

**As Introduced**

**129th General Assembly  
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**H. B. No. 383**

**Representative Slaby**

**Cosponsors: Representatives Grossman, Combs, McGregor, Roegner**

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**A B I L L**

To amend section 1345.01 and to enact sections 1  
4722.01 to 4722.06 of the Revised Code to make 2  
changes relative to residential construction and 3  
the Consumer Sales Practices Act and to establish 4  
laws governing the practices of home construction 5  
service suppliers. 6

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That section 1345.01 be amended and sections 7  
4722.01, 4722.02, 4722.03, 4722.04, 4722.05, and 4722.06 of the 8  
Revised Code be enacted to read as follows: 9

**Sec. 1345.01.** As used in sections 1345.01 to 1345.13 of the 10  
Revised Code: 11

(A) "Consumer transaction" means a sale, lease, assignment, 12  
award by chance, or other transfer of an item of goods, a service, 13  
a franchise, or an intangible, to an individual for purposes that 14  
are primarily personal, family, or household, or solicitation to 15  
supply any of these things. "Consumer transaction" does not 16  
include transactions between persons, defined in sections 4905.03 17  
and 5725.01 of the Revised Code, and their customers, except for 18  
transactions involving a loan made pursuant to sections 1321.35 to 19

1321.48 of the Revised Code and transactions in connection with 20  
residential mortgages between loan officers, mortgage brokers, or 21  
nonbank mortgage lenders and their customers; transactions 22  
involving a construction contract of a one-, two-, or three-family 23  
dwelling; transactions between certified public accountants or 24  
public accountants and their clients; transactions between 25  
attorneys, physicians, or dentists and their clients or patients; 26  
and transactions between veterinarians and their patients that 27  
pertain to medical treatment but not ancillary services. 28

(B) "Person" includes an individual, corporation, government, 29  
governmental subdivision or agency, business trust, estate, trust, 30  
partnership, association, cooperative, or other legal entity. 31

(C) "Supplier" means a seller, lessor, assignor, franchisor, 32  
or other person engaged in the business of effecting or soliciting 33  
consumer transactions, whether or not the person deals directly 34  
with the consumer. If the consumer transaction is in connection 35  
with a residential mortgage, "supplier" does not include an 36  
assignee or purchaser of the loan for value, except as otherwise 37  
provided in section 1345.091 of the Revised Code. For purposes of 38  
this division, in a consumer transaction in connection with a 39  
residential mortgage, "seller" means a loan officer, mortgage 40  
broker, or nonbank mortgage lender. 41

(D) "Consumer" means a person who engages in a consumer 42  
transaction with a supplier. 43

(E) "Knowledge" means actual awareness, but such actual 44  
awareness may be inferred where objective manifestations indicate 45  
that the individual involved acted with such awareness. 46

(F) "Natural gas service" means the sale of natural gas, 47  
exclusive of any distribution or ancillary service. 48

(G) "Public telecommunications service" means the 49  
transmission by electromagnetic or other means, other than by a 50

telephone company as defined in section 4927.01 of the Revised Code, of signs, signals, writings, images, sounds, messages, or data originating in this state regardless of actual call routing. "Public telecommunications service" excludes a system, including its construction, maintenance, or operation, for the provision of telecommunications service, or any portion of such service, by any entity for the sole and exclusive use of that entity, its parent, a subsidiary, or an affiliated entity, and not for resale, directly or indirectly; the provision of terminal equipment used to originate telecommunications service; broadcast transmission by radio, television, or satellite broadcast stations regulated by the federal government; or cable television service.

(H)(1) "Loan officer" means an individual who for compensation or gain, or in anticipation of compensation or gain, takes or offers to take a residential mortgage loan application; assists or offers to assist a buyer in obtaining or applying to obtain a residential mortgage loan by, among other things, advising on loan terms, including rates, fees, and other costs; offers or negotiates terms of a residential mortgage loan; or issues or offers to issue a commitment for a residential mortgage loan. "Loan officer" also includes a loan originator as defined in division (E)(1) of section 1322.01 of the Revised Code.

