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(As Reported by S. Insurance, Commerce, and Labor)

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

BILL SUMMARY

- Prohibits contractors 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 \$250,000 of general liability insurance.
- Prohibits contractors from engaging in specified practices.
- Provides civil and criminal penalties and remedies for violations of the bill.
- Allows the Attorney General to prosecute contractors for violations of the bill or any other criminal law for claims related to or arising out of a construction project, as defined under the bill.
- Exempts certain transactions from the Consumer Sales Practices Act.

* This analysis was prepared before the report of the Senate Insurance, Commerce, and Labor Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Allows home improvement contractors to obtain a license, but does not require a license to engage in a home improvement or new residential construction.
- Specifies right to cure provisions to allow a home improvement contractor time to remedy construction defects prior to the owner filing a lawsuit.
- Specifies provisions relating to express warranties for new residential construction.

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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 any home improvement" or offers to perform any home improvement for compensation" (R.C. 4722.01(F)). 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."¹ 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(E)).

Portions of the requirements and prohibitions created by the bill also apply to new residential construction contractors. "New residential construction contractor" is defined as "any person who performs or offers to perform any new residential construction for compensation" (R.C. 4722.01(J)). "New residential construction" is defined as "any original construction of a residential building" (R.C. 4722.01(I)).

Home improvement contractors and new residential construction contractors are collectively referred to as "contractors" in the bill (R.C.

¹ (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(G)).

(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(G)).

(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(G)).

(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(H)).

4722.01(C). "Construction project" is used in the bill to refer to both home improvement and new residential construction (R.C. 4722.01(B)).

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 construction project." The bill states that "owner" may include "the owner of the property, a tenant who occupies the dwelling unit on which the construction project is performed, or a person the owner authorizes to act on the owner's behalf to contract for a construction project, and any other person who contracts for a construction project" (R.C. 4722.01(K)).

Provisions applicable to both home improvement and new residential construction contractors

Written contract required

The bill prohibits any person from performing any construction project 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 construction project, including all of the following:

- (1) The contractor's name, physical business address, business telephone number, and, if licensed under the bill, license number, but if not licensed, also the contractor's taxpayer identification number and physical home address;
- (2) The owner's name, address, and telephone number;
- (3) The address of the property where the construction project is to be performed;
- (4) A detailed description of the construction project, including the goods and services to be furnished as part of the construction project;
- (5) The date or time period the construction project is to begin and the date or time period it is to be completed;
- (6) The total cost of the construction project;
- (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 CONSTRUCTION PROJECT THAT IS THE SUBJECT OF THIS CONTRACT RESULTS IN A CONSTRUCTION DEFECT, THE CONTRACTOR NAMED IN THIS CONTRACT WILL HAVE THE RIGHT TO CURE THE CONSTRUCTION DEFECT IN A MANNER CONSISTENT WITH CHAPTER 1312. OF THE REVISED CODE IF THE CONSTRUCTION DEFECT ARISES FROM NEW RESIDENTIAL CONSTRUCTION, OR CHAPTER 4722. OF THE REVISED CODE IF THE CONSTRUCTION DEFECT ARISES FROM A HOME IMPROVEMENT. GENERALLY THE RIGHT TO CURE PROVISIONS PROVIDE THE CONTRACTOR SIXTY (60) 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. 4722.03(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 construction project exceed the estimate provided in the contract, in substantially the following language:

"EXCESS COSTS

IF AT ANY TIME A CONSTRUCTION PROJECT 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 CONTRACTOR

BEGINS WORK RELATED TO THOSE COSTS.
INITIAL YOUR CHOICE OF THE TYPE OF
ESTIMATE YOU REQUIRE:

..... written estimate oral estimate" (R.C.
4722.03(B)(1).)

The bill provides that if the total amount of unforeseen, but reasonably necessary excess costs of a construction project 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. 4722.03(B)(2).)

