

As Introduced

**130th General Assembly
Regular Session
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H. B. No. 140

Representative Patmon

Cosponsors: Representatives Strahorn, Stebelton

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A B I L L

To amend sections 4722.02 and 4745.01 and to enact 1
sections 4785.01 to 4785.17, 4785.20, and 4785.99 2
of the Revised Code to require licensure of 3
residential construction contractors and to create 4
the Residential Builders' and Maintenance and 5
Alteration Contractors' Licensing Board to 6
regulate the licensure and performance of 7
residential construction contractors. 8

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

Section 1. That sections 4722.02 and 4745.01 be amended and 9
sections 4785.01, 4785.02, 4785.03, 4785.04, 4785.05, 4785.06, 10
4785.07, 4785.08, 4785.09, 4785.10, 4785.11, 4785.12, 4785.13, 11
4785.14, 4785.15, 4785.16, 4785.17, 4785.20, and 4785.99 of the 12
Revised Code be enacted to read as follows: 13

Sec. 4722.02. (A) Except as provided in division (C) of this 14
section, no home construction service supplier shall perform any 15
home construction service the cost of which equals or exceeds 16
twenty-five thousand dollars unless the supplier enters into a 17
written home construction services contract with the owner. The 18
contract shall include all agreements and conditions related to 19

the home construction service, including all of the following:	20
(1) The supplier's name, physical business address, business telephone number, and taxpayer identification number, <u>and</u> <u>information regarding the supplier's license issued under Chapter 4785. of the Revised Code;</u>	21 22 23 24
(2) The owner's name, address, and telephone number;	25
(3) The address or location of the property where the home construction service is to be performed;	26 27
(4) A general description of the home construction service, including the goods and services to be furnished as part of the service;	28 29 30
(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;	31 32 33
(6) The total estimated cost of the home construction service;	34 35
(7) Any cost of installation, delivery, or other cost that the total estimated cost does not cover;	36 37
(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;	38 39 40
(9) The dated signatures of the owner and the supplier.	41
(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.	42 43 44 45 46 47 48

(2) To determine the type of notice an owner requires when 49
the costs of a home construction service exceed the estimate 50
provided in the contract, the contract shall include a statement 51
in substantially the following language: 52

"EXCESS COSTS 53

IF AT ANY TIME A HOME CONSTRUCTION SERVICE REQUIRES EXTRA 54
COSTS ABOVE THE COST SPECIFIED OR ESTIMATED IN THE CONTRACT THAT 55
WERE REASONABLY UNFORESEEN, BUT NECESSARY, AND THE TOTAL OF ALL 56
EXTRA COSTS TO DATE EXCEEDS FIVE THOUSAND DOLLARS OVER THE COURSE 57
OF THE ENTIRE HOME CONSTRUCTION CONTRACT, YOU HAVE A RIGHT TO AN 58
ESTIMATE OF THOSE EXCESS COSTS BEFORE THE HOME CONSTRUCTION 59
SERVICE SUPPLIER BEGINS WORK RELATED TO THOSE COSTS. INITIAL YOUR 60
CHOICE OF THE TYPE OF ESTIMATE YOU REQUIRE: 61
..... written estimate oral estimate" 62

(3) If the contract stipulates that the specified cost of the 63
home construction service is a firm price and the home 64
construction service supplier will not charge the owner with any 65
excess costs, the home construction service supplier need not 66
comply with the notice requirements of this division. 67

(C) A home construction service supplier who enters into a 68
cost-plus contract with an owner for a home construction service 69
need not comply with the requirements in divisions (A) and (B) of 70
this section. 71

Sec. 4745.01. (A) "Standard renewal procedure," as used in 72
Chapters 905., 907., 909., 911., 913., 915., 918., 921., 923., 73
927., 942., 943., 953., 1321., 3710., 3713., 3719., 3742., 3748., 74
3769., 3783., 3921., 3951., 4104., 4105., ~~4143.~~ 4169., 4561., 75
4703., 4707., 4709., 4713., 4715., 4717., 4723., 4725., 4727., 76
4728., 4729., 4731., 4733., 4734., 4735., 4739., 4741., 4747., 77
4749., 4752., 4753., 4755., 4757., 4758., 4759., 4761., 4766., 78

4773., ~~and~~ 4775., and 4785. of the Revised Code, means the license 79
renewal procedures specified in this chapter. 80

(B) "Licensing agency," as used in this chapter, means any 81
department, division, board, section of a board, or other state 82
governmental unit subject to the standard renewal procedure, as 83
defined in this section, and authorized by the Revised Code to 84
issue a license to engage in a specific profession, occupation, or 85
occupational activity, or to have charge of and operate certain 86
specified equipment, machinery, or premises. 87

(C) "License," as used in this chapter, means a license, 88
certificate, permit, card, or other authority issued or conferred 89
by a licensing agency by authority of which the licensee has or 90
claims the privilege to engage in the profession, occupation, or 91
occupational activity, or to have control of and operate certain 92
specific equipment, machinery, or premises, over which the 93
licensing agency has jurisdiction. 94

(D) "Licensee," as used in this chapter, means either the 95
person to whom the license is issued or renewed by a licensing 96
agency, or the person, partnership, or corporation at whose 97
request the license is issued or renewed. 98

(E) "Renewal" and "renewed," as used in this chapter and in 99
the chapters of the Revised Code specified in division (A) of this 100
section, includes the continuing licensing procedure provided in 101
Chapter 3748. of the Revised Code and rules adopted under it and 102
in sections 1321.05 and 3921.33 of the Revised Code, and as 103
applied to those continuing licenses any reference in this chapter 104
to the date of expiration of any license shall be construed to 105
mean the due date of the annual or other fee for the continuing 106
license. 107

Sec. 4785.01. As used in this chapter: 108

(A) "Nonresidential building" and "residential building" have 109
the same meanings as in section 3781.06 of the Revised Code. 110