(2) "Loan officer" does not include an employee of a bank, savings bank, savings and loan association, credit union, or credit union service organization organized under the laws of this state, another state, or the United States; an employee of a subsidiary of such a bank, savings bank, savings and loan association, or credit union; or an employee of an affiliate that (a) controls, is controlled by, or is under common control with, such a bank, savings bank, savings and loan association, or credit union and (b) is subject to examination, supervision, and regulation, including with respect to the affiliate's compliance

with applicable consumer protection requirements, by the board of 83  
governors of the federal reserve system, the comptroller of the 84  
currency, the office of thrift supervision, the federal deposit 85  
insurance corporation, or the national credit union 86  
administration. 87

(I) "Residential mortgage" or "mortgage" means an obligation 88  
to pay a sum of money evidenced by a note and secured by a lien 89  
upon real property located within this state containing two or 90  
fewer residential units or on which two or fewer residential units 91  
are to be constructed and includes such an obligation on a 92  
residential condominium or cooperative unit. 93

(J)(1) "Mortgage broker" means any of the following: 94

(a) A person that holds that person out as being able to 95  
assist a buyer in obtaining a mortgage and charges or receives 96  
from either the buyer or lender money or other valuable 97  
consideration readily convertible into money for providing this 98  
assistance; 99

(b) A person that solicits financial and mortgage information 100  
from the public, provides that information to a mortgage broker or 101  
a person that makes residential mortgage loans, and charges or 102  
receives from either of them money or other valuable consideration 103  
readily convertible into money for providing the information; 104

(c) A person engaged in table-funding or warehouse-lending 105  
mortgage loans that are residential mortgage loans. 106

(2) "Mortgage broker" does not include a bank, savings bank, 107  
savings and loan association, credit union, or credit union 108  
service organization organized under the laws of this state, 109  
another state, or the United States; a subsidiary of such a bank, 110  
savings bank, savings and loan association, or credit union; an 111  
affiliate that (a) controls, is controlled by, or is under common 112  
control with, such a bank, savings bank, savings and loan 113

association, or credit union and (b) is subject to examination, 114  
supervision, and regulation, including with respect to the 115  
affiliate's compliance with applicable consumer protection 116  
requirements, by the board of governors of the federal reserve 117  
system, the comptroller of the currency, the office of thrift 118  
supervision, the federal deposit insurance corporation, or the 119  
national credit union administration; or an employee of any such 120  
entity. 121

(K) "Nonbank mortgage lender" means any person that engages 122  
in a consumer transaction in connection with a residential 123  
mortgage, except for a bank, savings bank, savings and loan 124  
association, credit union, or credit union service organization 125  
organized under the laws of this state, another state, or the 126  
United States; a subsidiary of such a bank, savings bank, savings 127  
and loan association, or credit union; or an affiliate that (1) 128  
controls, is controlled by, or is under common control with, such 129  
a bank, savings bank, savings and loan association, or credit 130  
union and (2) is subject to examination, supervision, and 131  
regulation, including with respect to the affiliate's compliance 132  
with applicable consumer protection requirements, by the board of 133  
governors of the federal reserve system, the comptroller of the 134  
currency, the office of thrift supervision, the federal deposit 135  
insurance corporation, or the national credit union 136  
administration. 137

(L) For purposes of divisions (H), (J), and (K) of this 138  
section: 139

(1) "Control" of another entity means ownership, control, or 140  
power to vote twenty-five per cent or more of the outstanding 141  
shares of any class of voting securities of the other entity, 142  
directly or indirectly or acting through one or more other 143  
persons. 144

(2) "Credit union service organization" means a CUSO as 145

defined in 12 C.F.R. 702.2. 146

Sec. 4722.01. As used in this chapter: 147

(A) "Commencement" means the date on which all parties have 148  
signed a home construction service contract. 149

(B) "Cost-plus contract" means a contract entered into 150  
between an owner and a home construction service supplier under 151  
which payment to the supplier is based on the cost of a product 152  
plus the supplier's rate for labor to install the product. 153

(C) "Home construction service" means the construction of a 154  
new residential building or the substantial rehabilitation of a 155  
residential building. "Home construction service" does not include 156  
construction performed on a structure that contains four or more 157  
dwelling units, except for work on an individual dwelling unit 158  
within that structure, or construction performed on the common 159  
area of a condominium property. 160

(D) "Home construction service contract" means a contract 161  
between an owner and a supplier to perform home construction 162  
services, including services rendered based on a cost-plus 163  
contract. 164

(E) "Home construction service supplier" or "supplier" means 165  
a person who provides home construction services for compensation. 166

(F) "Owner" means the person who contracts with a home 167  
construction service supplier. "Owner" may include the owner of 168  
the property, a tenant who occupies the dwelling unit on which the 169  
home construction service is performed, or a person the owner 170  
authorizes to act on the owner's behalf to contract for a home 171  
construction service, and any other person who contracts for a 172  
home construction service. 173

(G) "Residential building" means a one-, two-, or 174  
three-family dwelling and any accessory construction incidental to 175

the dwelling. "Residential building" does not include any of the 176  
following: 177

(1) An industrialized unit as described in section 3781.06 of 178  
the Revised Code; 179

(2) A manufactured home as described in section 3781.06 of 180  
the Revised Code; 181

