



H.B. 461

125th General Assembly
(As Introduced)

Reps. Trakas, Buehrer, Brown, Otterman, Reidelbach, DeGeeter, Slaby

BILL SUMMARY

- Establishes the Home Improvement Contractor Law under which home improvement contractors must register and comply with the law.
- Establishes the Home Improvement Contractor Registration Board to administer the law and register home improvement contractors.
- Requires the Board to maintain records and make specified information about home improvement contractors available to the public on the Internet.
- Requires home improvement contractors to comply with the bill's provisions that include insurance, a written contract, a warranty on products and workmanship, and limitations on the amount of the down payment.
- Grants the owner the right to terminate a contract by midnight of the third business day after signing.
- Specifies prohibited practices.
- Allows an owner to file a civil action or to file a complaint with the Home Improvement Contractor Registration Board.
- Grants the Attorney General enforcement powers and power to investigate violations.
- Provides civil and criminal penalties for violating the law.
- Specifies that the bill's provisions are in addition to any local ordinances or regulations.

- Provides a time schedule for implementing the registration process.

CONTENT AND OPERATION

Background

Ohio law does not provide for licensure or registration of home improvement contractors. The types of contractors for which state licensure is required include heating, ventilation, and air conditioning contractors, refrigeration contractors, electrical contractors, plumbing contractors, and hydronics contractors. These licenses are issued by the Ohio Construction Industry Examining Board in the Department of Commerce and are governed by Chapter 4740. of the Revised Code (not in the bill).

Registration system for home improvement contractors

The bill establishes the Ohio Home Improvement Contractor Registration Board in the Department of Commerce and requires that all home improvement contractors register with the Board. Under the bill, no person may operate as a home improvement contractor without registration and any advertisement for home improvements must contain the contractor's registration number. Registration with the Board is in addition to any local licensure or registration requirement. (R.C. 4722.02 and 4722.03.)

The board consists of 11 members who are Ohio residents, with five members appointed by the Governor, two members appointed by the President of the Senate, two members appointed by the Speaker of the House of Representatives, one member appointed by the Attorney General, and one member appointed by the Director of Commerce. The bill specifies that the Board consist of two members representing professional remodeling groups, two members representing the general public who are not associated with or financially interested in the home improvement business, one member representing senior citizens, one member representing the Better Business Bureau, one member who is a specialty contractor, one member who is employed as a building inspector, and three members who are employed in the home improvement industry. The bill specifies the methods of appointment and terms of office for each member. (R.C. 4722.02.)

Duties of Board

The bill requires the Board to adopt rules related to registration and develop and prescribe an application form to be used in applying for registration, hear complaints from owners regarding home improvement contractors, educate the public concerning practices related to home improvements, maintain an electronic

database that contains the information on the applications for registration and make that database available to the Attorney General, and maintain and make available to the public on the Internet a list of the names, business addresses, and business telephone numbers of home improvement contractors and their sales persons. The Board also must maintain a system that enables the contractors to update their registration information online or by e-mail. (R.C. 4722.021(A).)

Registration

To register with the Ohio Home Improvement Contractor Registration Board, a person must submit an application on the form the Board prescribes, provide the information the bill requires, and include the fee the Board determines. (R.C. 4722.04(A) and (D).) After registration, the contractor must inform the Board of any changes in the required information within 30 business days following the change or be subject to a penalty in an amount the Board establishes by rule. All fees the Board receives for applications are to be paid into the Home Improvement Contractor Registration Fund, which the bill creates in the state treasury. The Board is directed to use the fund to administer the Home Improvement Contractors Registration Program, to educate consumers, home improvement contractors, and employees of contractors, and to pay the Board's expenses. (R.C. 4722.04(E).)

Procedure for approving or denying an application for registration

The bill requires the Board to approve or deny a registration within 30 days after receiving a completed application and issue a certificate of registration to any person whose application is approved. A registration is effective for one year and may be renewed according to rules the Board adopts. A registration may not be transferred or assigned to another person (R.C. 4722.05(A)).

The Board may deny, refuse to renew, or suspend or revoke a registration for reasons specified in the bill that are related to fraud, theft, falsification, and deception, or having a license suspended or revoked by another state or a jurisdiction within Ohio. The Board must follow procedures set forth in the bill, including procedures set forth in the Administrative Procedure Act, when it does not approve a registration. The procedures include written notice and opportunity to be heard upon an appeal. A contractor whose application for registration is denied, suspended, or revoked may apply again after six months have passed pursuant to procedures the Board establishes by rule (R.C. 4722.05(B), (D), and (E)).

