copy of the document, (13) failing to disclose to the owner prior to the commencement of any repair or service, that any part of the repair or service will be performed by a person other than the home improvement contractor or contractor's employee if the contract disclaims any warranty of the repair or service performed by the other person, or (14) representing that repairs or services must be performed away from the property on which the home improvement is being performed when that is not the fact.

- Provides that a violation of any prohibition specified in the preceding dot point is deemed a violation of the Ohio Consumer Sales Practices Act and that all penalties and remedies available under that Act are available to an owner harmed by the violation.
- Specifies the obligations of a home improvement contractor pertaining to the time for commencing work and completing the home improvement pursuant to an agreed schedule if the owner makes the required payments and requires the contractor to maintain an adequate amount of general liability insurance.
- Provides that an owner may send the home improvement contractor a written notice of the contractor's failure to fulfill any obligation imposed by the bill and may terminate the contract upon notice if the contractor fails to fulfill the obligation and permits the contractor who believes that the obligation described in the owner's notice has been fulfilled to bring a civil action for injunctive relief or damages.
- Permits an owner to bring a civil action for damages for breach of contract or breach of any duty imposed by the bill.

CONTENT AND OPERATION

General prohibition; home improvement contract

The bill prohibits any person from performing any "home improvement" unless that person enters into a written contract with the "owner" and requires the

contract to include all agreements and conditions related to the home improvement, including all of the following (see "Definitions," below, for definitions of the terms in quotation marks) (R.C. 4722.02(A)):

- (1) The "contractor's" name, business street address, and telephone number;
- (2) The owner's name, address, and telephone number;
- (3) The address of the property where the home improvement is to be performed;
- (4) A detailed description of the home improvement, including the goods and services to be furnished as part of the home improvement;
- (5) The date or time period the home improvement is to begin and the date or time period it is to be completed;
- (6) The total cost of the home improvement;
- (7) Any cost of installation, delivery, or other cost that the total cost does not cover;
- (8) The dated signatures of the owner and the contractor.

Excess costs--notice requirements

If the total amount of excess costs of a home improvement at any time exceeds 10% of the cost estimated or specified in the contract, the bill requires the contractor, prior to performing the work related to the excess costs, to provide an owner with the type of notice the owner has designated in the contract (see following paragraph). If the contract stipulates that the specified cost of the home improvement is a firm price and the contractor will not charge the owner with any excess costs, the contractor need not comply with the bill's notice requirements. An owner is not liable for any excess costs unless the contractor complies with the notice requirements. (R.C. 4722.02(B)(2), (3), and (4).)

To determine the type of notice an owner requires when the costs of a home improvement exceed the estimate provided in the contract, the contract must include a statement in substantially the following language (R.C. 4722.02(B)(1)):

"EXCESS COSTS

IF AT ANY TIME A HOME IMPROVEMENT REQUIRES EXTRA COSTS ABOVE THE COST SPECIFIED OR ESTIMATED IN THE

CONTRACT, AND THE TOTAL OF ALL EXTRA COSTS TO DATE EXCEEDS TEN PER CENT OF THE CONTRACT COST, YOU HAVE A RIGHT TO AN ESTIMATE OF THOSE EXCESS COSTS BEFORE THE CONTRACTOR BEGINS WORK RELATED TO THOSE COSTS. INITIAL YOUR CHOICE OF THE TYPE OF ESTIMATE YOU REQUIRE:

..... written estimate oral estimate"

Prohibitions involving home improvement contractors

The bill prohibits any home improvement contractor from doing any of the following (R.C. 4722.03(A)):

- (1) Prior to commencing work related to the home improvement, failing to enter into a written contract that complies with the bill;
- (2) Prior to commencing any work that is related to an excess cost, failing to provide an estimate of the excess costs as the bill requires;
- (3) Making the performance of any home improvement contingent upon a consumer's waiver of any rights the bill provides;
- (4) Failing 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, that must be directly related to the actual labor or parts involved;
- (5) Charging for any excess cost that the owner has not approved;
- (6) Representing that repairs, services, or work is necessary when such is not the fact;
- (7) Representing that repairs or work have been performed when such is not the fact;
- (8) Representing that an item of goods or any part thereof that is being inspected or diagnosed for a home improvement is in a dangerous condition, or that its continued use may be harmful, when such is not the fact;
- (9) Materially understating or misstating the estimated cost of the home improvement;
- (10) Fraudulently misrepresenting any aspect of the transaction or the nature or the quality of the work or materials;

(11) Failing to provide the owner with a written itemized list of repairs performed or services rendered, including a list of parts or materials and a statement of whether they are used, manufactured, or rebuilt, if not new, the cost to the owner, the amount charged for labor, and the identity of the individual performing the repair or service;

(12) Failing to tender to the owner any replaced parts, unless the parts are to be rebuilt or sold by the contractor, or returned to the manufacturer in connection with a warranted repair or service, and the intended reuse or return is made known to the owner prior to commencing any repair or services;

(13) Failing to provide to the owner, upon the owner's request, a written, itemized receipt for any item of goods that are left with, or turned over to, the contractor for repair or services. The receipt must include all of the following: (a) the identity of the person who will perform the repair or services, (b) the name and dated signature of the person or representative who actually accepts the goods, and (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.

