



**Am. Sub. S.B. 275**  
127th General Assembly  
(As Passed by the Senate)

**Sens. Spada, Coughlin, Grendell, Jacobson, Mumper, Padgett, Roberts,  
Stivers, Schaffer**

---

**BILL SUMMARY**

- Prohibits home improvement contractors from performing home improvements involving a cost of \$1,000 or more without entering into a contract with the homeowner.
- Requires a contract for home improvements to include all agreements and conditions related to the home improvement and specifies information that must be contained in a contract for home improvements.
- Specifies notice, receipt, down payment, and schedule requirements and requirements relative to excess costs for home improvements.
- Requires a home improvement contractor engaging in any home improvement involving a cost of \$1,000 or more to maintain not less than \$250,000 of general liability insurance.
- Prohibits home improvement contractors from engaging in specified practices.
- Specifies that the failure of a home improvement contractor to comply with specified provisions of the bill is an unfair or deceptive act or practice in violation of the Consumer Sales Practices Act and provides remedies under that act for a contractor's violation of the bill.
- Specifies right to cure provisions to allow a home improvement contractor time to remedy construction defects prior to the owner filing a lawsuit.

---

## CONTENT AND OPERATION

### Definitions

The bill creates requirements and prohibitions applicable to home improvement contractors. "Home improvement contractor" is defined by the bill as "any person who performs or offers to perform any home improvement for compensation" (R.C. 4722.01(D)). Additionally, the bill defines "home improvement" as "any repair, alteration, or addition to any residential building, industrialized unit, manufactured home, or mobile home, or to any dwelling unit in any type of structure."<sup>1</sup> Under the bill, "home improvement" does not include construction of a new residential building, industrialized unit, or manufactured home; 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(C)).

---

<sup>1</sup> (A) "Industrialized unit" means a building unit or assembly of closed construction fabricated in an off-site facility, that is substantially self-sufficient as a unit or as part of a greater structure, and that requires transportation to the site of intended use. "Industrialized unit" includes units installed on the site as independent units, as part of a group of units, or incorporated with standard construction methods to form a completed structural entity. "Industrialized unit" does not include a manufactured home or a mobile home (R.C. 3781.06(C)(3), not in the bill and 4722.01(E)).

(B) "Manufactured home" means a building unit or assembly of closed construction that is fabricated in an off-site facility and constructed in conformance with the federal construction and safety standards established by the Secretary of Housing and Urban Development pursuant to the "Manufactured Housing Construction and Safety Standards Act of 1974," and that has a permanent label or tag affixed to it certifying compliance with all applicable federal construction and safety standards (R.C. 3781.06(C)(4), not in the bill and 4722.01(E)).

(C) "Residential building" means "a one-family, two-family, or three-family dwelling house, and any accessory structure incidental to that dwelling house." "Residential building" includes a one-family, two-family, or three-family dwelling house that is used as a model to promote the sale of a similar dwelling house." "Residential building" does not include an industrialized unit, a manufactured home, or a mobile home (R.C. 3781.06(C)(9), not in the bill and 4722.01(E)).

(D) "Mobile home" means "a building unit or assembly of closed construction that is fabricated in an off-site facility, is more than 35 body feet in length or, when erected on site, is 320 or more square feet, is built on a permanent chassis, is transportable in one or more sections, and does not qualify as a manufactured home or as an industrialized unit" (R.C. 4501.01(O), not in the bill and 4722.01(F)).

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 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" (R.C. 4722.01(G)).

**Written contract**

The bill prohibits a home improvement contractor from performing any home improvement the cost of which equals or exceeds \$1,000 unless that person enters into a written contract with the owner. The contract must include all agreements and conditions related to the home improvement, including all of the following:

- (1) The contractor's name, physical business address, business telephone number, taxpayer identification number, and physical home address;
- (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;
- (9) A notice of applicable right to cure provisions in substantially the following language:

