

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 608

Session of
1999

INTRODUCED BY WOGAN, McCALL, KENNEY, BARRAR, STABACK, READSHAW, FICHTER, LAUGHLIN, WOJNAROSKI, RUBLEY, J. TAYLOR, HARHAI, ROONEY, ORIE, MAITLAND, SNYDER, COY, MARSICO, MELIO, PESCI, TRAVAGLIO, L. I. COHEN, WALKO, TRELLO, SURRA, COLAFELLA, CIVERA, VAN HORNE, STEELMAN, DeLUCA, BARD, E. Z. TAYLOR, WILT, MICHLOVIC, GANNON AND TANGRETTI, FEBRUARY 17, 1999

AS REPORTED FROM COMMITTEE ON CONSUMER AFFAIRS, HOUSE OF REPRESENTATIVES, AS AMENDED, NOVEMBER 16, 1999

AN ACT

1 Providing for the regulation of home improvement contracts and
2 for registration of certain home improvement contractors;
3 prohibiting certain acts; prescribing requirements for home
4 improvement contracts; establishing the Home Improvement
5 Guaranty Fund; and providing for claims against the fund and
6 for the offense of home improvement fraud.

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11 The General Assembly of the Commonwealth of Pennsylvania
12 hereby enacts as follows:

13 Section 1. Short title.

14 This act shall be known and may be cited as the Home
15 Improvement Consumer Protection Act.

16 Section 2. Definitions.

17 The following words and phrases when used in this act shall
18 have the meanings given to them in this section unless the
19 context clearly indicates otherwise:

20 "Bureau." The Bureau of Consumer Protection within the
21 Office of Attorney General of the Commonwealth.

22 "Certificate." A certificate of registration issued pursuant
23 to this act.

24 "Contractor." Any person, including a subcontractor or
25 employee of another contractor, who owns and operates a home
26 improvement business or who undertakes, offers to undertake or
27 agrees to perform any home improvement. The term does not
28 include a person for whom the total cash value of all of that
29 person's home improvements is less than \$3,000 during any period
30 of 12 consecutive months.

1 "Department." The Department of Labor and Industry of the
2 Commonwealth.

3 "Fund." The Home Improvement Guaranty Fund established in
4 section 14.

5 "Home improvement." The term includes, but is not limited
6 to, the repair, replacement, remodeling, alteration, conversion,
7 modernization, improvement, rehabilitation or sandblasting of or
8 addition to any land or building, or that portion thereof, which
9 is used or designed to be used as a private residence or the
10 construction, replacement, installation or improvement of
11 driveways, swimming pools, porches, garages, roofs, siding,
12 insulation, solar energy systems, security systems, flooring,
13 patios, fences, doors and windows and waterproofing in
14 connection with such land or building or that portion thereof
15 which is used or designed to be used as a private residence in
16 which the total cash price for all work agreed upon between the
17 contractor and owner exceeds \$200. The term does not include:

18 (1) The construction of a new home.

19 (2) The sale of goods or materials by a seller who
20 neither arranges to perform nor performs, directly or
21 indirectly, any work or labor in connection with the
22 installation or application of the goods or materials.

23 (3) The sale of services furnished for commercial or
24 business use or for resale, provided commercial or business
25 service takes place somewhere other than at a private
26 residence.

27 (4) The sale of appliances, such as stoves,
28 refrigerators, freezers, room air conditioners and others
29 which are designed for and are easily removable from the
30 premises without material alteration thereof.

1 (5) Any work performed without compensation by the owner
2 on the owner's private residence or residential rental
3 property.

4 (6) Any work performed by a landscaper certified by the
5 Department of Agriculture under the act of December 16, 1992
6 (P.L.1228, No.162), known as the Plant Pest Act, except to
7 the extent that such work involves the construction,
8 replacement, installation or improvement of buildings,
9 driveways, swimming pools, porches, garages, roofs, siding,
10 insulation, solar energy systems, security systems, flooring,
11 patios, nondecorative fences, doors, lighting systems,
12 concrete walkways and windows.

13 "Home improvement contract." An agreement between a
14 contractor or salesperson and an owner for the performance of a
15 home improvement.

16 "Owner." A person who owns or resides in a private residence
17 and includes any agent of that person. An owner of a private
18 residence shall not be required to reside in such residence to
19 be deemed an owner under this act. A person who owns three or
20 more private residences shall not be deemed an owner except with
21 respect to the person's primary residence or the part of the
22 building which houses the primary residence of the owner.

23 "Person." An individual, partnership, limited partnership,
24 limited liability company, joint venture or corporation.

25 "Private residence." A single family dwelling, a multifamily
26 dwelling consisting of not more than three units or a single
27 unit located within any multifamily dwelling, including, but not
28 limited to, condominiums and co-op units.