(14) Failing at the time any owner signs or initials any document to provide the owner with a copy of the document;

(15) Failing to disclose to the owner prior to the commencement of any repair or service, that any part of the repair or service will be performed by a person other than the home improvement contractor or employee of the contractor if the contract disclaims any warranty of the repair or service that the other person performs;

(16) Representing that repairs or services must be performed away from the property on which the home improvement is being performed when that is not the fact.

A violation of any of the above prohibitions pertaining to a home improvement contractor is deemed to be a violation of the Ohio Consumer Sales Practices Act, R.C. 1345.01 to 1345.13 (see **COMMENT**), notwithstanding any provisions of those sections to the contrary. All the penalties and remedies available under that Act are available to an owner who is harmed by a violation of any of those prohibitions.

Other obligations of home improvement contractor

The bill requires a home improvement contractor to begin work on the date or within the time period the contract specifies and to complete the home

improvement pursuant to any agreed-upon schedule if the owner makes payments as the schedule requires. In no case may a contractor fail to complete the amount of work that is in proportion to the payments an owner has made unless the delay is due to reasonable cause beyond the contractor's control. A home improvement contractor must maintain an adequate amount of general liability insurance. (R.C. 4722.04 and 4722.06.)

Owner's remedies

Notice of contractor's failure to fulfill obligation; notice of termination of contract

If a home improvement contractor fails to fulfill any obligation that the bill imposes, the owner may deliver a written notice of that failure to the contractor, specifying the act or omission that constitutes noncompliance and the specific obligation that was not met. The notice must state that if the contractor does not fulfill the obligation, the owner has authority to terminate the contract upon the date specified in the notice, to be not less than 30 days after the delivery of the notice. If the contractor fails to remedy the condition or fulfill the obligation specified in the notice by the date specified in the notice, the owner may terminate the contract by delivering a notice of termination to the contractor, specifying that the contract is terminated. At any time prior to delivery of the notice of termination, the contractor may remedy the condition and the owner may not subsequently terminate the contract.

If a contractor who receives a notice of failure to fulfill an obligation described in the preceding paragraph believes that the obligation described in that notice has been fulfilled, the contractor may initiate a civil action for injunctive relief or damages in a court of common pleas. (R.C. 4722.05.)

Civil action for breach of contract or duty

The bill permits an owner to initiate a civil action in a court of common pleas for damages due to any breach of contract or for breach of any duty that the bill imposes. The court may grant an injunction, a temporary restraining order, actual damages, or other appropriate relief for a violation of the bill. The court may award the owner treble damages if it finds a home improvement contractor fraudulently committed an act or practice that violates the bill. (R.C. 4722.07(A) and (B).)

In any action pursuant to the bill, the court may award to the prevailing party a reasonable attorney's fee limited to the work reasonably performed, if either of the following applies (R.C. 4722.07(C)):

(1) The owner complaining of the act or practice that violated the bill has brought or maintained an action that is groundless, and the owner filed or maintained the action in bad faith.

(2) The home improvement contractor knowingly committed an act or practice that violates the bill.

Definitions

The bill defines the following terms (R.C. 4722.01):

"Home improvement" means any repair, alteration, or addition to any one-, two-, or three-family residential structure or to any dwelling unit in any type of structure. "Home improvement" does not include any of the following: (1) construction of a new one-, two-, or three-family residential structure, (2) work performed on a structure that contains four or more dwelling units, except for work on an individual dwelling unit within that structure, or (3) work performed on the common area of a condominium property.

"Home improvement contractor" means any person who performs any home improvement or offers to perform any home improvement for compensation.

"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.

COMMENT

R.C. 1345.01 to 1345.13 are not in the bill. R.C. 1345.02 includes a listing of prohibited unfair or deceptive consumer sales practices, and R.C. 1345.03 prohibits unconscionable consumer sales practices. R.C. 1345.06 grants the Attorney General investigatory powers regarding acts or practices that allegedly violate the Consumer Sales Practices Act. Upon finding a reasonable cause to believe that a supplier has engaged or is engaging in an act or practice in violation of that Act, the Attorney General may bring a declaratory judgment action, an action to obtain a temporary restraining order, preliminary injunction, or permanent injunction to restrain the act or practice, or a class action on behalf of aggrieved consumers (R.C. 1345.07). An aggrieved consumer also has an individual cause of action under R.C. 1345.09 and is entitled to relief, which includes recovery of damages, rescission of the consumer transaction, declaratory judgment, injunctive relief, or other appropriate relief. The remedies in the

Consumer Sales Practices Act are in addition to remedies otherwise available for the same conduct under state or local law (R.C. 1345.13).

HISTORY

| ACTION | DATE |
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| Introduced | 01-17-08 |

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