



S.B. 275

127th General Assembly
(As Introduced)

Sens. Spada, Buehrer, Coughlin, Grendell, Jacobson, Mason, Miller,
Mumper, Padgett, Roberts, Schuler, Seitz, Stivers

BILL SUMMARY

- Prohibits persons from performing home improvements without entering into a contract with the homeowner.
- Specifies information that must be contained in contracts for home improvements.
- Specifies notice, receipt, and schedule requirements and requirements relative to excess costs for home improvements.
- Requires home improvement contractors to maintain an adequate amount of general liability insurance.
- Allows homeowners, after giving proper notice, to terminate a home improvement contract if the contractor fails to fulfill obligations the bill imposes.
- Prohibits contractors from engaging in specified practices.
- Provides penalties and remedies for violations of the bill.

CONTENT AND OPERATION

Background

The bill creates requirements and prohibitions applicable to home improvement contractors. "Home improvement contractor" is defined by the bill as "any person who performs any home improvement or offers to perform any home improvement for compensation" (R.C. 4722.01(B)). Additionally, the bill defines "home improvement" as "any repair, alteration, or addition to any one-

two-, or three-family residential structure or to any dwelling unit in any type of structure." Under the bill, "home improvement" does not include construction of a new one-, two-, or three-family residential structure; work performed on a structure that contains four or more dwelling units, except for work on an individual dwelling unit within that structure; and work performed on the common area of a condominium property (R.C. 4722.01(A)). Under the bill, home improvement contractors engage in transactions with owners. "Owner" is defined as "the person who contracts with a home improvement contractor for a home improvement." The bill states that "owner" may include "the owner of the property, a tenant who occupies the dwelling unit on which a 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" (R.C. 4722.01(C)).

Written contract required

The bill prohibits any person from performing a home improvement unless that person enters into a written contract with the owner. The contract, under the bill, must include all agreements and conditions relating to the home improvement and contain all of the following:

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.

(R.C. 4722.02(A).)

The bill also requires the contract to include a statement in substantially the following language:

"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"

The bill stipulates that 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, prior to performing the work related to the excess costs, the contractor must provide an owner with the type of notice the owner designated in the contract. If the contractor fails to give the owner the appropriate notice, the bill stipulates that the owner is not liable for any excess costs. The statement above is not required under the bill if the contract stipulates that the cost of the home improvement is a firm price and the contractor will not charge the owner with any excess costs. (R.C. 4722.02(B).)

Contractor responsibilities

Under the bill, a home improvement contractor must begin work on the date or within the time period the contract specifies and must complete the home improvement pursuant to any agreed-upon schedule if the owner makes payments as the schedule requires. The bill states that the contractor must complete the amount of work that is in proportion to the payments an owner has made unless the delay is due to a reasonable cause beyond the contractor's control. (R.C. 4722.04.)

The bill requires that the home improvement contractor, upon the owner's request, provide an 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 the identity of the person who will perform the repair or services; the name and dated signature of the person or representative who actually accepts the goods; 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. (R.C. 4722.03(A)(13).)

The bill requires home improvement contractors to maintain general liability insurance in an adequate amount. (R.C. 4722.06.)

Prohibitions

The bill prohibits home improvement contractors 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 as the bill requires prior to commencing any work that is related to an excess cost;
3. Making the performance of any home improvement contingent upon a consumer's waiver of rights provided by the bill;
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 the excess cost, completion of the work may not be possible and a charge may be imposed for disassembly, reassembly, or partially completed work, which shall be directly related to the actual labor or parts involved;
5. Charging for any excess cost the owner has not approved;
6. Representing that repairs, services, or work is necessary, when they are not actually necessary;
7. Representing that repairs or work have been performed when they have not actually been performed;
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 a 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, as described in "Contractor responsibilities" above, for any item of goods that are left with, or turned over to, the contractor for repair or services.
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.

(R.C. 4722.03(A).)

Remedies and penalties

Consumer Sales Practices Act

The bill makes a violation of the prohibitions described immediately above a violation of the Consumer Sales Practices Act (R.C. 1345.01 through 1345.13). All the penalties and remedies available under the Consumer Sales Practices Act are available to an owner who is harmed by a violation of the prohibitions described above. Under that Act, a consumer may bring several types of actions for a violation of the Act, including an individual action to rescind the transaction or recover the consumer's damages and an action to seek a declaratory judgment, an injunction, or other appropriate relief. (R.C. 4722.03(B) and R.C. 1345.09, not in the bill.)

Termination of contract

The bill states that if a home improvement contractor fails to fulfill any obligation 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 bill requires that the notice 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, which may not be less than 30 days after the delivery of the notice. (R.C. 4722.05(A).)

If the contractor receives a notice as stated above and the contractor believes that the obligation described in the notice has been fulfilled, the bill specifies that the contractor may initiate a civil action for injunctive relief or damages in a court of common pleas. (R.C. 4722.05(C).)

Under the bill, 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. (R.C. 4722.05(B).)

Civil action

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 created by the bill. The court may grant an injunction, a temporary restraining order, actual damages, or other appropriate relief for a violation of the bill (R.C. 4722.07(A)). Under the bill, the court may award treble damages¹ to the owner if it finds that the home improvement contractor fraudulently committed an act or practice that violates the bill (R.C. 4722.07(B)). In any action brought pursuant to the bill, the court may award the prevailing party reasonable attorney's fees limited to the work reasonably performed if either of the following applies:

(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 provisions of the bill (R.C. 4722.07(C)).

¹ "Treble damages" are damages that are three times the amount that the fact-finder determines is owed (Black's Law Dictionary, 2nd Pocket Edition, 2001).

HISTORY

ACTION

DATE

Introduced

01-17-08

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