29 "Salesperson." Any individual who negotiates or offers to
30 negotiate a home improvement contract with an owner or solicits

1 or otherwise endeavors to procure by any means whatsoever,
2 directly or indirectly, a home improvement contract from an
3 owner.

4 Section 3. Registration of contractors and salespersons.

5 (a) General rule.--No person shall hold himself out as a
6 contractor or salesperson, nor shall that person perform any
7 home improvement, without first obtaining a certificate from the
8 department as provided in this act, except that a person
9 registered as a contractor shall not be required to obtain a
10 salesperson's certificate. An individual who has provided
11 personal information to the department when registering on
12 behalf of a business is not required to register as an
13 individual so long as the person performs home improvements
14 solely on behalf of the registered business.

15 (b) Salespersons.--

16 (1) No contractor shall employ or use the services of
17 any salesperson to procure business from an owner unless the
18 salesperson is registered under this act.

19 (2) No individual shall act as a home improvement
20 salesperson on behalf of an unregistered contractor.

21 (c) Liability.--No business entity registered pursuant to
22 this act shall be relieved of responsibility under this act for
23 the conduct and acts of its agents, employees, officers or
24 directors, nor shall any individual be relieved of
25 responsibility under this act by reason of his employment or
26 relationship with such business entity.

27 (d) Effects of unregistered status.--No unregistered
28 contractor or salesperson shall have standing to sue, countersue
29 or raise a defense of nonpayment in any dispute arising from a
30 home improvement. No unregistered contractor or salesperson may

1 file a mechanic's lien with respect to a home improvement.

2 (e) Public access to registration information.--The
3 department shall maintain a toll-free telephone number from
4 which a caller can obtain information as to whether a contractor
5 or salesperson is registered with the department pursuant to
6 this act.

7 Section 4. Procedures for registration.

8 (a) Application.--A person desiring a certificate as a
9 contractor or salesperson shall apply to the department in
10 writing on a form provided by the department. The application
11 shall include the following information:

12 (1) For an individual applicant, the name, home address,
13 home telephone number and driver's license identification
14 number of the applicant, as well as the individual's business
15 name, address and telephone number if different.

16 (2) For a partnership applicant, the name, home address,
17 home telephone number and driver's license identification
18 number of each partner as well as the partnership name,
19 address and telephone number.

20 (3) For a corporation, limited liability company or
21 limited partnership applicant, the name, home address, home
22 telephone number and driver's license identification number
23 of each officer, each director or each individual holding
24 greater than a 10% stake in the business, as well as the
25 entity's business name, address and telephone number.

26 (4) For an out-of-State corporation, limited liability
27 or limited partnership, the name and address of the entity's
28 resident agent or registered office provider within this
29 Commonwealth AND ANY REGISTRATION NUMBER OR LICENSE NUMBER
30 ISSUED TO THE ENTITY BY ITS HOME STATE OR POLITICAL

<—

1 SUBDIVISION OF SUCH OTHER STATE, IF APPLICABLE.

2 (5) For a joint venture applicant, the name, address and
3 telephone number of the joint venture, as well as the name,
4 address and telephone number of each party to the joint
5 venture. When the parties to a joint venture include business
6 entities, the information required from such entities
7 pursuant to paragraphs (2) and (3) shall also be provided.

8 (6) If the applicant is applying for a contractor
9 registration, a complete description of the nature of the
10 contracting business of the applicant.

11 (7) A statement whether:

12 (i) The individual making application, even if doing
13 so as part of a business entity application, has ever
14 been convicted of a criminal offense related to a home
15 improvement transaction, fraud, theft, a crime of
16 deception or a crime involving fraudulent business
17 practices, as well as a statement whether the applicant
18 has ever had a civil judgment entered against the
19 applicant or a business in which the applicant held an
20 interest that was related to a home improvement
21 transaction.

22 (ii) Whether the applicant's certificate or the
23 certificate of a business with which the individual
24 making application held an interest, has ever been
25 revoked or suspended pursuant to an order issued by a
26 court of competent jurisdiction IN THIS COMMONWEALTH OR <—
27 ANY OTHER STATE OR POLITICAL SUBDIVISION THEREOF.

28 (8) Whether within the last ten years the applicant has
29 ever been suspended or debarred from participating in any
30 Federal, State or local program through which funding or

1 other assistance is provided to consumers for home
2 improvements.

3 (9) If the department or the bureau determines that
4 additional information is necessary to effectuate the purpose
5 of this act, the department or the bureau shall promulgate
6 regulations to require the submission of the additional
7 information.