(B) "Residential builder" means either of the following: 111

(1) A person who is engaged in the construction of a 112
residential building or a combination residential and 113
nonresidential building and who, for a fixed sum, price, fee, 114
percentage, valuable consideration, or other compensation other 115
than wages for personal labor only, undertakes with another or 116
offers to undertake or purports to have the capacity to undertake 117
with another for the erection, construction, replacement, repair, 118
alteration, or an addition to, subtraction from, improvement of, 119
wrecking of, or demolition of, a residential building or 120
combination residential and nonresidential building; 121

(2) A person who erects a residential building or combination 122
residential and nonresidential building. 123

(C) "Residential maintenance and alteration contractor" means 124
either of the following: 125

(1) A person who, for a fixed sum, price, fee, percentage, 126
valuable consideration, or other compensation other than wages for 127
personal labor only, undertakes with another for the repair, 128
alteration, or an addition to, subtraction from, improvement of, 129
wrecking of, or demolition of a residential building or 130
combination residential and nonresidential building, the building 131
of a garage, or laying of concrete on residential property; 132

(2) A person who engages in the purchase, substantial 133
rehabilitation or improvement, and resale of a residential 134
building, and who engages in that activity on the same building 135
more than twice in one calendar year. 136

(D)(1) "Salesperson" means an employee or agent, other than a 137
qualifying officer designated under section 4785.07 of the Revised 138
Code, of a residential builder or residential maintenance and 139

alteration contractor licensed under this chapter, who for a 140
salary, wage, fee, percentage, commission, or other consideration, 141
sells or attempts to sell, negotiates or attempts to negotiate, 142
solicits for or attempts to solicit for, obtains or attempts to 143
obtain a contract or commitment for, or furnishes or attempts or 144
agrees to furnish, the goods and services of a residential builder 145
or residential maintenance and alteration contractor. 146

(2) "Salesperson" does not include a person working for a 147
residential builder or residential maintenance and alteration 148
contractor licensed under this chapter who makes sales that are 149
occasional and incidental to the person's principal employment. 150

(E) "Wages" means money paid or to be paid on an hourly or 151
daily basis by an owner, lessor, or occupant of a residential 152
building or combination residential and nonresidential building as 153
consideration for the performance of personal labor on the 154
structure by a person who does not perform or promise to perform 155
the labor for any other fixed sum, price, fee, percentage, 156
valuable consideration, or other compensation and who does not 157
furnish or agree to furnish the material or supplies required to 158
be used in the performance of the labor or an act listed in 159
division (B) or (C) of this section. 160

Sec. 4785.02. (A) Except as otherwise provided in division 161
(B) of this section, no person shall engage or attempt to engage 162
in the practice of a residential builder, residential maintenance 163
and alteration contractor, or salesperson unless the person is 164
licensed pursuant to this chapter. 165

(B) This chapter does not apply to any of the following 166
persons: 167

(1) An authorized representative of the United States 168
government, this state, or a political subdivision of this state; 169

<u>(2) An owner of property, with reference to a residential building on the property for the owner's own use and occupancy;</u>	170 171
<u>(3) An owner of rental residential property, with reference to the maintenance and alteration of that property;</u>	172 173
<u>(4) An officer of the court acting within the terms of the officer's office;</u>	174 175
<u>(5) A person other than a salesperson who engages solely in the business of performing work and services under contract with a residential builder or a residential maintenance and alteration contractor licensed under this chapter;</u>	176 177 178 179
<u>(6) A person working on one undertaking or project by one or more contracts, the aggregate contract price for which labor, material, and any other item is less than six hundred dollars;</u>	180 181 182
<u>(7) An electrical contractor who is licensed under Chapter 4740. of the Revised Code or who holds a certificate issued by the state fire marshal pursuant to section 3737.65 of the Revised Code, only with respect to the electrical installation, maintenance, or repair work performed by the contractor;</u>	183 184 185 186 187
<u>(8) A plumbing contractor licensed under Chapter 4740. of the Revised Code only with respect to plumbing installation, maintenance, or repair work performed by the contractor;</u>	188 189 190
<u>(9) A heating, ventilating, and air conditioning contractor licensed under Chapter 4740. of the Revised Code, only with respect to any heating, ventilating, and air conditioning installation, maintenance, or repair work performed by the contractor;</u>	191 192 193 194 195
<u>(10) A refrigeration contractor licensed under Chapter 4740. of the Revised Code, only with respect to refrigeration installation, maintenance, or repair work performed by the contractor.</u>	196 197 198 199

(C) The exemption described in division (B)(6) of this section does not apply if the work is only a part of a larger or major operation, regardless of whether the operation is undertaken by the same or a different residential builder or residential maintenance and alteration contractor, or in which a division of the operation is made in contracts of amounts less than six hundred dollars to evade compliance with this chapter.

Sec. 4785.03. (A) There is hereby created in the department of commerce the residential builders' and maintenance and alteration contractors' board. The board shall consist of the following nine members, who shall be appointed by the governor with the advice and consent of the senate:

(1) Four members who are residential builders licensed under this chapter;

(2) Two members who are maintenance and alteration contractors licensed under this chapter;

(3) Three members who represent the general public, one of whom is certified under section 3781.10 of the Revised Code to inspect residential buildings.

(B) Each member of the board shall be at least eighteen years of age and shall be a resident of this state. The director of commerce is an ex officio member of the board and shall not vote on any matter before the board and is not a member for purposes of determining whether a quorum is present. In making appointments to the board, the governor shall seek nominations from a wide range of interested groups and persons, including appropriate professional associations, consumer associations, labor unions, and other organizations or individuals.

