

AN ACT

To amend section 1345.01 and to enact sections 4722.01 to 4722.04 and 4722.06 to 4722.08 of the Revised Code to make changes relative to residential construction and the Consumer Sales Practices Act and to establish laws governing the practices of home construction service suppliers.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That section 1345.01 be amended and sections 4722.01, 4722.02, 4722.03, 4722.04, 4722.06, 4722.07, and 4722.08 of the Revised Code be enacted to read as follows:

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

(A) "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. "Consumer transaction" does not include transactions between persons, defined in sections 4905.03 and 5725.01 of the Revised Code, and their customers, except for transactions involving a loan made pursuant to sections 1321.35 to 1321.48 of the Revised Code and transactions in connection with residential mortgages between loan officers, mortgage brokers, or nonbank mortgage lenders and their customers; transactions involving a home construction service contract as defined in section 4722.01 of the Revised Code; transactions between certified public accountants or public accountants and their clients; transactions between attorneys, physicians, or dentists and their clients or patients; and transactions between veterinarians and their patients that pertain to medical treatment but not ancillary services.

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

(C) "Supplier" means a seller, lessor, assignor, franchisor, or other person engaged in the business of effecting or soliciting consumer

transactions, whether or not the person deals directly with the consumer. If the consumer transaction is in connection with a residential mortgage, "supplier" does not include an assignee or purchaser of the loan for value, except as otherwise provided in section 1345.091 of the Revised Code. For purposes of this division, in a consumer transaction in connection with a residential mortgage, "seller" means a loan officer, mortgage broker, or nonbank mortgage lender.

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

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

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

(G) "Public telecommunications service" means the transmission by electromagnetic or other means, other than by a 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 governors of the federal reserve system, the comptroller of the currency, the office of thrift supervision, the federal deposit insurance corporation, or the national credit union administration.

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

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

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

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

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

(2) "Mortgage broker" does not include 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; a subsidiary of such a bank, savings bank, savings and loan association, or credit union; 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 governors of the federal reserve system, the comptroller of the currency, the office of thrift supervision, the federal deposit insurance corporation, or the national credit union administration; or an employee of any such entity.

(K) "Nonbank mortgage lender" means any person that engages in a consumer transaction in connection with a residential mortgage, except for 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; a subsidiary of such a bank, savings bank, savings and loan association, or credit union; or an affiliate that (1) controls, is controlled by, or is under common control with, such a bank, savings bank, savings and loan association, or credit union and (2) is subject to examination, supervision, and regulation, including with respect to the affiliate's compliance with applicable consumer protection requirements, by the board of governors of the federal reserve system, the comptroller of the currency, the office of thrift supervision, the federal deposit insurance corporation, or the national credit union administration.

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

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

(2) "Credit union service organization" means a CUSO as defined in 12 C.F.R. 702.2.

Sec. 4722.01. As used in this chapter:

(A) "Cost-plus contract" means a contract entered into between an owner and a home construction service supplier 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 plus an agreed percentage of profit or a stipulated fee.

(B) "Home construction service" means the construction of a residential building. "Home construction service" does not include 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.

(C) "Home construction service contract" means a contract between an owner and a supplier to perform home construction services, including services rendered based on a cost-plus contract, for an amount exceeding twenty-five thousand dollars.

(D) "Home construction service supplier" or "supplier" means a person who contracts with an owner to provide home construction services for compensation and who maintains in force a general liability insurance policy in an amount of not less than two hundred fifty thousand dollars.

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

(F) "Residential building" means a one-, two-, or three-family dwelling and any accessory construction incidental to the dwelling. "Residential building" does not include any of the following:

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

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

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

(G) "Workmanlike manner" means the home construction service supplier has engaged in construction that meets or exceeds the minimum quantifiable standards promulgated by the Ohio home builders association.

Sec. 4722.02. (A) Except as provided in division (C) of this section, no home construction service supplier shall perform any home construction service the cost of which equals or exceeds twenty-five thousand dollars unless the supplier enters into a written home construction services contract with the owner. The contract shall 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) 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 in an amount of not less than two hundred fifty thousand dollars;

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

(B)(1) If the total amount of reasonably unforeseen, but necessary, excess costs of a home construction service at any time exceeds five thousand dollars over the course of the entire home construction 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.

(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:

"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"

(3) If the contract stipulates that the specified cost of the home construction service is a firm price and the home construction service supplier will not charge the owner with any excess costs, the home construction service supplier need not comply with the notice requirements of this division.