"RIGHT TO CURE

IN THE EVENT THAT THE HOME  
IMPROVEMENT THAT IS THE SUBJECT OF THIS  
CONTRACT RESULTS IN A CONSTRUCTION

DEFECT, THE HOME IMPROVEMENT CONTRACTOR NAMED IN THIS CONTRACT WILL HAVE THE RIGHT TO CURE THE CONSTRUCTION DEFECT IN A MANNER CONSISTENT WITH CHAPTER 4722. OF THE REVISED CODE IF THE CONSTRUCTION DEFECT ARISES FROM A HOME IMPROVEMENT. GENERALLY THE RIGHT TO CURE PROVISIONS PROVIDE THE HOME IMPROVEMENT CONTRACTOR THIRTY (30) DAYS TO CURE ANY CONSTRUCTION DEFECT, BUT SEE THE APPLICABLE SECTIONS OF THE REVISED CODE TO DETERMINE SPECIFIC TIME AND NOTICE REQUIREMENTS.";

(10) A notice stating whether or not the contractor has performance bonds or other insurance beyond the insurance required by the bill that will cover losses incurred through defects or breach of contract terms by the contractor. (R.C. 4722.02(A).)

**Excess costs**

The bill requires the contract to include a statement to determine the type of notice an owner requires when the costs of a home improvement exceed the estimate provided in the contract, 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 WHICH WERE UNFORESEEN, BUT REASONABLY NECESSARY, 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 HOME IMPROVEMENT CONTRACTOR BEGINS WORK RELATED TO THOSE COSTS. INITIAL YOUR CHOICE OF THE TYPE OF ESTIMATE YOU REQUIRE:

..... written estimate ..... oral estimate" (R.C. 4722.02(B)(1).)

The bill provides that if the total amount of unforeseen but reasonably necessary 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 has designated in the contract. (R.C. 4722.02(B)(2).)

If the contract stipulates that the specified cost of the home improvement is a firm price and the home improvement contractor will not charge the owner with any excess costs, the contractor need not comply with the notice requirements described above. (R.C. 4722.02(B)(3).)

An owner is not liable for any excess costs unless the costs were unforeseen, but reasonably necessary, and unless the home improvement contractor complies with the notice requirements. (R.C. 4722.02(B)(4).)

### **Prohibitions**

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

(1) Prior to commencing work related to the home improvement, failing to enter into a written contract that complies with the bill (R.C. 4722.03(A));

(2) After entering into a contract with an owner and 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 (R.C. 4722.03(B));

(3) Making the performance of any home improvement contingent upon a consumer's waiver of any rights the bill provides (R.C. 4722.03(D));

(4) Representing that repairs, services, or work is necessary when such is not the fact (R.C. 4722.03(E));

(5) 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 (R.C. 4722.03(F));

(6) Materially understating or misstating the estimated cost of the home improvement (R.C. 4722.03(G));

(7) Fraudulently misrepresenting any aspect of the transaction or the nature or the quality of the work or materials (R.C. 4722.03(H));

(8) Failing at the time any owner signs or initials any document to provide the owner with a copy of the document (R.C. 4722.03(I));

(9) 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 contractor or employee of the contractor if the contract disclaims any warranty of the repair or service that the other person performs (R.C. 4722.03(J));

(10) 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(K));

(11) After entering into a contract with an owner, doing any of the following:

(a) 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, which shall be directly related to the actual labor or parts involved;

(b) Charging for any excess cost that the owner has not approved;

(c) Representing that repairs or work have been performed when such is not the fact;

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

(e) 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;

(f) Failing to provide a full refund for any goods or services that the contractor has failed to deliver in accordance with the terms and conditions of the contract required by the bill and for which the contractor has received payment;

(g) 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:

(i) The identity of the person who will perform the repair or services;

(ii) The name and dated signature of the person or representative who actually accepts the goods;

(iii) 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(C)).

### **Down payment and work schedule**

Under the bill, a home improvement contractor may take as a down payment not more than 10% of the contract price before completion of the contractor's performance under the contract, except that the contractor may take up to 75% of the total cost of any special order item that is otherwise not returnable or usable before the contractor's performance is completed. The bill requires that a home improvement contractor begin work on the date or within the time period specified by the contract and complete the home improvement pursuant to any agreed-upon schedule unless delay is due to reasonable cause beyond the contractor's control. (R.C. 4722.04.)

### **Insurance**

The bill requires a home improvement contractor engaging in any home improvement the cost of which equals or exceeds \$1,000 to maintain general liability insurance in an amount not less than \$250,000 (R.C. 4722.07).

