Julie A. Cameron *Legislative Service Commission*

H.B. 148

126th General Assembly
(As Introduced)

Reps. Trakas, DeGeeter, McGregor, Buehrer, S. Patton, Otterman, Brown

BILL SUMMARY

- Establishes the Home Improvement Contractor Law requiring home improvement contractors to 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, in addition to other requirements the bill specifies, to maintain an insurance policy, enter into a written contract with an owner that includes specified provisions, give the owner copies of warranties, and comply with limitations the bill sets on down payment amounts.
- Grants the owner the right to terminate a contract by midnight of the third business day after signing the contract or by midnight of the third business day after the contractor provides a cancellation form whichever is later.
- Specifies prohibited practices.
- Allows an owner to file a civil action or to file a complaint with the Home Improvement Contractor Registration Board.
- Allows the Attorney General to conduct investigations and bring a civil action if it appears that a person has violated the bill or the rules adopted under it.

- Provides civil and criminal penalties for violating the bill's requirements, or rules adopted pursuant to the bill.
- Specifies that the bill's provisions are in addition to any local ordinances or regulations.
- Provides a time schedule for the Board to implement the registration process for home improvement contractors.

TABLE OF CONTENTS

Background 2
Registration system for home improvement contractors 3
  Duties of Board 4
Registration 4
  Procedure for approving or denying an application for registration 5
Written contract required 6
  Prohibited in contract 7
Right to terminate 8
Contractor responsibilities 9
  Prohibitions 9
Attorney General authority 10
  Investigations 10
  Civil action 10
  Remedies available to court in civil action 10
Actions an owner may take 11
  File civil action 11
  File complaint 11
Procedures in criminal proceedings 11
Relationship of bill to federal, state, and local laws 12
Criminal penalties 12
Schedule for implementing bill 12

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"[1] register with the Board. Under the bill, no person may operate as a home improvement contractor without registration and any advertisement for "home improvements"[2] must contain the contractor's registration number. Registration with the Board is in addition to any local licensure or registration requirement. The bill also specifies that any person who is licensed pursuant to the Pesticides Law, the Nursery Stock and Plant Pests Law, or the Construction Industry Licensing Board Law is not required to register as a home improvement

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[1] *A home improvement contractor, under the bill, is any person who, for compensation, engages in the business of performing or offering to perform any home improvement. The bill also specifically lists persons who are not considered home improvement contractors unless they advertise or indicate that they are home improvement contractors (R.C. 4722.01(F)).*

[2] *The bill defines "home improvement" as the repair, replacement, remodeling, alteration, conversion, improvement, rehabilitation, or addition to any building used or designed to be used as a one-, two-, or three-family dwelling house or an individually owned unit in a residential condominium development, and includes but is not limited to the construction, replacement, installation, repair, and improvement of sunrooms, porches, decks, gazebos, swimming pools, doors, windows, shutters, awnings, gutters, downspouts, siding, roofing, insulation, cabinetry, concrete, asphalt, flooring, painting, heating and air conditioning equipment, plumbing systems, appliances installed with permanent connections to plumbing, drainage or waterproofing systems, and garages.*

"Home improvement" does not include, under the bill, construction of a new residential building; work performed on a structure that contains four or more dwelling units, except for work performed on a residential condominium unit that is individually owned; work performed on the common area of a condominium property; goods sold or materials furnished by a seller who neither arranges to perform nor performs, directly or indirectly, any work or labor in connection with the installation or application of the goods or materials; goods sold or services furnished for commercial or business use or for resale; the sale of an appliance that is designed to be easily transported and installed without a permanent connection to the dwelling or land, including stoves, refrigerators, freezers, and room air conditioners, or the installation of an appliance by the retailer who sold the appliance or the retailer's agent; and work performed by a person licensed pursuant to the Pesticides Law (R.C. Chapter 921.), the Nursery Stock and Plant Pests Law (R.C. Chapter 927.), or the Construction Industry Licensing Board Law (R.C. Chapter 4740.) when the work is limited to the licensed trade. (R.C. 4722.01(D).)

contractor if that person's work is limited to the trade for which the person is licensed. (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 consists of two members representing professional remodeling groups (at least one of whom represents professional remodeling groups of 200 or more members), 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. Board members do not receive compensation but are entitled to reimbursement for actual and necessary expenses incurred in discharging their formal duties. Reimbursement is paid from the Home Improvement Contractor Registration Fund, created in the bill. (R.C. 4722.02.)