(3) A mobile home as described in section 4501.01 of the 182  
Revised Code. 183

(H) "Substantial rehabilitation" means rehabilitation, 184  
repair, or alteration of at least thirty per cent of the square 185  
footage of a one-, two-, or three-family dwelling. 186

(I) "Workmanlike manner" means the home construction service 187  
supplier has engaged in construction that meets or exceeds the 188  
minimum quantifiable standards promulgated by a local home 189  
builders association. 190

**Sec. 4722.02.** (A) Except as provided in division (C) of this 191  
section, no home construction service supplier shall perform any 192  
home construction service the cost of which equals or exceeds one 193  
thousand dollars unless that person enters into a written contract 194  
with the owner. The contract shall include all agreements and 195  
conditions related to the home construction service, including all 196  
of the following: 197

(1) The supplier's name, physical business address, business 198  
telephone number, and taxpayer identification number; 199

(2) The owner's name, address, and telephone number; 200

(3) The address or location of the property where the home 201  
construction service is to be performed; 202

(4) A general description of the home construction service, 203  
including the goods and services to be furnished as part of the 204

<u>service;</u>	205
<u>(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;</u>	206 207 208
<u>(6) The total estimated cost of the home construction service;</u>	209 210
<u>(7) Any cost of installation, delivery, or other cost that the total estimated cost does not cover;</u>	211 212
<u>(8) The dated signatures of the owner and the supplier.</u>	213
<u>(B)(1) If the total amount of unforeseen, but reasonably necessary, excess costs of a home construction service at any time exceeds ten per cent of the cost estimated or specified in the contract, prior to performing the work related to the excess costs, the home construction service supplier shall provide an owner with a notice that contains a written or oral estimate, depending on which type the owner has designated in the contract.</u>	214 215 216 217 218 219 220
<u>(2) To determine the type of notice an owner requires when the costs of a home construction service exceed the estimate provided in the contract, the contract shall include a statement in substantially the following language:</u>	221 222 223 224
<u>"EXCESS COSTS</u>	225
<u>IF AT ANY TIME A HOME CONSTRUCTION SERVICE REQUIRES EXTRA COSTS ABOVE THE COST SPECIFIED OR ESTIMATED IN THE CONTRACT THAT WERE UNFORESEEN, BUT REASONABLY NECESSARY, AND THE TOTAL OF ALL EXTRA COSTS TO DATE EXCEEDS TEN PER CENT OF THE CONTRACT COST, YOU HAVE A RIGHT TO AN ESTIMATE OF THOSE EXCESS COSTS BEFORE THE HOME CONSTRUCTION SERVICE SUPPLIER BEGINS WORK RELATED TO THOSE COSTS. INITIAL YOUR CHOICE OF THE TYPE OF ESTIMATE YOU REQUIRE:</u>	226 227 228 229 230 231 232
<u>..... written estimate ..... oral estimate"</u>	233
<u>(3) If the contract stipulates that the specified cost of the</u>	234

home construction service is a firm price and the home 235  
construction service supplier will not charge the owner with any 236  
excess costs, the home construction service supplier need not 237  
comply with the notice requirements of this division. 238

(C) A home construction service supplier who enters into a 239  
cost-plus contract with an owner for a home construction service 240  
need not comply with the requirements in divisions (A) and (B) of 241  
this section. 242

**Sec. 4722.03.** (A) No home construction service supplier shall 243  
do any of the following: 244

(1) Prior to commencing work related to the home construction 245  
service, fail to enter into a written contract that complies with 246  
this chapter; 247

(2) After entering into a contract with an owner and prior to 248  
commencing any work that is related to an excess cost, fail to 249  
provide an estimate of the excess costs as this chapter requires; 250

(3) After entering into a contract with an owner, do any of 251  
the following: 252

(a) Fail to disclose, prior to the owner's acceptance of any 253  
goods or work related to an excess cost, that in failing to 254  
approve an excess cost, completion of the work may not be possible 255  
and a charge may be imposed for any disassembly, reassembly, or 256  
partially completed work, which shall be directly related to the 257  
actual labor or parts involved; 258

(b) Charge for any excess cost that the owner has not 259  
approved; 260

(c) Represent that repairs or work have been performed when 261  
such is not the fact; 262

(d) Fail to perform the home construction service in a 263  
competent, workmanlike manner as defined in section 4722.01 of the 264

