



Ohio Legislative Service Commission

Final Analysis

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Am. Sub. H.B. 383 129th General Assembly (As Passed by the General Assembly)

Reps. Slaby, Grossman, Combs, McGregor, Roegner, Bubp, Letson, Amstutz, Barnes, Blair, Blessing, Boose, Huffman, Milkovich, Rose, Sears, Stebelton, Winburn, Young, Batchelder

Sens. Bacon, Schaffer, Jones, Eklund, Faber, LaRose, Patton, Peterson, Seitz

Effective date: August 31, 2012

ACT SUMMARY

- Specifically excludes from the definition of "consumer transaction" for purposes of the Consumer Sales Practices Act a transaction involving a home construction services contract regarding a one-, two-, or three-family dwelling.
- Generally prohibits a home construction service supplier from performing home construction services that cost \$25,000 or more without entering into a written home construction services contract with the owner and requires the contract to include all agreements and conditions related to the home construction service, including a copy of the supplier's required liability insurance contract and specified information.
- Generally requires a home construction service supplier to provide notice that contains a written or oral estimate to the owner prior to performing work related to reasonably unforeseen, but necessary, costs that exceed \$5,000 over the course of the entire home construction contract.
- Provides that a home construction service supplier does not have to comply with the requirements described in the two preceding dot points or the requirements described in the following dot point related to excess costs if the supplier enters into a cost-plus contract with an owner.
- Prohibits a home construction service supplier from doing specified acts in violation of the act's provisions relating to contracts and excess costs, failing to perform the contract in a workmanlike manner, failing to make certain disclosures relating to

excess costs or repair services, making certain types of false or misleading statements to the owner, and doing other specified acts related to the home construction services.

- Generally authorizes a home construction service supplier to take as a down payment not more than 10% of the contract price before the supplier's performance under the contract begins and to accept payments from a construction loan.
- Grants to the Attorney General specified powers and remedies that are substantially similar to those available to the Attorney General under the Consumer Sales Practices Act.
- Prohibits the Attorney General from disclosing facts and identities discovered during an investigation unless specified circumstances exist.
- Permits an owner to bring a civil action for damages or other relief for a violation of the act and authorizes an award of limited attorney's fees to the prevailing party if the owner brought or maintained a groundless action in bad faith or if the supplier knowingly committed an act or practice in violation of the act.

CONTENT AND OPERATION

Consumer Sales Practices Act

Law retained in part by the act defines "consumer transaction" for purposes of the Consumer Sales Practices Act to mean 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. The act excludes from the definition of "consumer transaction" a transaction involving a home construction service contract (see "**Home construction service contracts**," below).¹ It thereby excludes such transactions from the purview of the Consumer Sales Practices Act, which prohibits and provides remedies for unfair, deceptive, or unconscionable acts in connection with consumer transactions.

Home construction services

The act enacts the Home Construction Service Law² to govern the provision of a "home construction service" (the construction of a residential building, excluding

¹ R.C. 1345.01(A).

² R.C. Chapter 4722.

construction performed on a structure that contains four or more dwelling units, except for work on an individual dwelling unit within that structure or construction performed on the common area of a condominium property). The act defines "residential building" as a one-, two-, or three-family dwelling and any accessory construction incidental to the dwelling. It expressly excludes from the definition an industrialized unit, a manufactured home, and a mobile home.³

Home construction service contracts

The act generally prohibits a home construction service supplier (someone who contracts with an owner to provide home construction services for compensation and who has a general liability insurance policy in an amount of not less than \$250,000)⁴ from performing home construction services that cost \$25,000 or more without entering into a written home construction services contract with the owner. The "owner" is defined as the person who contracts with a supplier and may be the owner of the property, a tenant who occupies the dwelling unit on which the service is performed, a person the owner authorizes to act on the owner's behalf to contract for the service, or any other person who contracts for the service.⁵ A "home construction service contract" is defined as a contract between an owner and a supplier to perform home construction services, including those rendered based on a cost-plus contract, for an amount exceeding \$25,000.⁶ The prohibition does not apply if the supplier and owner enter into a cost-plus contract under which payment to the supplier is based on the cost of a product plus the supplier's rate for labor to install the product and an agreed percentage of profit or a stipulated fee.⁷

The contract, if one is required, must include all agreements and conditions related to the home construction service, including all of the following:

- (1) The supplier's name, physical business address, business telephone number, and taxpayer identification number;
- (2) The owner's name, address, and telephone number;

³ R.C. 4722.01(B) and (F).