(C) Not later than ninety days after the effective date of this section, the governor shall make the initial appointments to

the board. Of the initial appointments to the board, one member 230
representing residential builders, one member representing 231
residential maintenance and alteration contractors, and one member 232
representing the general public shall be appointed for terms of 233
four years; two members representing residential builders and one 234
member representing the general public shall be appointed for 235
terms of three years; and the remaining members shall be appointed 236
for a term of two years. Thereafter, each term shall be for four 237
years, ending on the same day of the same month as the term that 238
it succeeds. Each member shall hold office from the date of 239
appointment until the end of the term for which appointed. 240
Vacancies shall be filled in the manner provided for original 241
appointments. A member appointed to fill a vacancy prior to the 242
expiration of a term shall hold office for the remainder of that 243
term. A member shall continue in office subsequent to the 244
expiration of the term until the member's successor takes office. 245
No member may be appointed for more than two consecutive terms of 246
four years. 247

(D) Each member of the board shall be paid an amount fixed 248
pursuant to division (J) of section 124.15 of the Revised Code for 249
each day or portion thereof spent in the discharge of the member's 250
official duties and shall be reimbursed for the member's actual 251
and necessary expenses incurred in the discharge of those duties. 252

(E) The board shall meet as often as necessary to fulfill its 253
duties under this chapter, but shall meet not less than twice a 254
year and at other dates set by the director. A majority of the 255
members appointed and serving shall constitute a quorum. A member 256
of a board shall not vote by proxy. 257

(F) The board annually shall elect a chairperson, a 258
vice-chairperson, and other officers the board determines 259
necessary. The board may adopt bylaws for the regulation of its 260
internal affairs. The board shall report its activities to the 261

director annually and at any additional time as the director 262
requests. 263

Sec. 4785.04. (A) The residential builders' and maintenance 264
and alteration contractors' board shall do all of the following: 265

(1) Interpret a licensure requirement of this chapter, and, 266
if necessary, furnish aid in an investigation conducted under 267
section 4785.10 of the Revised Code; 268

(2) Assist the director of commerce in implementing this 269
chapter; 270

(3) Adopt any rules as required under this chapter that are 271
necessary and appropriate in accordance with Chapter 119. of the 272
Revised Code; 273

(4) Impose, after a hearing conducted pursuant to Chapter 274
119. of the Revised Code, any penalties that the board determines 275
appropriate in accordance with sections 4785.12 and 4785.13 of the 276
Revised Code; 277

(5) Aid the director in interpreting a licensure requirement 278
set forth in this chapter that is incomplete or subjective in 279
nature to determine whether the person seeking a license or a 280
renewal of a license has satisfied the requirements for the 281
license or renewal; 282

(6) Develop with the director the examinations required under 283
sections 4785.05 and 4785.09 of the Revised Code. 284

(B) The examinations developed by the board and the director 285
pursuant to division (A)(6) of this section shall test an 286
applicant's or licensee's knowledge of the obligations of a 287
residential builder or residential maintenance and alteration 288
contractor to the public and to the applicant's or licensee's 289
principal, and the applicant's or licensee's knowledge of the laws 290
relating to the license for which the applicant applied or that 291

the licensee holds. 292

The board and the director, in developing the examination 293
under that division, may adopt an examination or test prepared by 294
another agency if the board and the director determine that the 295
examination or test serves as a basis for determining whether a 296
person has the knowledge and skills to perform as a residential 297
builder, residential maintenance and alteration contractor, or 298
salesperson. Notwithstanding section 121.22 of the Revised Code, 299
the material required by the board and the director to develop an 300
examination may be considered by the board in an executive 301
session, if the board satisfies the requirements of division (G) 302
of that section. The board and the director, in determining the 303
form of the recommended examination, shall give special emphasis 304
to an alternative form of testing that permits a person to 305
demonstrate a special qualification the person may have that is 306
not evident under a written examination, but is related to being a 307
residential builder, residential maintenance and alteration 308
contractor, or salesperson. The alternative form of testing shall 309
be structured to give weight to a person's experience, 310
noninstitutional training, and innate skills and shall be flexible 311
enough to enable a person with a mental or physical disability to 312
demonstrate that the person has the requisite knowledge and 313
skills. 314

(C)(1) A member of the board, at the discretion of the board, 315
may attend an informal conference conducted under section 4785.14 316
of the Revised Code. 317

(2) The board may adopt rules to establish the minimum 318
standards of acceptable practice as a residential builder, 319
residential maintenance and alteration contractor, or salesperson. 320

Sec. 4785.05. (A) The director of commerce shall issue a 321
license to an applicant for a residential builder license, 322

residential maintenance and alteration contractor license, or a 323
salesperson license if the applicant does all of the following: 324

(1) Satisfactorily demonstrates to the director that the 325
applicant is of good moral character and is financially stable; 326

(2) Submits a copy of a driver's license, commercial driver's 327
license, or state identification card issued pursuant to Chapter 328
4506. or 4507. of the Revised Code or the equivalent law of 329
another state, to demonstrate proof of identity; 330

(3) Passes the examination described in divisions (A)(6) and 331
(B) of section 4785.04 of the Revised Code; 332

(4) Maintains a principal place of business in this state; 333

(5) Pays the fees required under section 4785.20 of the 334
Revised Code. 335

(B) An applicant for a salesperson license is not required to 336
satisfy the requirement described in division (A)(4) of this 337
section to receive a salesperson license. 338

(C) Notwithstanding division (A) of this section, a person or 339
qualifying officer for a corporation or member of a partnership or 340
other business association who holds a residential builder or 341
residential maintenance and alteration contractor license is not 342
required to retake an examination for that license when applying 343
for an additional license. However, a residential maintenance and 344
alteration contractor who holds a license and applies for a 345
license as a residential builder is required to take an 346
examination for the residential builder license. 347

(D) A residential builder or residential maintenance and 348
alteration contractor shall submit the application for a 349
salesperson license on behalf of an employee of the builder or 350
contractor who wishes to be licensed as a salesperson. 351