<u>Revised Code;</u>	265
<u>(e) Fail 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 home construction service provider, 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;</u>	266 267 268 269 270 271
<u>(f) Fail to provide a full refund within a reasonable time period for any goods or services that the home construction service supplier has failed to deliver in accordance with the terms and conditions of the contract required by section 4722.02 of the Revised Code and for which the supplier has received payment;</u>	272 273 274 275 276 277
<u>(g) Fail 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 home construction service supplier for repair or services. The receipt shall include all of the following:</u>	278 279 280 281 282
<u>(i) The identity of the person who will perform the repair or services;</u>	283 284
<u>(ii) The name and dated signature of the person or representative who actually accepts the goods;</u>	285 286
<u>(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.</u>	287 288 289
<u>(4) Make the performance of any home construction service contingent upon a consumer's waiver of any rights this chapter provides;</u>	290 291 292
<u>(5) Represent that repairs, services, or work is necessary to comply with the residential building code when such is not the</u>	293 294

<u>fact;</u>	295
<u>(6) Represent that an item of goods or any part thereof that</u>	296
<u>is being inspected or diagnosed for a home construction service is</u>	297
<u>in a dangerous condition, or that its continued use may be</u>	298
<u>harmful, when such is not the fact;</u>	299
<u>(7) Intentionally understate or intentionally misstate the</u>	300
<u>estimated cost of the home construction service;</u>	301
<u>(8) Fraudulently misrepresent any aspect of the transaction</u>	302
<u>or the nature or the quality of the work or materials;</u>	303
<u>(9) Fail at the time any owner signs or initials any document</u>	304
<u>to provide the owner with a copy of the document within a</u>	305
<u>reasonable time period;</u>	306
<u>(10) Fail to disclose to the owner prior to the commencement</u>	307
<u>of any repair or service that any part of the repair or service</u>	308
<u>will be performed by a person other than the home construction</u>	309
<u>service supplier or employee of the supplier if the contract</u>	310
<u>disclaims any warranty of the repair or service that the other</u>	311
<u>person performs;</u>	312
<u>(11) Represent that repairs or services must be performed</u>	313
<u>away from the property on which the home construction service is</u>	314
<u>being performed when that is not the fact.</u>	315
<u>(B) A home construction service supplier who enters into a</u>	316
<u>cost-plus contract with an owner for a home construction service</u>	317
<u>need not comply with the requirements regarding excess costs</u>	318
<u>provided in this section.</u>	319
<b><u>Sec. 4722.04.</u></b> <u>A home construction service supplier may take</u>	320
<u>as a down payment not more than ten per cent of the contract price</u>	321
<u>before the supplier's performance that is required by the contract</u>	322
<u>is completed, except a supplier may take as a down payment not</u>	323
<u>more than seventy-five per cent of the total cost of any special</u>	324

order item that is otherwise not returnable or usable before the 325  
supplier's performance that is required by the contract is 326  
completed. This section does not apply to a home construction 327  
service supplier who enters into a cost-plus contract. A supplier 328  
may accept payments from a construction loan in connection with a 329  
home construction service contract. 330

Sec. 4722.05. (A) All powers and remedies available to the 331  
attorney general provided in sections 1345.05 to 1345.07 of the 332  
Revised Code to enforce sections 1345.01 to 1345.13 of the Revised 333  
Code are available to the attorney general to enforce this 334  
chapter. 335

Sec. 4722.06. For a violation of Chapter 4722. of the Revised 336  
Code, an owner has a cause of action and is entitled to relief as 337  
follows: 338

(A) Where the violation was an act prohibited by section 339  
4722.02, 4722.03, or 4722.04 of the Revised Code, the owner may, 340  
in an individual action, rescind the transaction or recover the 341  
owner's actual economic damages plus an amount not exceeding five 342  
thousand dollars in noneconomic damages. 343

(B) In any action for rescission, revocation of the 344  
transaction must occur within a reasonable time after the owner 345  
discovers or should have discovered the ground for it and before 346  
any substantial change in condition of the subject of the 347  
transaction. 348

(C) Any owner may seek a declaratory judgment, an injunction, 349  
or other appropriate relief against an act or practice that 350  
violates this chapter. 351

(D) The court may award to the prevailing party a reasonable 352  
attorney's fee limited to the work reasonably performed, if either 353  
of the following apply: 354

(1) The owner complaining of the act or practice that 355  
violated this chapter has brought or maintained an action that is 356  
groundless, and the owner filed or maintained the action in bad 357  
faith; 358

(2) The home construction service supplier has knowingly 359  
committed an act or practice that violates this chapter. 360

(E) As used in this section, "actual economic damages" means 361  
damages for direct, incidental, or consequential pecuniary losses 362  
resulting from a violation of Chapter 4722. of the Revised Code 363  
and does not include damages for noneconomic loss as defined in 364  
section 2315.18 of the Revised Code. 365

(F) Nothing in this section shall preclude an owner from also 366  
proceeding with a cause of action under any other theory of law. 367

**Section 2.** That existing section 1345.01 of the Revised Code 368  
is hereby repealed. 369