8 (b) Grounds for refusal of certificate.--The department may
9 not provide a certificate of registration to any applicant:

10 (1) who has had a certificate of registration revoked
11 within five years preceding the application;

12 (2) whose officer or principal has had his registration
13 revoked within five years preceding the application; or

14 (3) who has been suspended or debarred within the last
15 ten years from participating in any Federal, State or local
16 program which provides funding to consumers for home
17 improvements.

18 (c) Contractual relationships.--In addition to the
19 information required in subsection (a), a contractor shall be
20 required to notify the department of any employment or other
21 contractual relationship between the contractor and any
22 salesperson. A contractor shall be required to submit such
23 information within 20 days of entering into an employment or
24 other contractual relationship with a salesperson. Information
25 under this subsection shall be updated by the contractor, on a
26 form provided by the department, on an as-needed basis
27 throughout the period of registration.

28 (d) Reporting of multiple registration or licensure.--Any
29 registered contractor or salesperson in this Commonwealth who is
30 registered or licensed as a home improvement contractor or

1 salesperson in any other state, or political subdivision
2 thereof, shall report this information to the department on the
3 initial registration and biennial registration application. Any
4 disciplinary action taken in such other jurisdiction shall be
5 reported to the department on the initial registration
6 application or, if such action occurred subsequent to submission
7 of an initial application, on the biennial registration
8 application or within 90 days of final disposition, whichever is
9 sooner. Multiple registration or licensure shall be noted by the
10 department on the contractor's or salesperson's record, and such
11 state, or political subdivision thereof, shall be notified by
12 the department of any disciplinary actions taken against such
13 contractor or salesperson in this Commonwealth.

14 Section 5. Application fees.

15 (a) General rule.--Each application for a certificate for:

16 (1) A home improvement contractor or renewal of that
17 certificate shall be accompanied by a fee of \$50.

18 (2) A salesperson or renewal of that certificate shall
19 be accompanied by a fee of \$25.

20 (b) Dedicated use of fees.--Fifty percent of the application
21 fees collected shall be used by the department for the purposes
22 of fulfilling its obligations under this act relating to
23 registration. The balance of the application fees collected
24 shall be used by the bureau for the purposes of carrying out and
25 enforcing the provisions of this act. The department and the
26 bureau shall establish rules or regulations regarding payment,
27 collection and distribution of money payable to and received by
28 the department pursuant to this section.

29 (c) Multiple registrations.--Business entity applicants
30 shall be required to pay the application fee in this section and

1 the fund fee set forth in section 14 only as a business entity,
2 regardless of the number of individuals who provide registration
3 information pursuant to this act.

4 Section 6. Certificate of registration and renewal.

5 (a) Duty of department.--Upon receipt of a completed
6 application and fee, the department shall issue and deliver to
7 the applicant a certificate to engage in the business for which
8 the application was made or refuse to issue the certificate
9 pursuant to this act or an order of a court of competent
10 jurisdiction within seven days.

11 (b) Nontransferability.--Certificates issued to home
12 improvement contractors or salespersons shall not be
13 transferable or assignable.

14 (c) Duration of certificate.--All certificates issued under
15 this act shall expire biennially. The expiration date shall be
16 placed upon the certificate. The fee for renewal of a
17 certificate shall be the same as the fee charged for an original
18 application under section 5. The information required pursuant
19 to section 4 shall also be required for renewal of
20 certification. The department shall provide a form for renewal
21 of registration.

22 ~~(d) Grounds for denial and revocation of registration. The~~ <—

23 (D) GROUNDS FOR DENIAL AND REVOCATION OF REGISTRATION.-- <—

24 (1) THE department shall deny registration to any
25 contractor or salesperson against whom a civil judgment has
26 been entered in favor of an owner that was related to a home
27 improvement transaction if the transaction occurred after the
28 effective date of this act and the judgment remains
29 unsatisfied. The department, with bureau approval, may permit
30 a contractor or salesperson to receive a new or renewed

1 certificate after the contractor has entered into a written
2 agreement whereby the contractor agrees to pay the judgment
3 in full in the form of periodic payments over a specific
4 period of time. If the contractor or salesperson does not pay
5 in accordance with the terms of the agreement, the department
6 shall immediately revoke the contractor's or salesperson's
7 certificate of registration.

8 (2) THE DEPARTMENT MAY REFUSE TO ISSUE A CERTIFICATE OF <—
9 REGISTRATION TO ANY CONTRACTOR OR SALESPERSON IF IT
10 DETERMINES, IN COLLABORATION WITH THE BUREAU, THAT SUCH
11 CONTRACTOR OR SALESPERSON HAS ENGAGED IN A PATTERN OF CONDUCT
12 CONTRARY TO THE PROVISIONS OF THIS ACT, REGARDLESS OF WHETHER
13 A CIVIL JUDGMENT RELATING TO A HOME IMPROVEMENT CONTRACT HAS
14 EVER BEEN ENTERED AGAINST THE HOME IMPROVEMENT CONTRACTOR OR
15 SALESPERSON.