If the contract stipulates that the specified cost of the construction project is a firm price and the contractor will not charge the owner with any excess costs, the contractor need not comply with the notice requirements described above. (R.C. 4722.03(B)(3).)

An owner is not liable for any excess costs unless the costs were unforeseen, but reasonably necessary, and unless the contractor complies with the notice requirements. (R.C. 4722.03(B)(4).)

Any contractor who violates any of the contract requirements described above in "**Written contract required**," and in "**Excess costs**," is guilty of a fourth degree misdemeanor (R.C. 4722.99(A)).

Prohibitions

The bill prohibits any contractor from doing any of the following:

(1) Prior to commencing work related to the construction project, failing to enter into a written contract that complies with the bill (R.C. 4722.04(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. 4722.04(B));

(3) Making the performance of any construction project contingent upon a consumer's waiver of any rights the bill provides (R.C. 4722.04(D));

(4) Representing that repairs, services, or work is necessary when such is not the fact (R.C. 4722.04(E));

(5) Representing that an item of goods or any part thereof that is being inspected or diagnosed for a construction project is in a dangerous condition, or that its continued use may be harmful, when such is not the fact (R.C. 4722.04(F));

(6) Materially understating or misstating the estimated cost of the construction project (R.C. 4722.04(G));

(7) Fraudulently misrepresenting any aspect of the transaction or the nature or the quality of the work or materials (R.C. 4722.04(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. 4722.04(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. 4722.04(J));

(10) Representing that repairs or services must be performed away from the property on which the construction project is being performed when that is not the fact (R.C. 4722.04(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. 4722.04(C)).

Insurance required

The bill requires a contractor to maintain general liability insurance in an amount not less than \$250,000 (R.C. 4722.11).

Civil remedies

The bill allows 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 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 (R.C. 4722.12(A)). The court may award the owner treble damages if it finds a contractor knowingly committed an act or practice that violates the bill (R.C. 4722.12(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:

(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 contractor knowingly committed an act or practice that violates the bill (R.C. 4722.12(C)).

Nothing described above limits any other action brought by an owner or contractor at common law (R.C. 4722.12(D)).

Attorney General prosecutorial authority

The bill allows the Attorney General to initiate criminal proceedings for a prosecution under criminal provisions of the bill, or any other section of the Revised Code for claims related to or arising out of a construction project, by presenting evidence of criminal violations to the prosecuting attorney of the city or county in which the offense may be prosecuted. If the prosecuting attorney notifies the Attorney General in writing that the prosecuting attorney does not wish to prosecute the violations, or at the request of the prosecuting attorney, the Attorney General may proceed in the prosecution with all the rights, privileges, and powers conferred by law on prosecuting attorneys, including the power to appear before grand juries and to interrogate witnesses before grand juries (R.C. 4722.13).

Criminal provisions

The bill provides that any contractor who knowingly engages in a pattern of misrepresentation to consumers or knowingly and improperly represents quality, timeliness, or quantity of the work that was or is to be performed for a construction project is guilty of a misdemeanor of the first degree (R.C. 4722.99(B)). Additionally, the bill specifies that any instrumentality, as defined in the Criminal Forfeiture Law (R.C. Chapter 2981.), of a contractor convicted of an offense in connection with a construction project, is subject to the forfeiture provisions of the Criminal Forfeiture Law (R.C. 4722.14(A)).

The bill specifies that if a contractor is convicted of a criminal offense in connection with a construction project, 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 the Penalties and Sentencing Law (R.C. Chapter. 2929.).

The bill also provides two other criminal provisions, see "**Written contract required**," above, and "**Licensure**," below.