(E) If a residential builder or residential maintenance and 352

alteration contractor has more than one place of business in this 353
state, the director shall issue a branch license to the 354
residential builder or residential maintenance and alteration 355
contractor for each place of business maintained. A residential 356
builder or residential maintenance and alteration contractor shall 357
submit an application to the director for each branch office. 358

(F) A residential builder or residential maintenance and 359
alteration contractor licensed under this chapter shall report to 360
the director a change of name or address or a change of members or 361
addresses of the partnership, association, or corporation holding 362
a license under this chapter within thirty days after the change 363
occurs. 364

Sec. 4785.06. (A)(1) A person issued a license as a 365
residential maintenance and alteration contractor under section 366
4785.05 of the Revised Code is authorized to engage in the 367
following crafts or trades: 368

- (a) Carpentry; 369
- (b) Concrete; 370
- (c) Swimming pool installation; 371
- (d) Waterproofing a basement; 372
- (e) Excavation; 373
- (f) Insulation work; 374
- (g) Masonry work; 375
- (h) Painting and decorating; 376
- (i) Roofing; 377
- (j) Siding and gutters; 378
- (k) Screen or storm sash installation; 379
- (l) Tile and marble work; 380

(m) House wrecking. 381

(2) The director of commerce shall specify on the license the particular craft or trade for which the licensee is qualified to perform. Nothing in this section prohibits a residential maintenance and alteration contractor from taking and executing a contract involving the use of two or more crafts or trades if the performance of the work in the craft or trade other than the craft or trade for which the contractor is licensed is incidental and supplemental to the performance of work in the craft or trade for which the contractor is licensed. 382
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(B) A salesperson shall be licensed in the employ of only one residential builder or residential maintenance and alteration contractor. If a licensed salesperson wishes to change employment from one residential builder or residential maintenance and alteration contractor to another, the salesperson shall forward the license to the director of commerce and the new residential builder or residential maintenance and alteration contractor shall apply for a transfer and the issuance of a new license under the salesperson's new employer. 391
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Sec. 4785.07. If a corporation, partnership, association, limited liability company, or other entity applies for a license under section 4785.05 of the Revised Code, the applicant shall designate one of its officers, partners, members, or managing agents as a qualifying officer who, upon taking and passing the examination, and satisfying all other requirements of this chapter, shall receive a license to act for the entity. The qualifying officer also shall obtain and maintain a license under this chapter as an individual. The qualifying officer is responsible for exercising the supervision or control of the building or construction operations necessary to secure full compliance with this chapter and the rules adopted under it. The 400
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director of commerce shall not issue a license to a corporation, 412
partnership, association, limited liability company, or other 413
entity unless each partner, trustee, director, officer, or member 414
or a person exercising control of the entity is at least eighteen 415
years of age and satisfies the requirements for a license under 416
section 4785.05 of the Revised Code other than those requirements 417
relating to knowledge and experience. If an individual licensee is 418
also a qualifying officer, the director shall list the 419
individual's name and license number on any license issued to the 420
individual as a qualifying officer. In the case of a license 421
issued under this section, each officer, partner, member, or 422
managing agent, regardless of whether the person is the qualifying 423
officer, shall provide a copy of the person's driver's license, 424
commercial driver's license, or state identification card issued 425
pursuant to Chapter 4506. or 4507. of the Revised Code or the 426
equivalent law of another state for use by the director only for 427
identification purposes. 428

The license issued to a corporation, partnership, 429
association, limited liability company, or other entity is 430
suspended when a license or license application of a qualifying 431
officer, partner, trustee, director, officer, member, or a person 432
exercising control of the entity is suspended, revoked, or denied. 433
The suspension remains in effect until the residential builders' 434
and maintenance and alteration contractors' board determines that 435
the disability created by the suspension, revocation, or denial 436
has been removed. 437

If a qualifying officer of a licensee ceases to be the 438
licensee's qualifying officer, the licensee's license is 439
suspended. However, upon request, the director may permit the 440
license to remain in force for a reasonable time to permit the 441
qualification of a new qualifying officer. 442

Sec. 4785.08. Notwithstanding division (A)(4) of section 4785.05 of the Revised Code, the director of commerce may issue a license under that section to an applicant who does not have a principal place of business in this state if the applicant otherwise complies with this chapter. The director shall not issue a license to a foreign corporation as defined in section 1701.01 of the Revised Code unless the corporation is authorized to do business in this state by the secretary of state. The applicant shall file an irrevocable consent to service of process. The consent shall be signed by the applicant or by an authorized officer, member, or partner of the applicant and shall be notarized. If the applicant is a corporation, the consent shall be accompanied by a certified copy of the resolution of the corporation authorizing the consent. A process or pleading served upon the director shall be sufficient service upon the licensee. A process or pleading served upon the director under this section shall be in duplicate. The director immediately shall forward by registered mail one copy of the process or pleading to the main office of the licensee served. 443
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Sec. 4785.09. A license issued under section 4785.05 or 4785.08 of the Revised Code is valid for a period of three years after the date the license is issued. The license shall be renewed in accordance with the standard renewal procedure under Chapter 4745. of the Revised Code, except that, notwithstanding section 4745.02 of the Revised Code, the director of commerce shall cause to be mailed the notice and renewal application for a residential builder or residential maintenance and alteration contractor license on or before the sixtieth day prior to the expiration of the license. The director shall renew a salesperson license if the licensee so requests and pays the fee listed in section 4785.20 of the Revised Code. To renew a residential builder license or 462
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residential maintenance and alteration contractor license, a 474
licensee shall do all of the following: 475

(A) State in the renewal application that the licensee has a 476
current copy of the residential building code in effect in the 477
area where the licensee performs work; 478

(B) Pass the examination described in divisions (A)(6) and 479
(B) of section 4785.04 of the Revised Code; 480