Duties of Board

The bill requires the Board to: (1) adopt rules related to registration, (2) develop and prescribe an application form to be used in applying for registration, (3) hear complaints from owners regarding home improvement contractors and recommend actions based on findings related to those complaints to the Attorney General, (4) educate the public concerning practices related to home improvements, (5) maintain an electronic database that contains the information on the applications for registration and make that database available to the Attorney General, (6) 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, and (7) maintain a system that enables the contractors to update their registration information and provide other information the Board requires 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 (C).) 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 (R.C. 4722.04(B)). 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.)

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 when it denies, refuses to renew, suspends, or revokes a registration. The Board's decision must: (1) be in writing, (2) set forth the facts relating to the situation that led to the denial, refusal, suspension, or revocation and the reasons for the decision, including reference to the law or rule directly involved, (3) specify the time limit and procedure for appeal, and (4) be delivered to the applicant by certified mail. (R.C. 4722.05(B) and (C).)

Under the bill, any person whose application is denied or whose registration is suspended or revoked may request a hearing by making a written request to the Board within 30 days after receipt of the Board's decision. The request must include the name, address, and telephone number of the person requesting the hearing, and a brief statement of the grounds for appeal. The bill requires the Board to schedule and conduct a hearing in accordance with the Administrative Procedure Act. The hearing officer, under the bill, must review the Board's decision and affirm, reverse, vacate, or modify that decision within 30 business days after the hearing. (R.C. 4722.05(D).) A contractor whose registration or application for registration is denied, suspended, or revoked may apply for registration again six months after the denial, suspension, or revocation. The Board may consider a new application in accordance with rules the Board adopts (R.C. 4722.05(E)).

Written contract required

The bill prohibits a home improvement contractor from performing any home improvement unless that contractor has entered into a written contract[3] with the owner. The contract, under the bill, must include all agreements and contain all of the following:

(1) The contractor's name, business street address, telephone number, and registration numbers;

(2) The owner's name, address, and telephone number;

(3) The address where the work is to be performed;

(4) A detailed description of the home improvement, including the goods and services to be furnished;

(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 amount to be paid for the home improvement;

(7) Statements that obligate the contractor to obtain any required permit, pay any required fee, and post any notice required in connection with the home improvement, and guarantee or provide a manufacturer's warranty, if one is available, to guarantee all work and materials for not less than one year after the home improvement is completed;

(8) A statement of any lien or security interest that may be filed against the property;

(9) Any cost of installation or delivery that the contract does not cover;

(10) The dated signatures of the owner and the contractor.

The bill also requires the contract to include two notices, both in at least 14-point type. One notice must state that the owner should not sign the contract if it contains any blank spaces and that the owner is entitled to a copy of the contract at the time the owner signs it. The other notice must state that any change or amendment to the original contract must be in writing and agreed to by the owner

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[3] *The bill defines "home improvement contract" as any agreement between a home improvement contractor or salesperson and an owner for the performance of a home improvement, and includes all agreements for labor, services, and materials to be furnished and performed under that contract (R.C. 4722.01(E)).*

and the contractor. The contract must also include the following statement clearly set forth in at least 14-point type in immediate proximity to the signature line:

> "State law ensures that you may cancel this transaction at any time prior to midnight of the third business day after you sign. You may cancel using any form of written communication or the form provided."

(R.C. 4722.06(A).)

Prohibited in contract

The contract must not include a clause that limits consumer remedies, a confession of judgment clause, a clause that requires venue or mediation or arbitration in any county other than the county in which the owner resides or the home improvement is performed, or any waiver of rights to which the bill entitles the owner, except in an emergency. The contract, under the bill, must not include a binding or mandatory arbitration clause unless the owner specifically agrees to the clause and signs the following statement, set forth in 14-point type and located in immediate proximity to the arbitration clause:

> "State law permits a home improvement contract to include a binding or mandatory arbitration requirement only if the owner agrees. Sign here if you agree to arbitration as described in this contract. ..... (signature of owner)".

(R.C. 4722.06(B).)