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 removes several transactions from the definition of "consumer transaction" under the CSPA. Generally, "consumer transaction" means "a sale, lease, assignment, award by chance, or

other transfer of an item of goods, a service, a franchise, or an intangible, to an individual for purposes that are primarily personal, family, or household, or solicitation to supply any of these things" (R.C. 1345.01(A)(1)). The bill specifies that, among others, "consumer transaction" does not include transactions between owners and any of the following:

- (1) Home improvement contractors licensed pursuant to the bill;
- (2) Home improvement contractors who are not licensed pursuant to the bill and who fulfill the criteria described in "**Right to cure**," below;
- (3) New residential construction contractors who fulfill the criteria described in the New Residential Construction Right to Cure Law (R.C. Chapter 1312.);
- (4) New residential construction contractors who fulfill the criteria described in "**Express Warranty**," below;
- (5) Home improvement contractors who provide home improvement goods or services valued at less than \$1,000, except that if through changes, modifications, or additions, the value of the home improvement goods or services exceeds \$1,000, the transaction is a consumer transaction under the CSPA and all of the provisions of the CSPA apply except for any provisions requiring or relating to written contracts.

The bill provides that any of the transactions described above are considered a consumer transaction under the CSPA if the transaction is the basis of a claim for fraud or misrepresentation and the fraud or misrepresentation induces an owner to enter into a contract under the CSPA.

Provisions applicable to home improvement contractors only

Optional licensure

The board requires the Ohio Construction Industry Licensing Board (hereinafter OCILB) to issue licenses to home improvement contractors in a manner prescribed by the OCILB in rules it adopts under the bill. Any home improvement contractor may apply for a license by filing with the OCILB a written application, accompanied by the filing fee established pursuant to rules the OCILB adopts under the bill. A home improvement contractor is not required to maintain a license issued pursuant to the bill to perform construction projects in Ohio (R.C. 4722.02(A)).

The bill requires the OCILB to adopt rules in accordance with the Administrative Procedure Act to establish all of the following:

(1) Fees for license issuance and renewal, including late fees, subject to the approval of the Controlling Board.

(2) Continuing education requirements for license renewal, including a requirement that a licensed home improvement contractor satisfactorily complete not less than ten hours of continuing education courses per year.

(3) A code of ethics for home improvement contractors.

(4) Standards for minimal best practices of licensed home improvement contractors that the licensed home improvement contractors must follow, including, but not limited to, rules specifying unfair contractor practices.

(5) Disciplinary procedures for contractors who violate the minimal best practices rules adopted by the OCILB.

(6) Requirements by which an arbitration procedure, if any, may be certified for use between contractors and owners to address disputes, to assure that an arbitration procedure does not contain unconscionable provisions, and to require the use of neutral arbitrators.

(7) Any other requirement that is necessary and proper for the implementation of the licensing provisions of the bill (R.C. 4722.02(B) and R.C. 4740.04(J), not in the bill).

The bill specifies that any person who wishes to make a complaint against a person who, on the date the action or event upon which the complaint is based held a valid license issued pursuant to the bill, must submit the complaint in writing to the OCILB within ten years after the date the owner has knowledge of the event upon which the complaint is based (R.C. 4722.02(D), the bill). Additionally, the OCILB has the same powers as those described in continuing OCILB Law (R.C. Chapter 4740.) to discipline and investigate a licensee who violates the bill (R.C. 4722.02(C)).

The bill allows any contractor holding a valid, unexpired license to renew the license by submitting an application to the OCILB not more than 90 calendar days before the expiration of the license, along with the renewal fee the OCILB establishes pursuant to rules it adopts under the bill and proof of compliance with the applicable continuing education requirements (R.C. 4722.02(E)).

The bill specifies that upon application and within one calendar year after a license has expired, the OCILB may waive any of the requirements for renewal of a license upon finding that an applicant substantially meets the renewal requirements or that failure to timely apply for renewal is due to excusable neglect. If the OCILB waives requirements for renewal of a license, the OCILB

may impose conditions upon the licensee and assess a late renewal fee of not more than double the usual renewal fee. The OCILB must not reissue a license to an applicant until after that applicant has satisfied every condition the OCILB imposed upon that applicant for reissuance of a license (R.C. 4722.02(F)).