(C) Pay the fees listed in section 4785.20 of the Revised 481
Code for the examination and renewal. 482

For purposes of section 4745.02 of the Revised Code, the 483
director shall not accept a renewal application for a residential 484
builder or residential alteration and maintenance contractor 485
license until the licensee passes the required examination. 486

Sec. 4785.10. (A) Any person may file a complaint with the 487
director of commerce that alleges that a person has violated this 488
chapter or a rule adopted or order issued under it. A complaint 489
shall be filed not later than eighteen months after the latest of 490
the following events regarding a residential building or a 491
combination of residential and nonresidential building: 492

(1) In the case of a residential maintenance and alteration 493
contract, completion of the contract or occupancy or purchase of 494
the building; 495

(2) In the case of a project involving construction of a new 496
residential building or requiring an occupancy permit, issuance of 497
the certificate of occupancy or temporary certificate of occupancy 498
or closing. 499

(B) A person shall describe in writing in the complaint 500
submitted to the director the factual basis for the allegation. 501
The person shall send a copy of the initial complaint to the 502

licensee identified in the complaint concurrent with the 503
submission of the complaint to the director. 504

(C) If the complaint is filed by an owner of a building, the 505
director shall proceed with an investigation only if the owner 506
demonstrates that the owner provided notice to the licensee 507
describing reasonable times and dates that the building was 508
accessible for any needed repairs and submits proof acceptable to 509
the director that the repairs were not made within sixty days 510
after the date the notice was sent. The director may waive the 511
requirements of this division if the director determines that a 512
waiver is necessary to safeguard the building or to protect an 513
occupant's health and safety. If the director waives the 514
requirements, the director may utilize any remedy available under 515
division (A) of section 4785.11 of the Revised Code. 516

(D) The director, upon receipt of a complaint, immediately 517
shall begin an investigation of the allegations of the complaint 518
and shall open a correspondence file. The director shall make a 519
written acknowledgment of the complaint within fifteen days after 520
receipt of the complaint to the person making the complaint. If 521
the complaint is made by the director, the director shall 522
designate one or more employees of the director to act as the 523
person making the complaint. The director shall conduct the 524
investigation. 525

(E) The director shall request the appropriate building 526
official to inspect the property that is the subject of the 527
complaint. Upon receipt of a building inspection report issued to 528
the director by a state or local building enforcement official 529
that verifies or confirms the substance of a complaint, the 530
director shall send by certified mail a copy of the verified 531
complaint to the licensee. If the director does not send a copy of 532
the verified complaint within thirty days after receipt of the 533
building inspection report, the residential builders' and 534

maintenance and alteration contractors' board shall not assess a 535
fine against the licensee under section 4785.13 of the Revised 536
Code, but the director may pursue restitution, license suspension, 537
or other remedies provided under that section. 538

(F) If the owner and a licensed residential builder or 539
residential maintenance and alteration contractor have agreed 540
contractually on mutually acceptable performance guidelines 541
relating to workmanship, the director shall consider those 542
guidelines in the director's evaluation of the complaint. The 543
guidelines shall be consistent with the residential building code 544
adopted pursuant to Chapter 3781. of the Revised Code. 545

(G) In furtherance of an investigation, the director may 546
request that the attorney general petition a court of competent 547
jurisdiction to issue a subpoena requiring a person to appear 548
before the director and be examined with reference to a matter 549
within the scope of the investigation and to produce books, 550
papers, or documents pertaining to the investigation. 551

Sec. 4785.11. (A) The director of commerce shall conclude an 552
investigation conducted under section 4785.10 of the Revised Code 553
within thirty days after the complaint is filed. The director may 554
take additional time if the director gives the parties to the 555
complaint written notice of the extension before the initial 556
thirty-day period expires. 557

If the investigation does not disclose a violation of this 558
chapter or a rule adopted or an order issued under it, the 559
director shall close the complaint. The director shall forward the 560
reasons for closing the complaint to the parties, who then may 561
provide additional information to reopen the complaint. 562

If the investigation discloses evidence of a violation, the 563
director shall prepare the appropriate action against the person, 564
which may be any of the following: 565

<u>(1) A formal complaint;</u>	566
<u>(2) A cease and desist order;</u>	567
<u>(3) Summary suspension;</u>	568
<u>(4) A citation.</u>	569
<u>(B)(1) If the director issues a formal complaint under</u>	570
<u>division (A)(1) of this section, the director shall serve the</u>	571
<u>formal complaint upon the parties to the complaint. At the same</u>	572
<u>time, the director shall serve the respondent with a notice that</u>	573
<u>includes both of the following:</u>	574
<u>(a) An offer to choose one of the following:</u>	575
<u>(i) An opportunity to meet with the director to negotiate a</u>	576
<u>settlement of the matter;</u>	577
<u>(ii) An opportunity for a hearing under Chapter 119. of the</u>	578
<u>Revised Code.</u>	579
<u>(b) A description of the process for an informal conference</u>	580
<u>under section 4785.14 of the Revised Code and for a hearing under</u>	581
<u>Chapter 119. of the Revised Code.</u>	582
<u>(2) The respondent, within fifteen days after the receipt of</u>	583
<u>notice described in division (B)(1) of this section, shall select</u>	584
<u>one of the options described in that division. If a respondent</u>	585
<u>does not select one of those options within that time period, then</u>	586
<u>the director shall proceed with a hearing held under Chapter 119.</u>	587
<u>of the Revised Code.</u>	588
<u>(C) If a cease and desist order has been issued under</u>	589
<u>division (A)(2) of this section, the person ordered to cease and</u>	590
<u>desist may request a hearing in accordance with Chapter 119. of</u>	591
<u>the Revised Code. Upon a violation of a cease and desist order,</u>	592
<u>the attorney general may apply in a court with appropriate</u>	593
<u>jurisdiction to restrain and enjoin, temporarily or permanently,</u>	594
<u>or both, the person from further violating the cease and desist</u>	595

order. 596

(D) The director may issue a summary suspension under 597
division (A)(3) of this section based on an affidavit by a person 598
familiar with the facts set forth in the affidavit, or, if 599
appropriate, based upon an affidavit on information and belief 600
that an imminent threat to the public health, safety, and welfare 601
exists. 602