16 Section 7. Certificate holder to exhibit and advertise
17 certificate.

18 Contractors and salespersons shall exhibit their certificates
19 upon request by any interested party, ~~state in any advertisement~~ <—
20 ~~the fact that they are registered, and include their~~
21 ~~registration numbers.~~ ALL ADVERTISEMENTS OF A HOME IMPROVEMENT <—
22 CONTRACTOR OR SALESPERSON SHALL INCLUDE THE REGISTRATION NUMBER
23 ISSUED BY THE DEPARTMENT.

24 Section 8. Prohibited acts.

25 No person shall:

26 (1) Present or attempt to present, as his own, the
27 certificate of another person.

28 (2) Knowingly give false information when applying for a
29 certificate or a renewal of a certificate.

30 (3) Present himself falsely as or impersonate a

1 registered home improvement contractor or salesperson.

2 (4) Use or attempt to use a certificate which has
3 expired or which has been revoked.

4 (5) Offer to make or make any home improvement without
5 having a current certificate under this act.

6 (6) Represent in any manner that his registration
7 constitutes an endorsement of the quality of his workmanship
8 or of his competency by the department or the bureau.

9 (7) Fail to refund the amount paid for a home
10 improvement within ten days of a written request mailed or
11 delivered to the contractor's last known address, if:

12 (i) No substantial portion of the contracted work
13 has been performed at the time of the request.

14 (ii) More than 30 days has elapsed since the
15 starting date specified in the written contract or the
16 date of the contract if such contract does not specify a
17 starting date.

18 (8) Accept a municipal certificate of occupancy or other
19 proof that performance of a home improvement contract is
20 complete or satisfactorily concluded with knowledge that the
21 document or proof is false and the performance is incomplete.

22 (9) Utter, offer or use a completion certificate or
23 other proof that a home improvement contract is complete or
24 satisfactorily concluded:

25 (i) to make or accept an assignment or negotiation
26 of the right to receive payment under a home improvement
27 contract; or

28 (ii) to get or grant credit or a loan on security of
29 the right to receive payment under a home improvement
30 contract;

1 when the person knows or has reason to know that such
2 document or proof is false.

3 (10) Abandon or fail to perform, without justification,
4 a home improvement contract. The term "without justification"
5 shall include, but not be limited to, nonpayment by the owner
6 as required under the contract or any other violation of the
7 contract by the owner.

8 (11) Deviate materially from the plans or specifications
9 without the express, verifiable consent of the owner.

10 (12) Prepare, arrange, accept or participate in
11 arranging a mortgage, promissory note or other evidence of
12 debt for performing or selling a home improvement with
13 knowledge that the evidence of debt states a greater monetary
14 obligation than the consideration, including a time sale
15 price, for a home improvement.

16 (13) Advertise or offer, by any means, to perform a home
17 improvement if the person does not intend:

18 (i) to accept a home improvement contract;

19 (ii) to perform the home improvement; or

20 (iii) to charge for the home improvement at the
21 price advertised or offered.

22 (14) Violate a building law or ordinance of this
23 Commonwealth or political subdivision, a safety or labor law
24 of this Commonwealth or political subdivision, or the act of
25 June 2, 1915 (P.L.736, No.338), known as the Workers'
26 Compensation Act.

27 (15) Fail to pay all taxes associated with home
28 improvement sales or contracting.

29 (16) Perform or sell a home improvement with or through
30 another person who is required to hold a certificate pursuant

1 to this act but who does not hold the certificate.

2 (17) Act as a contractor or sell a home improvement
3 under a name other than that which is stated on the person's
4 certificate.

5 (18) Demand or receive any payment for a home
6 improvement before the home improvement contract is signed.

7 (19) Receive a deposit of more than one-third of the
8 home improvement contract price unless the total price of the
9 contract is less than \$500.

10 (20) While acting as a salesperson, fail to account for
11 or remit to the contractor whom the salesperson represents a
12 payment received in connection with a home improvement.

13 (21) Fail to pay fees or assessments required by this
14 act.

15 (22) Be suspended or debarred from a Federal, State or
16 local program as described in section 4(a)(8).

17 (23) FAIL TO REPORT REGISTRATION OR LICENSURE HELD IN
18 ANOTHER STATE, OR POLITICAL SUBDIVISION THEREOF, ON THE
19 INITIAL REGISTRATION AND BIENNIAL REGISTRATION APPLICATION.