The bill specifies that the down payment cannot be greater than 20% of the total amount of the contract price plus the cost of special-order or custom-made materials,[4] for which an itemized list showing the price of each must be provided. The final payment is not 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).)

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[4] *The bill defines "special-order or custom-made materials" as materials that, prior to their delivery to the work site, require processing by a manufacturer to meet the designated specifications of a particular home improvement project and cannot be returned to the supplier for a refund or credit because of features that limit their use to the specific project (R.C. 4722.01(I)).*

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 the later of midnight of the third business day after the owner signs the contract or midnight of the third business day after the contractor provides a notice of cancellation form. The bill requires a contractor or salesperson to provide the following cancellation form, that is completed except for the date and owner's signature, at the time an owner signs a home improvement contract:

"NOTICE OF CANCELLATION

.....

(contract date)

You may cancel this home improvement contract without penalty or obligation, for any reason, at any time prior to midnight of the third business day after the date written above.

If you cancel this contract, the contractor will return to you within ten business days any property you have given the contractor, any payments you have made, and any other item of value you have given the contractor.

If you cancel, you must make available to the contractor at your residence any goods delivered to you under this contract. If the contractor does not pick them up within thirty calendar days, you may keep or dispose of the goods. You are responsible for the value of any goods you do not make available.

To cancel this transaction, send the contractor a signed and dated copy of this cancellation notice or any other written notice indicating that you are canceling. The notice may be sent by mail, personal delivery, telegram, facsimile transmission, or e-mail. Send the notice to:

(Name of contractor or salesperson)

(Address of contractor's place of business)

not later than midnight of

(Date - three business days after contract is signed)

I HEREBY CANCEL THIS TRANSACTION

(Date) (Owner's signature)"

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 or the rights that the bill requires to be specified in the home improvement contract 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. The bill requires a contractor to begin work on the date or within the time period specified in the contract. A home improvement contractor must complete a home improvement pursuant to any agreed-upon schedule if the owner makes payments as required by that schedule. The bill prohibits a contractor, in any case, from failing to 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. 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: (1) knowingly misrepresenting a material fact in applying for a certificate of registration, (2) fraudulently misrepresenting any aspect of the transaction or the nature or the quality of the work or the materials, (3) requiring the deposit before the owner signs the contract, (4) knowingly violating any applicable building code or sanitary or health law of Ohio or any political subdivision, (5) 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 (6) 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 a 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; alter, without the owner's written

consent, 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

Under the bill the Attorney General may conduct an investigation regarding violations of the bill pursuant to procedures the bill sets forth. The bill also allows the Attorney General to administer oaths, subpoena witnesses, adduce evidence; require the production of any book, document, record, or other relevant matter; designate a representative in another state, if needed, to inspect a matter on the Attorney General's behalf and carry out similar requests received from officials of other states. Procedures concerning compliance with a subpoena also are specified in the bill. The Attorney General also may request that a court grant injunctive relief (R.C. 4722.10.)

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 the Board adopts. The Attorney General 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 the Attorney General brings. 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 court finds that a home improvement contractor or salesperson has 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 civil penalty is to be paid to the State Treasurer for deposit in the Home Improvement Contractor Consumer Protection Enforcement Fund that is created by the bill in the state treasury. The Board must use the Fund solely to give relief to owners who are harmed by registered home improvement contractors who violate the bill's requirements. 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) to (E).)

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, provide monetary relief from the Home Improvement Consumer Protection Enforcement Fund, or 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 rules adopted pursuant 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 must 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.[5] (R.C. 4722.99.)

Schedule for implementing bill

The bill requires that, not later than June 30, 2007, 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, 2007, the Board is to commence the registration of home improvement contractors. The effective date of sections requiring compliance are delayed until January 1, 2008, to enable the registration program to operate prior to required compliance.

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[5] *A first degree misdemeanor may result in a possible jail term of not more than 180 days, a possible fine of not more than $1,000, and other possible sanctions (R.C. 2929.24 to 2929.28, not in the bill). A fifth degree felony may result in a possible prison term of 6-12 months, a possible fine of not more than $2,500, and other possible sanctions. A fourth degree felony may result in a possible prison term of 6-18 months, a possible fine of not more than $5,000, and other possible sanctions. (R.C. 2929.14 to 2929.18, not in the bill.)*

HISTORY

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