Written contract required

The bill requires a written contract with the owner before a home improvement contractor may perform a home improvement. The bill also specifies the minimal content of the contract, which must include all agreements of the contractor and owner, be signed and dated by the owner, include the contractor's name, address, phone number, and registration number, set forth a detailed description of the home improvement including the supplies to be furnished, establish starting and completion times, set forth the amount to be paid, and include statements that obligate the contractor to obtain all permits, pay all fees, and post all notices required in connection with the home improvement. The contract must guarantee or provide a manufacturer's warranty to guarantee all work performed and materials furnished for not less than one year after the home improvement is completed. The contract must disclose any lien or security interest that may be filed against the property and contain a notice that the owner should not sign the contract if it contains any blank spaces and that any change or amendment to the contract shall be agreed to by the owner and the contractor. The contract shall include the costs of installation or delivery that the contract does not cover. Finally, the contract must include the exact paragraph specified in the bill that notifies the owner of the right to cancel the contract by midnight of the third business day after signing. (R.C. 4722.06(A).)

Prohibited in contract

The contract may not include a liquidated damages clause, a clause that limits consumer remedies, a confession of judgment clause, a clause that requires venue in any county other than the county in which the owner resides or the home improvement is performed, a binding or mandatory arbitration clause unless the owner specifically agrees to the clause and signs a statement of agreement or any waiver of rights that the bill entitles the owner, except in an emergency. (R.C. 4722.06(B).)

The contract must reflect the bill's provision that the down payment may not be greater than 20% of the total amount of the contract price plus the cost of special-order or custom-made materials, for which an itemized list must be provided that shows the price of each. The final payment may not be due until any required inspection or approval by a municipal corporation, township, or county building department is performed, if such an inspection is required. (R.C. 4722.06(C).)

Right to terminate

The bill establishes that in addition to any other right to revoke an offer to terminate or cancel a contract, an owner may cancel a home improvement contract



until midnight of the third business day after the owner signs the contract. An owner may cancel at any time until the contractor provides the notice of cancellation form that the bill requires the contractor to provide when the owner signs the contract. The form sets forth the duties of the contractor and the owner if the owner cancels as well as the procedures the owner must follow to cancel. However, the owner need not use that form to cancel as the bill specifies that the owner's notice of cancellation may be in any written form so long as it indicates the owner's intention not to proceed. The bill specifies how the date of the notice is calculated for different forms of delivery and that the right to cancel may not be waived by contract. (R.C. 4722.07(A), (B), and (C).)

Contractor responsibilities

The bill requires a home improvement contractor to maintain a general liability insurance policy in an amount the Ohio Home Improvement Contractor Registration Board establishes by rule. A contractor must begin or complete work on the date or within the time period specified in the contract unless the delay is due to a reasonable cause beyond the contractor's control. Upon completion of the home improvement, the contractor is required to give an owner a legible copy of each warranty, including manufacturers' warranties if supplied by the manufacturer, pertaining to goods or services supplied for the home improvement. (R.C. 4722.08(A), (B), and (C).)

Prohibitions

A home improvement contractor and salesperson are prohibited from knowingly misrepresenting a material fact in applying for a certificate of registration, fraudulently misrepresenting any aspect of the transaction or the nature or the quality of the work or the materials, requiring the deposit before the owner signs the contract, knowingly violating any applicable building code or sanitary or health law of Ohio or any political subdivision, using an owner's personal information without the owner's permission for any purpose not directly related to the home improvement, or transfer an owner's personal information to a third party for any purpose not directly related to the home improvement, or causing or attempting to cause an owner to waive any right the bill grants. (R.C. 4722.08(D).)

The bill prohibits any person from knowingly making a false or misleading statement or damaging an owner's property with purpose to induce, encourage, or solicit an owner to enter into a home improvement contract or to increase an agreed upon contract price for home improvement. Under the bill, no person may misrepresent, directly or by implication, an affiliation with or endorsement by a government or third-party organization to induce, encourage, or solicit an owner to enter into a home improvement contract, home loan application or document,

promissory note, or any other document incident to entering into or performing a home improvement, or misrepresent or conceal the contractor's or salesperson's real name, business name, or any other identifying information (R.C. 4722.09).

Attorney General authority

Investigations

The bill authorizes the Attorney General to conduct an investigation of violations of the bill pursuant to procedures the bill sets forth. Under the bill, the Attorney General is given authority to obtain information or matter from inside or outside the state, is given authority to administer oaths, subpoena witnesses, adduce evidence, may require the production of any book, document, record, or other relevant matter, may designate a representative in another state, if needed, to inspect matter on the Attorney General's behalf, and may request a court grant injunctive relief to preserve or restore the status quo. The bill authorizes the Attorney General to carry out similar requests received from officials of other states. (R.C. 4722.10(E).)