20 (24) FAIL TO REPORT THE REVOCATION OR SUSPENSION OF A
21 CERTIFICATE OF REGISTRATION IN ANOTHER STATE OR POLITICAL
22 SUBDIVISION THEREOF.

23 Section 9. Home improvement fraud.

24 (a) Offense defined.--A person commits the offense of home
25 improvement fraud if, with intent to defraud or injure anyone or
26 with knowledge that he is facilitating a fraud or injury to be
27 perpetrated by anyone, the actor:

28 (1) makes a false or misleading statement to induce,
29 encourage or solicit a person to enter into any written or
30 oral agreement for home improvement services or provision of

1 home improvement materials or to justify an increase in the
2 previously agreed upon price;

3 (2) receives any advance payment for performing home
4 improvement services or providing home improvement materials,
5 fails to perform or provide such services or materials within
6 the date specified in the agreement unless extended by
7 agreement with the consumer and fails to return the payment
8 received for such services or materials which were not
9 provided by that date;

10 (3) while soliciting a person to enter into an agreement
11 for home improvement services or materials, misrepresents or
12 conceals the contractor's or salesperson's real name, the
13 name of the contractor's business, the contractor's business
14 address or any other identifying information;

15 (4) damages a person's property with the intent to
16 induce, encourage or solicit that person to enter into a
17 written or oral agreement for performing home improvement
18 services or providing home improvement materials;

19 (5) misrepresents himself or another as an employee or
20 agent of the Federal, Commonwealth or municipal government,
21 any other governmental unit or any public utility, with the
22 intent to cause a person to enter into any agreement for
23 performing home improvement services or providing home
24 improvement materials;

25 (6) alters a home improvement agreement, mortgage,
26 promissory note or other document incident to performing or
27 selling a home improvement without the consent of the
28 consumer; or

29 (7) directly or indirectly publishes a false or
30 deceptive advertisement about home improvement.

1 (b) Grading.--

2 (1) A violation of subsection (a)(1), (3), (4), (5), (6)
3 or (7) constitutes:

4 (i) a felony of the third degree if the amount
5 involved exceeds \$2,000; or

6 (ii) a misdemeanor of the first degree if the amount
7 involved is \$2,000 or less or if the amount involved
8 cannot be satisfactorily ascertained.

9 (2) A violation of subsection (a)(2) constitutes:

10 (i) a felony of the third degree if the amount of
11 the payment retained exceeds \$2,000; or

12 (ii) a misdemeanor of the first degree if the amount
13 of the payment retained is \$2,000 or less or if the
14 amount of the overcharge cannot be satisfactorily
15 ascertained.

16 (3) Amounts involved pursuant to one scheme or course of
17 conduct, whether involving one or more victims, may be
18 aggregated in determining the grade of the offense pursuant
19 to subsection (a).

20 (4) Where a person commits an offense under subsection
21 (a) and the victim is 60 years of age or older, the grading
22 of the offense shall be one grade higher than specified in
23 paragraphs (1), (2) and (3). This paragraph shall not be
24 applicable to individuals whose sentence would be enhanced
25 pursuant to paragraph (5).

26 (5) Notwithstanding any other provisions of this
27 section, where a person commits a second or subsequent
28 offense described in subsection (a), the offense will
29 constitute a felony of the second degree regardless of the
30 amount of money involved. For this paragraph to be

1 applicable, the second or subsequent offense must have
2 occurred after the first conviction. Paragraph (4) shall not
3 be applicable to individuals whose sentences would be
4 enhanced pursuant to this paragraph.

5 (6) In addition to any other penalty imposed by this
6 act, the court may revoke or suspend the certificate of
7 registration issued under section 6. At the time of
8 sentencing, the court shall state the reasons for such
9 revocation or suspension.

10 (c) Jurisdiction.--

11 (1) The district attorneys of the several counties shall
12 have the authority to investigate and to institute criminal
13 proceedings for any violation of this section.

14 (2) In addition to the authority conferred upon the
15 Attorney General by the act of October 15, 1980 (P.L.950,
16 No.164), known as the Commonwealth Attorneys Act, the
17 Attorney General shall have the authority to investigate and
18 institute criminal proceedings for any violation of this
19 section or any series of such violations involving more than
20 one county of this Commonwealth or involving any county of
21 this Commonwealth and another state. No person charged with a
22 violation of this section by the Attorney General shall have
23 standing to challenge the authority of the Attorney General
24 to investigate or prosecute the case, and, if any such
25 challenge is made, the challenge shall be dismissed and no
26 relief shall be available in the courts of this Commonwealth
27 to the person making the challenge.