⁴ R.C. 4722.01(D).

⁵ R.C. 4722.01(E) and 4722.02(A).

⁶ R.C. 4722.01(C).

⁷ R.C. 4722.01(A) and 4722.02(C).

(3) The address or location of the property where the home construction service is to be performed;

(4) A general description of the home construction service, including the goods and services to be furnished as part of the service;

(5) The anticipated date or time period the home construction service is to begin and the anticipated date or time period it is to be completed;

(6) The total estimated cost of the home construction service;

(7) Any cost of installation, delivery, or other cost that the total estimated cost does not cover;

(8) A copy of the supplier's certificate of insurance showing general liability coverage of at least \$250,000;

(9) The dated signatures of the owner and the supplier.⁸

Under the act, if the total amount of reasonably unforeseen but necessary excess costs of a home construction service at any time exceeds \$5,000 over the course of the entire home construction contract, the home construction service supplier, before performing the work related to the excess costs, must provide the owner with a notice that contains a written or oral estimate, depending on which type the owner has designated in the contract. To determine the type of notice required, the contract must include a statement in substantially the following language:⁹

EXCESS COSTS

IF AT ANY TIME A HOME CONSTRUCTION SERVICE REQUIRES EXTRA COSTS ABOVE THE COST SPECIFIED OR ESTIMATED IN THE CONTRACT THAT WERE REASONABLY UNFORESEEN, BUT NECESSARY, AND THE TOTAL OF ALL EXTRA COSTS TO DATE EXCEEDS FIVE THOUSAND DOLLARS OVER THE COURSE OF THE ENTIRE HOME CONSTRUCTION CONTRACT, YOU HAVE A RIGHT TO AN ESTIMATE OF THOSE EXCESS COSTS BEFORE THE HOME CONSTRUCTION SERVICE SUPPLIER BEGINS WORK RELATED TO THOSE COSTS. INITIAL YOUR CHOICE OF THE TYPE OF ESTIMATE YOU REQUIRE:

. written estimate oral estimate

⁸ R.C. 4722.02(A).

⁹ R.C. 4722.02(B)(1) and (2).

No notice is required if the contract stipulates that the specified cost of the home construction service is a firm price and the supplier will not charge the owner with any excess costs or if the contract between the supplier and owner is a cost-plus contract. A home construction service supplier who enters into a cost-plus contract with the owner does not have to comply with the above-described notice requirements.¹⁰

Prohibitions applicable to home construction service suppliers

The act prohibits a home construction service supplier from doing any of the following, except that a supplier who enters into a cost-plus contract with the owner does not have to comply with any of the following requirements regarding excess costs:

(1) Before commencing work, fail to enter into a written contract that complies with the act's provisions;

(2) After entering into a contract and before commencing any work that is related to an excess cost, failing to provide an estimate of the excess costs as the act requires;

(3) After entering into a contract, 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 if the owner does not 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 must 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 perform the home construction service in a workmanlike manner (that is, a manner that meets or exceeds the minimum quantifiable standards promulgated by the Ohio Home Builders Association);¹¹

(e) Failing to tender to the owner, within a reasonable time and upon the owner's request, any replaced parts, unless the parts are to be rebuilt or sold by the supplier or returned to the manufacturer in connection with a warranted repair or

¹⁰ R.C. 4722.02(B)(3) and (C).

¹¹ R.C. 4722.01(G).

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 within a reasonable time period for any goods or services that the supplier has failed to deliver in accordance with the terms and conditions of the contract and for which the supplier has received payment;

(g) Failing to provide to the owner, within a reasonable time and upon the owner's request, a written, itemized receipt for any item of goods that is left with or turned over to the supplier for repair or services. The receipt must include the identity of the person who will perform the repair or services, the name and dated signature of the person or representative who actually accepts the goods, and 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.