Civil action

The bill permits the Attorney General to bring a civil action in a court of common pleas if it appears that a person has violated the bill's provisions or any substantive rule adopted pursuant to it and may request injunctive relief, a civil penalty, or other appropriate relief. The Attorney General is required to notify the Ohio Home Improvement Contractors Registration Board of any action taken pursuant to the right. Under the bill, any party to a civil action has the right to a jury trial. (R.C. 4722.11(A) and (B).)

Remedies available to court in civil action

If a home improvement contractor or salesperson is found to have violated the bill or a rule adopted pursuant to it, the court may grant a temporary restraining order, a preliminary injunction, an attachment, a permanent injunction without bond, an order for the appointment of a referee or receiver for the sequestration of assets, or any other appropriate relief. Each violation constitutes a separate violation. Any penalty is to be paid to the Home Improvement Contractor Registration Fund established under the bill. Any action to recover for a violation is required to be brought not more than two years after the owner discovers or should have discovered the violation, whichever occurs earlier. (R.C. 4722.11(C) and (D).)

Actions an owner may take

File civil action

An owner injured by a home improvement contractor's or salesperson's violation of the bill's provisions or a rule adopted pursuant to it may bring a civil action against the contractor or salesperson in any court of competent jurisdiction for legal or equitable relief. When an owner commences an action, the clerk of court is required to immediately serve notice upon the Attorney General's Office. Any party to the civil action has a right to a jury trial. (R.C. 4722.12(A), (B), and (C).)

The court may grant an injunction, a temporary restraining order, the greater of actual damages or \$200 for a first violation, and \$500 for additional violations, or other appropriate relief if it finds a home improvement contractor or salesperson has violated the bill or a rule adopted pursuant to it. The court or the jury may award the owner treble damages if it finds the contractor or salesperson fraudulently committed an act or practice that violated the bill or a substantive rule adopted pursuant to it relative to the performance of a product in the performance of the work by the contractor. (R.C. 4722.12(D).)

The bill requires an owner to bring any action within two years after the date the owner discovered or should have discovered the violation, whichever occurs earlier. (R.C. 4722.12(E).)

File complaint

The bill permits an owner to file a complaint with the Ohio Home Improvement Contractor Registration Board. The bill directs the Board to consider the facts of the complaint and permits the Board to take any appropriate action related to a contractor's license as well as recommend further action to the Attorney General. (R.C. 4722.13.)

Procedures in criminal proceedings

The bill outlines procedures for the Attorney General to follow in initiating any criminal proceeding that the bill permits. The bill specifies that the powers the bill grants are in addition to any other powers of the Attorney General, that the remedies and powers are cumulative and concurrent, the exercise of one remedy or power does not preclude or require the exercise of any other remedy or power, and the Attorney General need not use any procedure set forth in the bill prior to using any other procedures set forth in the bill (R.C. 4722.14).

Relationship of bill to federal, state, and local laws

The bill specifies that its powers, remedies, and penalties are in addition to any other power, remedy, or penalty available for the same conduct under federal, state, or local law. Nothing in the bill preempts any municipal, township, or county ordinance that does not conflict with the bill. An ordinance does not conflict with the bill if it provides protection to an owner that is equal to or greater than the protection that the bill and the rule adopted to it provide. Compliance with a local ordinance does not relieve a home improvement contractor or salesperson from complying with the bill and the rules adopted pursuant to it. The bill specifies that it is remedial in nature and to be liberally construed. (R.C. 4722.15.)

Criminal penalties

Any person working as a home improvement contractor who is not registered with the Ohio Home Improvement Contractor Registration Board is guilty of a first degree misdemeanor for the first offense and a fifth degree felony for each subsequent offense. Any person who knowingly and with fraudulent intent provides a product that does not perform as promised or who performs work that is not to the promised standard is guilty of a fifth degree felony. Committing the acts described in the bill during a time of emergency or against a person who is elderly or disabled is a fourth degree felony. (R.C. 4722.99.)

Series of offenses as single offense

A series of offenses under the bill are added to the offenses that under continuing law may be considered a single offense for purposes of trial when committed against an elderly person or a disabled adult. (R.C. 2913.61.)

Schedule for implementing bill

The bill requires that, not later than June 30, 2006, the Ohio Home Improvement Contractor Registration Board must establish procedures and a system to register home improvement contractors. The procedures for the first year of registration may differ from the procedures established for registration after the first year. On July 1, 2006, the Board is to commence the registration of home improvement contractors. The effective date of sections requiring compliance are delayed to enable the registration program to operate prior to required compliance.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	04-13-04	p. 1759

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