28 Section 10. Unfair Trade Practices and Consumer Protection Law.

29 (a) General rule.--A violation of any of the provisions of
30 this act shall be deemed a violation of the act of December 17,

1 1968 (P.L.1224, No.387), known as the Unfair Trade Practices and
2 Consumer Protection Law.

3 (b) Suspension or revocation of registration.--Upon the
4 request of the Attorney General or a district attorney, a court
5 may, for just cause and after notice and hearing, suspend or
6 revoke a certificate of registration for violations of this act.
7 The court may suspend or revoke a certificate of registration as
8 follows:

9 (1) For the first violation, a suspension of up to six
10 months.

11 (2) For the second violation, a suspension of up to one
12 year.

13 (3) For the third and all subsequent violations, the
14 court may impose any term of suspension or revoke a
15 certificate of registration.

16 Section 11. Regulations.

17 The department may adopt rules and regulations necessary to
18 carry out the provisions of this act relating to registration,
19 and the bureau may adopt rules and regulations necessary to
20 carry out and enforce the other provisions of this act.

21 Section 12. Exemptions.

22 Sections 3, 4, 5, 6, 7, 12, 13, 14, 15, 16 and 18 shall not
23 apply to any of the following persons or organizations:

24 (1) The Commonwealth, municipalities and political
25 subdivisions within the Commonwealth or any department or
26 agency of the Commonwealth or such municipalities.

27 (2) The government of the United States or any of its
28 departments or agencies.

29 (3) Any school, public or private, offering as part of a
30 vocational education program, courses and training in any

1 aspect of home improvement.

2 Section 13. Home improvement contracts.

3 (a) Requirements.--No home improvement contract shall be
4 valid or enforceable against an owner unless it:

5 (1) Is in writing and legible.

6 (2) Is signed by the owner and the contractor, or a
7 salesperson on behalf of a contractor.

8 (3) Contains the entire agreement between the owner and
9 the contractor.

10 (4) Contains the date of the transaction.

11 (5) Contains the name, address and certificate number of
12 the contractor.

13 (6) Contains the approximate starting date and
14 completion date.

15 (7) Is entered into by a registered contractor or a
16 registered salesperson.

17 (8) Provides a notice that gives the toll-free telephone
18 number of the department and states that:

19 (i) each contractor and salesperson must be
20 registered by the department; and

21 (ii) anyone may inquire of the department regarding
22 the status of a contractor or salesperson.

23 (b) Rescission right.--All home improvement contracts shall
24 be subject to section 7 of the act of December 17, 1968
25 (P.L.1224, No.387), known as the Unfair Trade Practices and
26 Consumer Protection Law.

27 (c) Copy to be provided.--A contractor or salesperson shall
28 provide and deliver to the owner, without charge, a completed
29 copy of the home improvement contract at the time the contract
30 is executed.

1 Section 14. Home Improvement Guaranty Fund.

2 (a) Establishment.--The Home Improvement Guaranty Fund is
3 hereby established in the State Treasury and shall be
4 administered by the bureau in accordance with this act.

5 (b) Biennial fund fee.--Each salesperson who applies for a
6 certificate or renewal thereof pursuant to this act shall pay a
7 fee of \$50 biennially, and each contractor who applies for a
8 certificate, or renewal thereof, pursuant to this act shall pay
9 a fee of \$100 biennially to the fund. The fee shall be payable
10 with the fee for an application for a certificate or renewal
11 thereof as provided in section 5 and shall be refunded in full
12 in the event the applicant is denied a certificate.

13 (c) Minimum balance.--

14 (1) Payments received under subsection (b) shall be
15 credited to the fund which shall maintain a balance of at
16 least \$2,000,000. If the bureau finds that, because of
17 pending claims, the amount of the fund may fall below
18 \$1,000,000, the bureau shall assess each contractor \$25 and
19 each salesperson \$10. However, under this subsection the
20 bureau may not make more than one assessment in any calendar
21 year.

22 (2) Failure to make payments to the fund as required by
23 this act shall result in suspension of registration. Barring
24 the existence of other grounds for suspension or revocation
25 of registration, the contractor's or salesperson's
26 certificate of registration shall be reinstated upon full
27 payment of all the required fees.

28 (d) Investment.--The moneys of the fund shall be invested
29 and the interest arising from the investments shall be credited
30 to the fund.

1 (e) Waiver of biennial fund fee.--In the event that the
2 bureau finds that the fund is adequately funded, the bureau
3 shall, during the first month of each fiscal year, adjust or
4 waive any biennial fund fee for the fiscal year.