(E)(1) A citation issued pursuant to division (A)(4) of this 603
section shall contain all of the following: 604

(a) The date of the citation; 605

(b) The name and title of the individual issuing the 606
citation; 607

(c) The name and address of the respondent, indicating that 608
the respondent is being cited for a violation of this chapter or 609
rules adopted or orders issued under it; 610

(d) A brief description of the conduct or conditions that are 611
considered to be a violation and a reference to the section of the 612
chapter, the rule, or the order the respondent is alleged to have 613
violated; 614

(e) The proposed penalties or actions required for 615
compliance, including the payment of a fine that shall not exceed 616
one hundred dollars for each violation; 617

(f) A space for the respondent to sign as a receipt for the 618
citation; 619

(g) A space for the respondent to indicate that the 620
respondent accepts the citation and agrees to comply or to 621
indicate that the respondent contests the violation contained in 622
the citation; 623

(h) A notice that the respondent must accept or reject the 624
terms of the citation within thirty days after the date of receipt 625

of the citation; 626

(i) A brief description of the hearing process under Chapter 627
119. of the Revised Code and the process for settlement through an 628
informal conference as described in section 4785.14 of the Revised 629
Code. 630

(2) The director may send a citation to a respondent by 631
certified mail, return receipt requested, or an employee of the 632
department of commerce may deliver the citation in person. 633

(3) If a respondent accepts the conditions set forth in a 634
citation, the respondent, within thirty days after receiving the 635
citation, shall sign the citation and return it to the director 636
along with any fine or other material required to be submitted by 637
the terms of the citation. The citation and accompanying material 638
shall be placed in the person's records with the director, 639
indicating the nature of the violation and that the person 640
accepted the conditions imposed. A citation issued under this 641
section shall have the same force and effect as a final order 642
issued by the residential builders' and maintenance and alteration 643
contractors' board and may be disclosed to the public. If no 644
further disciplinary actions are placed upon the person's record 645
within five calendar years after the date the citation is issued, 646
the director shall remove the citation and accompanying material 647
from the records. If a respondent so chooses, a one-page 648
explanation prepared by the respondent shall be placed in the 649
director's files and shall be disclosed each time the issuance of 650
the citation is disclosed. 651

(4) If a respondent does not admit to the violation cited, 652
the respondent may state that fact on the citation and return one 653
copy to the director within the thirty days after the date of 654
receipt of the citation. Upon receiving a copy of the citation not 655
admitting to the violation, the director shall implement the 656
process described in division (B) of this section, with the 657

citation serving as the formal complaint. 658

(5) The signing of a citation as an indication that the 659
citation was received by the respondent shall be considered to be 660
only a receipt of, not an admission to, the violation cited. 661

Sec. 4785.12. (A) If a licensee or respondent fails to appear 662
or participate in or defend any action, the residential builders' 663
and maintenance and alteration contractors' board shall issue an 664
order granting by default the relief requested, based upon proof 665
submitted to and findings made by a hearing examiner after a 666
hearing conducted under Chapter 119. of the Revised Code. 667

(B) Within sixty days after receipt of a hearing examiner's 668
report, the board shall meet and make a determination of the 669
penalties or disciplinary action to be assessed under section 670
4785.13 of the Revised Code. The board shall make the 671
determination based on the hearing examiner's report. If the board 672
does not determine the appropriate penalty to be assessed or 673
action to be taken within that time period, the director of 674
commerce may determine the appropriate penalty and issue a final 675
order. A member of the board who has participated in an 676
investigation of a complaint filed with the director or who has 677
attended an informal conference under section 4785.14 of the 678
Revised Code shall not participate in making a final determination 679
regarding that complaint. 680

Sec. 4785.13. (A) A licensee or applicant who commits one or 681
more of the following actions may be subject to any of the 682
disciplinary actions set forth in division (B) of this section: 683

(1) Abandonment without legal excuse of a contract, 684
construction project, or operation relating to an activity 685
described in division (B), (C), or (D) of section 4785.01 of the 686
Revised Code that is engaged in or undertaken by the licensee; 687

(2) Diversion of funds or property received for prosecution or completion of a specific construction project or operation, or for a specified purpose in the prosecution or completion of a construction project or operation, and the funds or property are applied or used for another construction project or operation, obligation, or purposes; 688
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(3) Failure to account for or remit money coming into the person's possession that belongs to others; 694
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(4) A willful departure from or disregard of plans or specifications in a material respect and prejudicial to another, without consent of the owner or an authorized representative and without the consent of the person entitled to have the particular construction project or operation completed in accordance with the plans and specifications; 696
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(5) A willful violation of the building laws of this state or of a political subdivision of this state; 702
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(6) In a residential maintenance and alteration contract, failure to furnish to a lender the purchaser's signed completion certificate executed upon completion of the work to be performed under the contract; 704
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(7) If an individual is a licensed residential builder or licensed residential maintenance and alteration contractor, failure to notify the director of commerce within ten days after a change in the control or direction of the licensee's business resulting from a change in the licensee's partners, directors, officers, or trustees, or a change in the control or direction of the licensee's business resulting from any other occurrence or event; 708
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(8) Failure to deliver to the purchaser the entire agreement of the parties, including any finance or other charge arising out of or incidental to the agreement if the agreement involves 716
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repair, alteration, or addition to, subtraction from, improvement 719
of, wrecking of, or demolition of a residential building or 720
combination of residential and nonresidential building, or the 721
building of a garage or laying of concrete on residential 722
property; 723