The bill also specifies that any person who previously held a license issued pursuant to the bill that subsequently had that license revoked by the OCILB pursuant to a disciplinary action under the bill or pursuant to rules adopted under the bill, must not engage in "construction projects" (see "***Definitions***," above) in Ohio (R.C. 4722.02(G)). Whoever violates the prohibition described immediately above is guilty of a first-degree misdemeanor for each violation (R.C. 4722.99(C)).

The bill limits the practices of home improvement contractors who do not obtain a license. The bill specifies that a home improvement contractor who is not licensed under the bill may take as a down payment not more than 10% of the contract price before the home improvement contractor's performance that is required by the contract is completed, except a home improvement contractor may take as a down payment not more than 75% of the total cost of any special order item that is otherwise not returnable or usable before the home improvement contractor's performance that is required by the contract is completed (R.C. 4722.05(A)).

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 construction project pursuant to any agreed-upon schedule unless delay is due to reasonable cause beyond the home improvement contractor's control. In no case can an owner be required to pay more than 10% of the value of the work completed by the contractor (R.C. 4722.05(A)).

Right to cure

The bill prohibits an owner from commencing arbitration proceedings or filing a dwelling action² against a home improvement contractor unless, at least 60

² "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(D).)

days before commencing the proceedings or filing the action, the owner provides the home improvement contractor with written notice of the construction defect that would be the basis of the arbitration proceedings 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. The notice must substantially comply with the requirements described immediately below (R.C. 4722.06(A)).

Any notice that an owner provides to a home improvement contractor must substantially do all of the following:

(1) Assert a claim involving a construction defect by itemizing and describing those construction defects;

(2) Include or attach a copy of any documentation concerning the construction defects prepared by a person who inspected the building for the owner;

(3) Include the name, address, and telephone number of the owner and the home improvement contractor and the address of the building that is the subject of the claim (R.C. 4722.06(B)).

After receiving a notice of defects, a home improvement contractor may request an owner to provide a description of the cause of the defects and the nature and extent of repairs necessary to remedy the defects. An owner may provide this information if the owner has knowledge of the cause of the defects and the repairs necessary to remedy those defects (R.C. 4722.06(C)).

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

A home improvement contractor must provide the owner with a good faith written response to any notice provided above. The response must be provided within 21 days after the owner mailed the notice, delivered it by personal delivery, or transmitted it by telegram, facsimile, or electronic mail. In the response, the home improvement contractor must offer to take one of the following actions:

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

- (1) Inspect the building that is the subject of the claim;
- (2) Compromise and settle the claim without an inspection;
- (3) Dispute the claim (R.C. 4722.07(A)).

If a home improvement contractor fails to respond as required above or disputes the claim, an owner is deemed to have complied with the right to cure and may commence arbitration proceedings or file a dwelling action without further notice to the home improvement contractor (R.C. 4722.07(B)).

If an owner rejects a home improvement contractor's offer to inspect the property or to compromise and settle a claim, the owner must notify the home improvement contractor of that rejection within 14 days after receiving the home improvement contractor's offer. The rejection notice must be in writing and include a reason for the rejection (R.C. 4722.07(C)).

After providing a rejection notice, an owner has complied with the right to cure and may commence arbitration proceedings or file a dwelling action without further notice to the contractor (R.C. 4722.07(D)).

If an owner accepts a home improvement contractor's offer to inspect the building, the owner must notify the home improvement contractor of that acceptance within 14 days after receipt of the notice described above. After accepting the offer to inspect, the owner must allow the home improvement contractor reasonable access to the building during normal working hours. The home improvement contractor must inspect the building within 14 days after the owner notifies the home improvement contractor that the owner accepts the offer to inspect the building. The home improvement contractor must take reasonable measures to determine the nature and cause of the construction defects and the appropriate remedy. The measures the contractor takes may include, but are not limited to, testing (R.C. 4722.08(A)).