### **Criminal provisions**

The bill provides that any instrumentality, as defined in the Criminal Forfeiture Law (R.C. Chapter 2981.), of a home improvement contractor convicted of an offense in connection with a home improvement, is subject to the forfeiture provisions of the Criminal Forfeiture Law.

The bill specifies that if a home improvement contractor is convicted of a criminal offense in connection with a home improvement, the sentencing court, when sentencing that contractor, must consider and specify a plan of restitution to the owner of the property harmed by the offense, pursuant to any community control sanctions ordered pursuant to R.C. 2929.15 to 2929.28. (R.C. 4722.08.)

### *Right to cure*

The bill prohibits an owner from commencing an arbitration proceeding or filing a dwelling action<sup>2</sup> against a home improvement contractor unless, at least 30 days before commencing the proceeding or filing the action, the owner provides the home improvement contractor with written notice of the construction defect<sup>3</sup> that would be the basis of the arbitration proceeding or the dwelling action. The notice must be in writing and mailed, sent by telegram, delivered in person, or sent by any means the home improvement contractor has indicated communications may be sent, including facsimile transmission and electronic mail. (R.C. 4722.06(A).)

After receiving a notice of defect, a home improvement contractor must provide the owner with a good faith written response. The response must be delivered to the owner not less than seven days after the contractor receives the owner's notice of defect and must notify the owner whether the contractor intends to remedy or contest the defect. If the contractor elects to remedy the defect, the contractor must complete the remedial work within 30 days after receipt of the notice of defect. If the contractor elects to remedy the defect and does not do so within 30 days after delivering the notice of election to the owner, the owner may file a dwelling action or commence an arbitration proceeding. If the contractor elects to contest the defect, the owner may file a dwelling action or commence an arbitration proceeding immediately. (R.C. 4722.06(B).)

If a home improvement contractor files a mechanics lien or commences any type of arbitration proceeding or legal action against an owner, the right to cure does not apply, and the owner immediately may counterclaim, commence an arbitration proceeding, or file a dwelling action against the home improvement contractor (R.C. 4722.06(C)).

---

<sup>2</sup> "Dwelling action" means any of the following actions, brought against a home improvement contractor, for damages or the loss of use of real property, caused by a construction defect:

- (1) A civil action in contract or tort for damages or indemnity;
- (2) Any action brought pursuant to the CSPA;
- (3) Any action brought pursuant to the bill. (R.C. 4722.01(B).)

<sup>3</sup> "Construction defect" means a deficiency that arises directly or indirectly from a home improvement (R.C. 4722.01(A)).



The bill stipulates that if a home improvement contractor is subject to the provisions of both R.C. 4722.06 as enacted by the bill and existing R.C. Chapter 1312., which deals with rights of owners and contractors when there is an alleged construction defect in a residential building, the provisions of R.C. 4722.06 govern (R.C. 2722.06(D)).

The right to cure does not apply to any dwelling action or arbitration proceeding arising out of a construction defect where that construction defect will jeopardize the welfare, health, or safety of the owner or any other occupant of the residential building or the residential building has been rendered uninhabitable by the construction defect (R.C. 4722.06(E)).

**Applicability of the Consumer Sales Practices Act**

The Consumer Sales Practices Act (hereinafter CSPA, R.C. 1345.01 to 1345.13) prohibits suppliers from committing unfair or deceptive acts or practices in connection with a consumer transaction. The bill provides that the failure of a home improvement contractor to comply with R.C. 4722.02 (contract requirements), R.C. 4722.03 (prohibitions), or 4722.04 (down payment and work schedule) constitutes an unfair or deceptive act or practice in violation of the CSPA. The bill gives the Attorney General all the same powers and remedies to enforce these sections as the Attorney General has under the CSPA, except for the initiation of criminal proceedings. The Attorney General's remedies under the CSPA include actions for declaratory judgment or injunction and motions for the imposition of civil penalties and the sequestration of assets to reimburse consumers (R.C. 1345.07, not in the bill). The bill also gives to owners the same right to pursue civil actions that consumers have under the CSPA (R.C. 1345.09, not in the bill). (R.C. 4722.05.)

---

**HISTORY**

ACTION	DATE
Introduced	01-17-08
Reported by S. Insurance, Commerce & Labor	05-29-08
Passed Senate (30-3)	06-10-08

s0275-ps-127.doc/kl