(9) If the licensee is a salesperson, failure to pay over 724
immediately upon receipt money received by the salesperson, in 725
connection with a transaction governed by this chapter to the 726
residential builder or residential maintenance and alteration 727
contractor under whom the salesperson is licensed; 728

(10) Aiding or abetting an unlicensed person to evade this 729
chapter, or knowingly combining or conspiring with, or acting as 730
agent, partner, or associate for an unlicensed person, allowing 731
one's license to be used by an unlicensed person, or acting as or 732
being an ostensible licensed residential builder or licensed 733
residential maintenance and alteration contractor for an 734
undisclosed person who does or has the right to control or direct, 735
or who may have the right to control or direct, directly or 736
indirectly, the operations of a licensee; 737

(11) Accepting a commission, bonus, or other valuable 738
consideration by a salesperson for the sale of goods or the 739
performance of service specified in this chapter from a person 740
other than the residential builder or residential maintenance and 741
alteration contractor under whom the person is licensed; 742

(12) Becoming insolvent, filing a bankruptcy action, becoming 743
subject to a receivership, assigning for the benefit of creditors, 744
failing to satisfy judgments or liens, or failing to pay an 745
obligation as it becomes due in the ordinary course of business; 746

(13) Performing work that does not meet the standards of the 747
applicable residential code; 748

(14) Practicing fraud or deceit in obtaining a license; 749

<u>(15) Practicing fraud, deceit, or dishonesty as a residential builder, residential maintenance and alteration contractor, or salesperson;</u>	750
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<u>(16) Violating a rule of conduct of a residential builder, residential maintenance and alteration contractor, or salesperson;</u>	753
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<u>(17) Demonstrating a lack of good moral character;</u>	755
<u>(18) Committing an act of gross negligence in practicing as a residential builder, residential maintenance and alteration contractor, or salesperson;</u>	756
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<u>(19) Practicing false advertising;</u>	759
<u>(20) Committing an act that demonstrates incompetence;</u>	760
<u>(21) Violating any other provision of this chapter or a rule adopted under this chapter for which a penalty is not otherwise prescribed;</u>	761
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<u>(22) Failing to comply with a subpoena issued under this chapter;</u>	764
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<u>(23) Failing to respond to a citation as required by section 4785.11 of the Revised Code;</u>	766
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<u>(24) Violating or failing to comply with a final order issued by the director, including a stipulation, settlement agreement, or a citation.</u>	768
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<u>(B) The residential builders' and maintenance and alteration contractors' board, or the director as described in division (B) of section 4785.12 of the Revised Code, may do any of the following with respect to a person who commits an act described in division (A) of this section:</u>	771
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<u>(1) Place a limitation on a license;</u>	776
<u>(2) Suspend a license;</u>	777
<u>(3) Deny issuance or renewal of a license;</u>	778

<u>(4) Revoke a license;</u>	779
<u>(5) Assess a fine against a licensee, not to exceed ten thousand dollars per violation;</u>	780 781
<u>(6) Censure;</u>	782
<u>(7) Place a licensee on probation;</u>	783
<u>(8) Require that restitution be made, based upon proof submitted to and findings made by the hearing examiner after a hearing.</u>	784 785 786
<u>(C) If restitution is required to be made under division (B)(8) of this section, the board or director may suspend the license of the person required to make the restitution until the restitution is made.</u>	787 788 789 790
<u>(D) A suspension, revocation, or denial of a license of a person shall suspend, revoke, or deny any other license held or applied for by that person issued under this chapter. A suspension, revocation, or denial of a license held by a qualifying officer of a corporation, partnership, association, limited liability company, or other entity by the board or director shall suspend, revoke, or deny any other license held or applied for under this chapter by that qualifying officer.</u>	791 792 793 794 795 796 797 798
<u>Sec. 4785.14.</u> <u>(A) A residential builder or residential maintenance and alteration contractor licensed under this chapter may contractually provide for an alternative dispute resolution procedure to resolve complaints filed with the director of commerce. The procedure shall be conducted by a neutral third party for determining the rights and responsibilities of the parties and shall be initiated by the licensee, who shall provide notice of the initiation of the procedure to the complainant by certified mail not less than thirty days before the commencement of that procedure. The procedure shall be conducted at a location</u>	799 800 801 802 803 804 805 806 807 808

mutually agreed to by the parties. 809

(B) Failure of the person bringing a complaint against a licensee to utilize a contractually provided alternative dispute resolution procedure shall be an affirmative defense to an action brought in a court of this state against a licensee under this chapter. 810
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The director may initiate a proceeding against a licensee under section 4785.11 of the Revised Code if the licensee has contractually provided for an alternative dispute resolution procedure that has not been utilized and completed, only if any of the following apply: 815
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(1) The licensee has not complied with a decision or order issued as a result of that alternative dispute resolution procedure. 820
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(2) That alternative dispute resolution procedure was not fully completed within ninety days after the filing of the complaint with the director. 823
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(3) An alternative dispute resolution procedure meeting the requirements of division (A) of this section is not available to the complainant. 826
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(C) At any time during an investigation under section 4785.10 of the Revised Code or after the issuance of a formal complaint, the director may bring together the parties to a complaint for an informal conference. At the informal conference, the director shall attempt to resolve issues raised in the complaint and may attempt to aid the parties in reaching a formal settlement or stipulation. 829
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A member of the residential builders' and maintenance and alteration contractors' board, at the discretion of the board, may attend an informal conference. An informal conference may result 836
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in a settlement, consent order, waiver, default, or other method 839
of settlement agreed upon by the parties and the director. A 840
settlement may include the denial, revocation, suspension, or 841
limitation of a license; fine; censure; probation; or restitution. 842
The board may reject a settlement and require a hearing under 843
Chapter 119. of the Revised Code. 844