5 Section 15. Claims against fund.

6 (a) General rule.--An owner may be compensated from the fund
7 for an actual loss that results from an act or omission or a
8 violation of this act by a registered contractor or salesperson
9 as found by a court of competent jurisdiction, upon the final
10 determination of or expiration of time for appeal in connection
11 with any such judgment. In the event the bureau and a contractor
12 or salesperson enter into an assurance of voluntary compliance,
13 as described in section 5 of the act of December 17, 1968
14 (P.L.1224, No.387), known as the Unfair Trade Practices and
15 Consumer Protection Law, which requires payment of restitution
16 to an owner and the contractor or salesperson fails to pay as
17 required by the terms of the assurance of voluntary compliance,
18 the bureau shall issue an order of payment from the fund to the
19 owner. The payment made pursuant to an assurance of voluntary
20 compliance shall be considered a claim for purposes of
21 reimbursement of the fund, however, subsection (g) shall not be
22 applicable.

23 (b) Acts of subcontractors, salespersons and employees.--For
24 purposes of recovery from the fund, the act or omission of a
25 registered contractor or registered salesperson includes the act
26 or omission of a subcontractor, salesperson or employee of the
27 registered contractor or registered salesperson whether or not
28 any express agency relationship exists.

29 (c) Denial of claim.--The bureau may deny a claim if the
30 bureau finds that the claimant:

1 (1) unreasonably rejected good faith efforts by the
2 contractor or salesperson to resolve the claim; or

3 (2) failed to make good faith efforts to collect the
4 amount due from the contractor or salesperson.

5 (d) Limitation on recovery.--

6 (1) The bureau may not provide from the fund:

7 (i) More than \$10,000 to one claimant for acts or
8 omissions of one contractor or salesperson.

9 (ii) More than \$50,000 to all claimants for acts or
10 omissions of one contractor or salesperson unless, after
11 the bureau has paid out \$50,000 on account of acts or
12 omissions of the contractor or salesperson, the
13 contractor or salesperson reimburses the fund. However,
14 in no case shall any one contractor or salesperson be
15 indebted, at any one time, to the fund for more than
16 \$50,000.

17 (iii) An amount for any attorney fees, consequential
18 damages, court costs, interest, personal injury damages
19 or punitive damages.

20 ~~(iv) An amount as a result of a default judgment in~~ <—
21 ~~court.~~

22 (2) In addition to the limits set forth in paragraph
23 (1), a claimant may not recover from the fund more than that
24 claimant's actual loss, to a maximum of \$10,000, for a claim
25 made on one contract. A court may, however, allocate
26 responsibility on one contract between contractors and
27 salespersons to a maximum combined responsibility of \$10,000.

28 (e) Excluded claimants.--

29 (1) A claim against the fund based on the act or
30 omission of a particular contractor or salesperson shall not

1 be made by:

2 (i) a spouse or other immediate relative of the
3 contractor or salesperson, or of a party which holds a
4 financial stake in the business of the contractor or
5 salesperson;

6 (ii) an employee, officer, director, partner or
7 other party which holds a financial stake in the business
8 of the contractor or salesperson; or

9 (iii) an immediate relative of an employee, officer,
10 director, partner or other party which holds a financial
11 stake in the business of the contractor or salesperson.

12 (2) An owner may make a claim against the fund only if
13 the owner:

14 (i) resides in the residence as to which the claim
15 is made; or

16 (ii) does not own more than two dwelling places,
17 unless the dwelling place as to which the claim is made
18 is the primary residence of the owner or the part of the
19 building which houses the primary residence of the owner.

20 (f) Limitations period.--A claim must be made against the
21 fund within two years after the claimant obtains an entry of
22 final judgment or decree against the contractor or salesperson
23 and all appeal rights have expired or been exhausted, or, in the
24 case of an assurance of voluntary compliance, within the later
25 of two years of entry into such assurance or one year after
26 nonpayment according to the terms of the assurance.

27 (g) Offer of proof.--In order to recover from the fund the
28 claimant must offer proof to the bureau that the claimant has
29 caused to be issued a writ of execution upon a judgment obtained
30 against the contractor or salesperson, and the officer executing

1 the same has made a return showing that no bank accounts or real
2 property of the contractor liable to be levied upon in
3 satisfaction of the judgment could be found, or that the amount
4 realized on the sale of them or of such of them as were found,
5 under the execution, was insufficient to satisfy the judgment or
6 stating the amount realized and the balance remaining due on the
7 judgment after application thereon of the amount realized. A
8 true and attested copy of the executing officer's return must be
9 attached to an application for fund reimbursement.

10 (h) Partial payments for fund integrity.--In order to
11 preserve the integrity of the fund, the bureau may order payment
12 out of the fund of an amount less than the order issued by the
13 court. The balance remaining due to the claimant shall be paid
14 from the fund pursuant to subsection (i).