Within ten days after a home improvement contractor conducts an inspection as described above, the home improvement contractor must provide the owner with one of the following:

- (1) A written offer to remedy the defects at no cost to the owner, an inspection report, a prediction of the additional construction work necessary to remedy each defect, and a timetable for completing the work necessary to remedy the defects;
- (2) A written offer to settle the claim;

(3) A written statement asserting that the home improvement contractor does not intend to remedy the defects (R.C. 4722.08(B)).

An owner has complied with the right to cure and may commence arbitration proceedings or file a dwelling action without further notice to the home improvement contractor if any of the following occur:

(1) The home improvement contractor does not inspect the property within 14 days after the owner notifies the home improvement contractor that the owner accepts the offer to inspect.

(2) Within ten days after the home improvement contractor conducts the inspection, the home improvement contractor does not provide a written response as required above.

(3) The home improvement contractor notifies the owner that the home improvement contractor does not intend to remedy the defects.

(4) The home improvement contractor fails to remedy the defects in the manner the home improvement contractor describes or within the timetable the home improvement contractor provides (R.C. 4722.08(C)).

If a home improvement contractor makes or provides for any repair or replacement to remedy a construction defect, the home improvement contractor may take reasonable steps to document the repair or replacement and to inspect the repair or replacement or have it inspected (R.C. 4722.08(D)).

If an owner accepts an offer that a home improvement contractor makes in compliance with the right to cure to compromise and settle the claim, to remedy the defects, or to settle the claim, and the contractor fulfills that offer in compliance with the right to cure, the owner is barred from bringing a dwelling action or commencing arbitration proceedings for the claim, except for claims of fraud or misrepresentation if the fraud or misrepresentation induces an owner to enter into a contract (R.C. 4722.08(E)).

Unless otherwise indicated in the right to cure, an owner has complied with the right to cure and may commence arbitration proceedings or file a dwelling action 60 days after the owner mails, delivers, sends by facsimile transmission or electronic mail, or otherwise provides the home improvement contractor with a defect notice as described above (R.C. 4722.09).

All applicable statutes of limitation or repose are tolled from the time the owner sends a notice of defect to a home improvement contractor as described above until the owner has complied with the bill (R.C. 4722.10(A)).

If an owner files a dwelling action or commences arbitration proceedings without having complied with the right to cure, the court or arbitrator must dismiss that action or those proceedings without prejudice. The owner may again file a dwelling action or commence arbitration proceedings after complying with the bill's requirements (R.C. 4722.10(B)).

The right to cure does not apply to any civil action in tort alleging personal injury or wrongful death to a person resulting from a construction defect (R.C. 4722.10(C)).

The right to cure does not apply to any dwelling action 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. 4722.10(D)).

Provisions applicable to new residential construction contractors only

Express warranty

The bill specifies that an express warranty that a residential contractor offers to an owner complies with the express warranty provisions if that warranty is in writing and includes all of the following:

- (1) The name and address of the residential contractor and any other person who is obligated to the owner under the warranty;
- (2) The name and address of the owner to whom the warranty is extended;
- (3) The period of time for which the warranty remains effective, which must not be less than ten years for claims related to structural integrity, including, but not limited to, the foundation, roof, and basic core structure of the residence, or less than two years for all other claims;
- (4) A description of the portions of the warranty that extend to a subsequent owner and the terms under which any extension is effective; however, any warranty must be fully transferable during the first two years of the existence of the structure;
- (5) The clear and conspicuous identification of any part or portion of the home or premises that is excepted or excluded from warranty coverage;

(6) An agreement to complete any construction covered by the warranty in a reasonably efficient time, in a workerlike³ manner, and in accordance with the state residential building code;

(7) Notice of the residential contractor's right under the warranty provisions to offer to resolve any alleged construction defect before the owner may commence a dwelling action or arbitration proceeding against the residential contractor;

(8) A condition that any warranty dispute must have its first hearing under a neutral, nonbinding dispute resolution procedure provided by any of the following:

(a) A local home builders trade association;

(b) The local Better Business Bureau;

(c) A local court program;

(d) Any other mediation or dispute resolution procedure agreed to by the parties.