If an informal conference is not held or does not result in a 845
settlement of a complaint, a hearing pursuant to Chapter 119. of 846
the Revised Code shall be held. A member of the board may attend a 847
hearing. 848

Sec. 4785.15. (A) A residential builder or residential 849
maintenance and alteration contractor shall not bring or maintain 850
an action in a court of this state for the collection of 851
compensation for the performance of an act or contract for which a 852
license is required under this chapter without proving that the 853
residential builder or residential maintenance and alteration 854
contractor was licensed under this chapter during the performance 855
of the act or contract. 856

(B) A residential builder or residential maintenance and 857
alteration contractor shall not impose or take any legal or other 858
action to impose a lien on real property unless that builder or 859
contractor was licensed under this chapter during the performance 860
of the act or contract. 861

(C) Divisions (A) and (B) of this section apply only to 862
contracts entered into on or after the effective date of division 863
(A) of section 4785.02 of the Revised Code. 864

Sec. 4785.16. (A) A prosecuting attorney or the attorney 865
general may bring an action for a civil violation in a court of 866
competent jurisdiction against a person not licensed under this 867
chapter who has violated division (A) of section 4785.02 of the 868

Revised Code. The court shall assess a civil fine of not less than 869
five thousand dollars and not more than twenty-five thousand 870
dollars and any additional civil damages or restitution the court 871
considers appropriate. 872

(B) If the attorney general considers it necessary, the 873
attorney general shall intervene in and prosecute all cases 874
arising under this chapter. Nothing in this division prohibits the 875
director of commerce from bringing any civil, criminal, or 876
administrative action for the enforcement of division (A) section 877
4785.02 of the Revised Code. The director has standing to bring an 878
administrative action or to directly bring an action in a court of 879
competent jurisdiction regarding unlicensed practice of an 880
occupation. 881

(C) The attorney general or the appropriate prosecuting 882
attorney may utilize the forfeiture provisions of Chapter 2981. of 883
the Revised Code for items seized and determined to be proceeds of 884
a crime, substituted proceeds of a crime, or the instrumentality 885
of a crime. 886

Sec. 4785.17. The director of commerce shall post on the web 887
site maintained by the department of commerce any final order of 888
the residential builders' and maintenance and alteration 889
contractors' board and the date the order was issued. The director 890
shall post the order within thirty days after the order is issued. 891

The director annually shall post on the web site the number 892
of final orders of the board. 893

Sec. 4785.20. (A) The director of commerce shall charge the 894
following fees with respect to administering this chapter: 895

(1) An application processing fee of fifteen dollars; 896

(2) A fee of fifty dollars to take the complete examination 897

for a license or renewal of a license as a residential builder or 898
residential maintenance and alteration contractor; 899

(3) A fee of thirty dollars to take the law and rules portion 900
of the examination for a license or renewal of a license as a 901
residential builder or residential maintenance and alteration 902
contractor; 903

(4) A fee of thirty dollars to take the practice or trades 904
portion of the examination for a license or renewal of a license 905
as a residential builder or residential maintenance and alteration 906
contractor; 907

(5) A fee of thirty dollars to take the salesperson 908
examination; 909

(6) An examination review fee of twenty dollars; 910

(7) A license and renewal fee of fifty dollars; 911

(8) A late renewal fee of twenty dollars; 912

(9) A duplicate license fee of ten dollars; 913

(10) A change of name, address, or employer fee of ten 914
dollars if the change results in the issuance of a new document. 915

(B) There is hereby created in the state treasury the builder 916
enforcement fund. The director shall deposit any fees and fines 917
the director receives under this chapter into the fund. The 918
director shall use the fund to enforce this chapter and to 919
reimburse the attorney general for the reasonable cost of services 920
provided to the director and for expenses incurred in prosecutions 921
for unlicensed practice or a prosecuting attorney for expenses 922
incurred in conducting prosecutions of unlicensed practice. 923

Sec. 4785.99. Whoever violates division (A) of section 924
4785.02 of the Revised Code is guilty of a misdemeanor, punishable 925
by a fine of not less than five thousand dollars or more than 926

twenty-five thousand dollars, imprisonment for not more than one 927
year, or both. If the offender has been previously convicted of a 928
violation of that division, the person is guilty of a misdemeanor 929
punishable by a fine of not less than five thousand dollars or 930
more than twenty-five thousand dollars, imprisonment for not more 931
than two years, or both. In the case of an offense that causes 932
death or serious injury, the person is guilty of a felony 933
punishable by a fine of not less than five thousand dollars or 934
more than twenty-five thousand dollars, imprisonment for not more 935
than four years, or both. 936

Section 2. That existing sections 4722.02 and 4745.01 of the 937
Revised Code are hereby repealed. 938

Section 3. Division (A) of section 4785.02 of the Revised 939
Code, as enacted by this act, shall take effect one hundred eighty 940
days after the effective date of this act. 941

Section 4. (A) Notwithstanding section 4785.03 of the Revised 942
Code, as enacted by this act, the Governor may appoint, as the 943
initial members of the Residential Builders' and Maintenance and 944
Alteration Contractors' Board who are required to be licensed 945
under that section, an individual who satisfies either of the 946
following qualifications: 947

(1) The individual is certified or otherwise approved by a 948
national organization that certifies or otherwise approves 949
individuals in the occupation to be licensed by the Board. 950

(2) The individual has actively engaged in the business of a 951
residential builder or residential maintenance and alteration 952
contractor, taught in an educational institution that prepares 953
applicants for licensure as a residential builder or residential 954
maintenance and alteration contractor, or both, for not less than 955
two years immediately preceding the date of the individual's 956

appointment. 957

(B) Within three years after the effective date of this act, 958

each individual appointed under division (A) of this section shall 959

be licensed as required under section 4785.02 of the Revised Code, 960

as enacted by this act. 961