15 (i) Special order of payment.--If the money in the fund is
16 insufficient to satisfy any duly authorized claim or portion
17 thereof, the bureau shall, when sufficient money exists in the
18 fund, satisfy the unpaid claims or portions thereof, in the
19 order that those claims or portions thereof were originally
20 determined.

21 (j) Investigation by bureau.--As provided in section 17, if
22 the bureau pays any amount from the fund as a result of a claim
23 against a contractor or salesperson, the bureau may conduct an
24 investigation to determine if the contractor or salesperson is
25 possessed of assets liable to be sold or applied in satisfaction
26 of the claim on the fund. If the bureau discovers any such
27 assets, the bureau may take any lawful action necessary for the
28 reimbursement of the fund.

29 (k) Revocation caused by payment of claim.--If the bureau
30 makes a payment of an amount as a result of a claim against a

1 contractor or salesperson, the department shall revoke the
2 certificate of the contractor or salesperson and the contractor
3 or salesperson shall not be eligible to receive a new or renewed
4 certificate until that contractor or salesperson has repaid such
5 amount in full, plus interest, from the time the payment is made
6 from the fund, except that the department, with bureau approval,
7 may permit a contractor or salesperson to receive a new or
8 renewed certificate after that contractor or salesperson has
9 entered into an agreement with the bureau whereby the contractor
10 or salesperson agrees to repay the fund in full in the form of
11 periodic payments over a set period of time. If the contractor
12 or salesperson fails to pay in accordance with the terms of the
13 agreement, the department shall automatically suspend the
14 contractor's or salesperson's certificate.

15 Section 16. Procedure for submitting claims.

16 (a) Initial claim.--In order to recover from the fund, a
17 claimant must submit to the bureau the documentation required
18 under section 15(g), if applicable, and the following
19 information on a form provided by the bureau:

- 20 (1) The amount claimed based on the actual loss.
- 21 (2) The facts giving rise to the claim.
- 22 (3) Any other evidence that supports the claim.
- 23 (4) Any other information that the bureau requires.

24 (b) Copy of claim to contractor.--On receipt of a claim
25 pursuant to this section, the bureau shall send a copy of the
26 claim to the contractor alleged to be responsible for the actual
27 loss. The contractor shall file a response or objection to the
28 claim within 30 days of receipt of the notice of such claim.
29 Failure to respond to the claim shall constitute a waiver of any
30 defense or objection to the claim.

(c) General order of payment.--Except as otherwise provided in this act, the bureau shall pay from the fund approved claims in the order that they are submitted.

Section 17. Reimbursement of fund.

(a) General rule.--After the bureau pays a claim from the fund:

(1) The bureau shall be subrogated to all rights of the claimant in the claim up to the amount paid.

(2) The claimant shall assign to the bureau all rights of the claimant in the claim up to the amount paid.

(3) The bureau has a right to reimbursement of the fund by the contractor or salesperson for:

(i) The amount paid from the fund.

(ii) Interest on the amount at an annual rate of 5% as adjusted by the Consumer Price Index on an annual basis.

All money that the bureau recovers on a claim shall be deposited in the fund.

(b) Suit for nonpayment.--If, within 30 days after the bureau gives notice, a contractor or salesperson on whose account a claim was paid shall fail to reimburse the fund in full, the bureau may initiate an action against the contractor or salesperson in a court of competent jurisdiction for the unreimbursed amount.

(c) Judgment.--The bureau is entitled to a judgment for the unreimbursed amount if the bureau proves that:

(1) A claim was paid from the fund on account of the contractor or salesperson.

(2) The contractor or salesperson has not reimbursed the fund in full.

1 (3) The bureau directed payment based on a final
2 judgment of a court of competent jurisdiction or an assurance
3 of voluntary compliance.

4 (d) Withholding of tax refund.--The bureau may request the
5 Department of Revenue to withhold the annual tax refund due any
6 individual or business on whose account or under whose business
7 a claim was paid from the fund and who is delinquent for at
8 least one year in making payments to the bureau for the purpose
9 of reimbursing the fund. Any tax refund withheld by the
10 Department of Revenue pursuant to this subsection shall be
11 deposited in the fund by that department. The bureau and the
12 Department of Revenue shall jointly establish procedures to
13 carry out the requirements of this subsection.

14 (e) Bankruptcy proceedings.--For the purpose of excepting to
15 a discharge of an individual or business under Federal
16 bankruptcy law, the bureau shall be a creditor of the individual
17 or business for the amount paid from the fund.

18 Section 18. Notice of suspension or revocation.

19 The Administrative Office of Pennsylvania Courts shall report
20 to the department and the bureau any suspension or revocation of
21 a certificate of registration ordered by a court.

22 Section 19. Effective date.

23 This act shall take effect in 180 days.