(4) Making the performance of any home construction service contingent upon an owner's waiver of any rights provided by the act;

(5) Falsely representing that repairs, services, or work is necessary to comply with the Residential Building Code;

(6) Falsely representing that an item of goods or any part thereof that is being inspected or diagnosed for a home construction service is in a dangerous condition, or that its continued use may be harmful;

(7) Intentionally understating or misstating the estimated cost of the home construction service;

(8) Intentionally misrepresenting any aspect of the transaction or the nature or the quality of the work or materials;

(9) Failing at the time any owner signs or initials any document to provide the owner with a copy of the document within a reasonable time period;

(10) Failing to disclose to the owner before the commencement of any repair or service that any part of the repair or service will be performed by a person other than the supplier or an employee of the supplier if the contract disclaims any warranty of the repair or service that the other person performs;

(11) Falsely representing that repairs or services must be performed away from the property on which the home construction service is being performed.¹²

Payments on home construction service contracts

As a general rule, the act authorizes a home construction service supplier to take as a down payment not more than 10% of the contract price before the supplier's performance under the contract begins. However, the act permits a supplier to take as a down payment up to 75% of the total cost of any special order item that is otherwise not returnable or usable before the supplier's performance begins. Under the act, a supplier may accept payments from a construction loan in connection with a home construction service contract. These provisions do not apply to a supplier who enters into a cost-plus contract.¹³

Powers, remedies, and duties of Attorney General

To enforce the act, the act grants to the Attorney General powers and remedies that are substantially similar to those available to the Attorney General under the Consumer Sales Practices Act. Specifically, the Attorney General may investigate alleged violations of the Home Construction Service Law in the same manner in which the Attorney General investigates alleged violations of the Consumer Sales Practices Act. With this authority, the Attorney General may give a supplier the opportunity to cease and desist from any suspected violation through acceptance of a written assurance of voluntary compliance. An assurance of voluntary compliance does not bar the Attorney General from reopening the investigation if the Attorney General believes that further proceedings are in the public interest.¹⁴

In addition to the remedies that are substantially similar to those under the Consumer Sales Practices Act, the Attorney General may request and the court may impose a civil penalty of not more than \$25,000 against the supplier for each violation of the Home Construction Service Law.¹⁵

The act prohibits the Attorney General, in carrying out the Attorney General's official duties, from disclosing publicly the identity of any supplier who is or was the subject of an investigation or any facts developed during such an investigation unless those matters are made public record in enforcement proceedings or the supplier who is

¹² R.C. 4722.03(A).

¹³ R.C. 4722.04.

¹⁴ R.C. 4722.06 and R.C. 1345.06 (not in the act).

¹⁵ R.C. 4722.07 and R.C. 1345.07 (not in the act).

the subject of the investigation gives written consent to public disclosure of those matters. The act also requires the Attorney General to cooperate with state and local officials, officials of other states, and officials of the federal government in the administration of laws that are comparable to the Home Construction Service Law.¹⁶

The act also gives the owner a cause of action for a violation of the Home Construction Service Law. If the violation is a prohibited act described above under "**Home construction service contracts**," "**Prohibitions applicable to home construction service suppliers**," or "**Payments on home construction service contracts**," the owner in an individual action may rescind the transaction or recover the owner's actual economic damages (damages for direct, incidental, or consequential pecuniary losses resulting from a violation of the act and not including noneconomic loss) plus an amount not exceeding \$5,000 in noneconomic damages. In an action for rescission, revocation of the transaction must occur within a reasonable time after the owner discovers or should have discovered the ground for it and before any substantial change in condition of the subject of the transaction. The act also expressly authorizes an owner to ask for a declaratory judgment, an injunction, or other appropriate relief against an act or practice that violates the act and states that it does not preclude an owner from also proceeding with a cause of action under any other theory of law.¹⁷

The act authorizes the court to award to the prevailing party a reasonable attorney's fee limited to the work reasonably performed if the owner brought or maintained a groundless action in bad faith or if the supplier knowingly committed an act or practice that violates the act.¹⁸

HISTORY

ACTION	DATE
Introduced	11-16-11
Reported, H. Judiciary & Ethics	02-15-12
Passed House (90-3)	02-15-12
Reported, S. Insurance, Commerce & Labor	05-03-12
Passed Senate (31-0)	05-09-12
House concurred in Senate amendments (95-2)	05-16-12

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¹⁶ R.C. 4722.07(I) and (J).

¹⁷ R.C. 4722.08.

¹⁸ R.C. 4722.08(D).