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

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

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

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

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

(a) Fail 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) Charge for any excess cost that the owner has not approved;

(c) Represent that repairs or work have been performed when such is

not the fact:

(d) Fail to perform the home construction service in a workmanlike manner;

(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 supplier, 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) 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;

(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:

(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.

(4) Make the performance of any home construction service contingent upon an owner's waiver of any rights this chapter provides;

(5) Represent that repairs, services, or work is necessary to comply with the residential building code when such is not the fact;

(6) Represent 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, when such is not the fact;

(7) Intentionally understate or intentionally misstate the estimated cost of the home construction service;

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

(9) Fail 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) Fail 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 home construction service supplier or employee of the supplier if the contract disclaims any warranty of the repair or service that the other person performs;

(11) Represent that repairs or services must be performed away from the property on which the home construction service is being performed when that is not the fact.

(B) A home construction service supplier who enters into a cost-plus contract with an owner for a home construction service need not comply with the requirements regarding excess costs provided in this section.

Sec. 4722.04. A home construction service supplier may take as a down payment not more than ten per cent of the contract price before the supplier's performance that is required by the contract begins, except a supplier may take as a down payment not more than seventy-five per cent of the total cost of any special order item that is otherwise not returnable or usable before the supplier's performance that is required by the contract begins. This section does not apply to a home construction service supplier who enters into a cost-plus contract. A supplier may accept payments from a construction loan in connection with a home construction service contract.

Sec. 4722.06. (A) If, by the attorney general's own inquiries or as a result of complaints, the attorney general has reasonable cause to believe that a person has engaged or is engaging in an act or practice that violates this chapter, the attorney general may investigate.

(B) For this purpose, the attorney general may administer oaths, subpoena witnesses, adduce evidence, and require the production of relevant matter.

If matter that the attorney general requires to be produced is located outside the state, the attorney general may designate representatives, including officials of the state in which the matter is located, to inspect the matter on the attorney general's behalf, and the attorney general may respond to similar requests from officials of other states. The person subpoenaed may make the matter available to the attorney general at a convenient location within the state or pay the reasonable and necessary expenses for the attorney general or the attorney general's representative to examine the matter at the place where it is located, provided that expenses shall not be charged to a party not subsequently found to have engaged in an act or practice violative of this chapter.

(C) Within twenty days after a subpoena has been served, a motion to extend the return day, or to modify or quash the subpoena, stating good cause, may be filed in the court of common pleas of Franklin county or the county in which the person served resides or has the person's principal place

of business.

(D) A person subpoenaed under this section shall comply with the terms of the subpoena, unless the parties agree to modify the terms of the subpoena or unless the court has modified or quashed the subpoena, extended the return day of the subpoena, or issued any other order with respect to the subpoena prior to its return day.

If a person fails without lawful excuse to obey a subpoena or to produce relevant matter, the attorney general may apply to the court of common pleas of the county in which the person subpoenaed resides or has the person's principal place of business for an order compelling compliance.

(E) The attorney general may request that an individual who refuses to testify or to produce relevant matter on the ground that the testimony or matter may incriminate the individual be ordered by the court to provide the testimony or matter. With the exception of a prosecution for perjury and an action for damages under this chapter, an individual who complies with a court order to provide testimony or matter, after asserting a privilege against self-incrimination to which the individual is entitled by law, shall not be subjected to a criminal proceeding or to a civil penalty or forfeiture on the basis of the testimony or matter required to be disclosed or testimony or matter discovered through that testimony or matter.

(F) The attorney general may:

(1) During an investigation under this section, afford, in a manner considered appropriate to the attorney general, a supplier an opportunity to cease and desist from any suspected violation. The attorney general may suspend the investigation during the time period that the attorney general permits the supplier to cease and desist; however, the suspension of the investigation or the affording of an opportunity to cease and desist shall not prejudice or prohibit any further investigation by the attorney general under this section.

(2) Terminate an investigation under this section upon acceptance of a written assurance of voluntary compliance from a supplier who is suspected of a violation of this chapter.

Acceptance of an assurance may be conditioned upon an undertaking to reimburse or to take other appropriate action with respect to identifiable owners damaged by an alleged violation of this chapter. An assurance of compliance given by a supplier is not evidence of violation of this chapter. The attorney general may, at any time, reopen an investigation terminated by the acceptance of an assurance of voluntary compliance, if the attorney general believes that further proceedings are in the public interest. Evidence of a violation of an assurance of voluntary compliance is prima-facie

evidence of an act or practice in violation of this chapter, if presented after the violation in an action brought under this chapter. An assurance of voluntary compliance may be filed with the court and if approved by the court, entered as a consent judgment.