(9) A provision that the owner and contractor will equally share in the cost of any dispute resolution procedure;

(10) Notice that the warranty is backed by either a separate policy of insurance or a performance bond in an amount equal to or greater than the contract price. Any warranty that otherwise complies with the bill is required to be backed by either a separate policy of insurance or a performance bond in an amount equal to or greater than the contract price.

(11) Any other term or condition that does not conflict with the Revised Code.

No words in the contract of sale or the deed nor merger of the contract of sale into the deed must exclude or modify any aspect of an express warranty made pursuant to this division (R.C. 1312.20(A)).

Except for actions based on a claim arising from a knowing misrepresentation of a material term or condition of the contract, goods, or

³ "Workerlike manner" means that a contractor performs the residential construction as a skilled worker would do, using ordinary care and skill working in a reasonably efficient manner, consistent with the residential building standards the Residential Construction Advisory Board establishes (R.C. 1312.20(H)).

services, no person may bring an action against a residential contractor under the express warranty provisions based on the construction of a residential building if the contractor provided an express warranty that complies with the requirements described above (R.C. 1312.20(B)).

No owner may bring a civil action for property damage, breach of contract, or other similar claims alleging a construction defect against a residential contractor who provides an express warranty that complies with the requirements described above unless that owner first submits the complaint to the dispute resolution procedure the Residential Construction Advisory Committee establishes. All applicable statutes of limitation or repose are tolled for the period of time the owner is engaged in the dispute resolution procedure (R.C. 1312.20(C)(2)).

Notwithstanding the requirement that the owner submit a complaint to a dispute resolution procedure, an action based on an intentional act or gross negligence in the construction of a residential building or for personal injuries directly and proximately caused by the negligence or breach of contract of a residential contractor are not subject to the bill and must not be submitted to the dispute resolution procedure the Residential Construction Advisory Committee established (R.C. 1312.20(C)(2)).

No owner may bring a claim based on a breach of warranty against a residential contractor more than ten years after the owner discovers a construction defect if the contractor provides an express warranty that complies with the express warranty provisions of the bill (R.C. 1312.20(D)).

In any action for property damages, whether based in tort or contract, brought against a residential contractor who offers an express warranty that complies with the bill's express warranty provisions for the construction of a residential building, each of the following apply:

(1) An owner may allege that the contractor failed to perform in a workerlike manner or that a contractor failed to substantially comply with an applicable local building code or the state residential building code.

(2) The burden of proof is on the owner to show that a residential contractor did not perform in a workerlike manner or failed to comply with a building code (R.C. 1312.20(E)).

The exclusive remedy for a breach of contract or a breach of warranty by a residential contractor who provides an express warranty that complies with the express warranty provisions is payment of the amount of actual or consequential damages caused by the breach (R.C. 1312.20(F)).

Damages for emotional distress are not available against a residential contractor who provides an express warranty that complies with the bill's express warranty provisions unless the emotional distress is associated with an actual physical injury (R.C. 1312.20(G)).

The Residential Construction Advisory Committee, in respect to the express warranty provisions, must do both of the following:

(1) Develop guidelines to use in determining what is a "workerlike manner" in the construction and rehabilitation of residential buildings.

(2) Adopt rules under the Administrative Procedure Act to establish dispute resolution procedures for the timely resolution of disputes between an owner and a contractor regarding an alleged breach of warranty or the construction of a residential building when the contractor has provided an express warranty that complies with the express warranty provisions. The rules must specify that decisions made pursuant to these dispute resolution procedures are not binding on the owner or other parties involved in the dispute (R.C. 4740.14(C)).

HISTORY

ACTION	DATE
Introduced	01-17-08
Reported by S. Insurance, Commerce & Labor	---

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