(G) The procedures available to the attorney general under this section are cumulative and concurrent, and the exercise of one procedure by the attorney general does not preclude or require the exercise of any other procedure.

Sec. 4722.07. (A) If the attorney general, by the attorney general's own inquiries or as a result of complaints, has reasonable cause to believe that a supplier has engaged or is engaging in an act or practice that violates this chapter, and that the action would be in the public interest, the attorney general may bring any of the following:

(1) An action to obtain a declaratory judgment that the act or practice violates this chapter;

(2)(a) An action, with notice as required by Civil Rule 65, to obtain a temporary restraining order, preliminary injunction, or permanent injunction to restrain the act or practice. If the attorney general shows by a preponderance of the evidence that the supplier has violated or is violating this chapter, the court may issue a temporary restraining order, preliminary injunction, or permanent injunction to restrain and prevent the act or practice.

(b) On motion of the attorney general, or on its own motion, the court may impose a civil penalty of not more than five thousand dollars for each day of violation of a temporary restraining order, preliminary injunction, or permanent injunction issued under this section, if the supplier received notice of the action. The civil penalties shall be paid as provided in division (G) of this section.

(c) Upon the commencement of an action under division (A)(2) of this section against a supplier who operates under a license, permit, certificate, commission, or other authorization issued by the supreme court or by a board, commission, department, division, or other agency of this state, the attorney general shall immediately notify the supreme court or agency that such an action has been commenced against the supplier.

(3) A class action under Civil Rule 23, as amended, on behalf of owners who have engaged in home construction service contracts in this state for damage caused by an act or practice described in this chapter.

(B) On motion of the attorney general and without bond, in the attorney general's action under this section, the court may make appropriate orders, including appointment of a referee or a receiver, for sequestration of assets,

to reimburse owners found to have been damaged, to carry out a home construction service contract in accordance with an owner's reasonable expectations, to strike or limit the application of unconscionable clauses of contracts so as to avoid an unconscionable result, or to grant other appropriate relief. The court may assess the expenses of a referee or receiver against the supplier.

(C) Any moneys or property recovered by the attorney general in an action under this section that cannot with due diligence within five years be restored by a referee to owners shall be unclaimed funds reportable under Chapter 169. of the Revised Code.

(D) In addition to the other remedies provided in this section, the attorney general may request and the court may impose a civil penalty of not more than twenty-five thousand dollars against the supplier for each violation of an act or practice described in this chapter. The civil penalties shall be paid as provided in division (G) of this section.

(E) No action may be brought by the attorney general under this section to recover for a home construction service contract more than two years after the occurrence of a violation.

(F) If a court determines that provision has been made for reimbursement or other appropriate corrective action, insofar as practicable, with respect to all consumers damaged by a violation, or in any other appropriate case, the attorney general, with court approval, may terminate enforcement proceedings brought by the attorney general upon acceptance of an assurance from the supplier of voluntary compliance with this chapter, with respect to the alleged violation. The assurance shall be filed with the court and entered as a consent judgment. A consent judgment is not evidence of prior violation of such chapter. Disregard of the terms of a consent judgment entered upon an assurance shall be treated as a violation of an injunction issued under this section.

(G) Civil penalties ordered pursuant to divisions (A) or (D) of this section shall be paid as follows: one-fourth of the amount to the treasurer of the county in which the action is brought and three-fourths to the consumer protection enforcement fund created by section 1345.51 of the Revised Code.

(H) The remedies available to the attorney general under this section are cumulative and concurrent, and the exercise of one remedy by the attorney general does not preclude or require the exercise of any other remedy.

(I) In carrying out the attorney general's official duties, the attorney general shall not disclose publicly the identity of any supplier who is or was the subject of an investigation under this chapter or any facts developed

during such an investigation unless those matters have become a matter of public record in enforcement proceedings, or the supplier who is the subject of the investigation gives written consent to public disclosure of those matters.

(J) The attorney general shall cooperate with state and local officials, officials of other states, and officials of the federal government in the administration of statutes comparable to this chapter.

Sec. 4722.08. For a violation of Chapter 4722. of the Revised Code, an owner has a cause of action and is entitled to relief as follows:

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

(B) In any 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.

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

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

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

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

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

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

SECTION 2. That existing section 1345.01 of the Revised Code is hereby repealed.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

Am. Sub. H. B. No. 383

129th G.A.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____