

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 673 Session of  
2005

INTRODUCED BY DeLUCA, BELFANTI, CURRY, DALEY, EACHUS, FABRIZIO,  
W. KELLER, LEDERER, MELIO, SOLOBAY, THOMAS AND YOUNGBLOOD,  
MARCH 1, 2005

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, MARCH 1, 2005

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

12 Section 1. Short title.

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

15 Section 2. Definitions.

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

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

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

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

30 "Fund." The Home Improvement Guaranty Fund established in

1 section 14 (relating to Home Improvement Guaranty Fund).

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

15 (1) The construction of a new home.

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

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

24 (4) The sale of appliances, such as stoves,  
25 refrigerators, freezers, room air conditioners and others  
26 which are designed for and are easily removable from the  
27 premises without material alteration exceeding \$200.

28 (5) Any work performed without compensation by the owner  
29 on the owner's private residence or residential rental  
30 property.

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

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

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

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

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

"Salesperson." Any person who negotiates or offers to negotiate a home improvement contract with an owner or solicits or otherwise endeavors to procure by any means whatsoever, directly or indirectly, a home improvement contract from an owner.

1 "Special order material." Any material purchased by a  
2 contractor exclusively for the performance of a specific home  
3 improvement contract and which has no value in the performance  
4 of another home improvement contract.

5 Section 3. Registration of contractors and salespersons.

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

16 (b) Salespersons.--

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

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

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

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

1 home improvement. No unregistered contractor or salesperson may  
2 file a mechanic's lien with respect to a home improvement.

3 (e) Public access to registration information.--The bureau  
4 shall maintain a toll-free telephone number from which a caller  
5 can obtain information as to whether a contractor or salesperson  
6 is registered with the bureau pursuant to 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 bureau in writing  
10 on a form provided by the bureau. The application shall include  
11 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 5% 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.

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 bureau determines that additional information  
4 is necessary to effectuate the purpose of this act, the  
5 bureau shall promulgate regulations to require the submission  
6 of the additional information.

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

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

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

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

17 (c) Contractual relationships.--In addition to the  
18 information required in subsection (a), a contractor shall be  
19 required to notify the bureau of any employment or other  
20 contractual relationship between the contractor and any  
21 salesperson. A contractor shall be required to submit such  
22 information within 30 days of entering into an employment or  
23 other contractual relationship with a salesperson. Information  
24 under this subsection shall be updated by the contractor, on a  
25 form provided by the bureau, on an as-needed basis throughout  
26 the period of registration.

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



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

13 Section 5. Application fees.

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

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

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

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

26 (c) Multiple registrations.--A home improvement contractor  
27 or salesperson applying as a business entity shall be required  
28 to pay the application fee in this section and the fund fee set  
29 forth in section 14 (relating to Home Improvement Guaranty Fund)  
30 only as a business entity, regardless of the number of

1 individuals who provide registration information pursuant to  
2 this act.

3 Section 6. Certificate of registration and renewal.

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

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

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

22 (d) Grounds for denial and revocation of registration.--The  
23 bureau shall deny registration to any contractor or salesperson  
24 against whom a civil judgment has been entered in favor of an  
25 owner that was related to a home improvement transaction if the  
26 transaction occurred after the effective date of this act and  
27 the judgment remains unsatisfied. The bureau may permit a  
28 contractor or salesperson to receive a new or renewed  
29 certificate after the contractor has entered into a written  
30 agreement whereby the contractor agrees to pay the judgment in

1 full in the form of periodic payments over a specific period of  
2 time. If the contractor or salesperson does not pay in  
3 accordance with the terms of the agreement, the bureau shall  
4 immediately revoke the contractor's or salesperson's certificate  
5 of registration.

6 (e) Refusal.--The bureau may refuse to issue a certificate  
7 of registration to any contractor or salesperson if it  
8 determines that such contractor or salesperson has engaged in a  
9 pattern of conduct contrary to the provisions of this act,  
10 regardless of whether a civil judgment relating to a home  
11 improvement contract has ever been entered against the home  
12 improvement contractor or salesperson.

13 Section 7. Certificate holder to exhibit and advertise  
14 certificate.

15 Contractors and salespersons shall exhibit their certificates  
16 upon request by any interested party. All advertisements of a  
17 home improvement contractor or salesperson shall include the  
18 registration number issued by the bureau. Any home improvement  
19 contract shall include the registration number of the home  
20 improvement contractor who is a party to the contract.

21 Section 8. Prohibited acts.

22 No person shall:

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

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

27 (3) Present himself falsely as or impersonate a  
28 registered home improvement contractor or salesperson.

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

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

3           (6) Represent in any manner that his registration  
4           constitutes an endorsement of the quality of his workmanship  
5           or of his competency by the bureau.

6           (7) Fail to refund the amount paid for a home  
7           improvement within ten days of either the acceptance and  
8           execution of a return receipt for certified mail containing a  
9           written request for a refund or the refusal to accept such  
10          certified mail sent to the contractor's last known address,  
11          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. Justification for the  
5 abandonment or failure to perform a home improvement contract  
6 by a contractor shall include, but not be limited to,  
7 nonpayment by the owner as required under the contract or any  
8 other violation of the contract by the owner.

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

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

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

19 (i) to accept a home improvement contract;

20 (ii) to perform the home improvement; or

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

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

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

30 (16) Perform or sell a home improvement with or through

1 another person who is required to hold a certificate pursuant  
2 to this act but who does not hold the certificate.

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

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

8 (19) Receive a deposit of more than one-third of the  
9 home improvement contract price unless the total price of the  
10 contract is less than \$500. For the purpose of calculating a  
11 deposit, the total contract price shall not include the cost  
12 of any special order material purchased or to be purchased by  
13 the contractor for the home improvement contract.

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

17 (21) Fail to pay fees or assessments required by this  
18 act.

19 (22) Be suspended or debarred from a Federal, State or  
20 local program as described in section 4(a)(8) (relating to  
21 procedures for registration).

22 (23) Fail to report registration or licensure held in  
23 another state or political subdivision thereof on the initial  
24 registration and biennial registration application.

25 (24) Fail to report the revocation or suspension of a  
26 registration in another state or political subdivision  
27 thereof.

28 Section 9. Home improvement fraud.

29 (a) Offense defined.--A person commits the offense of home  
30 improvement fraud if, with intent to defraud or injure anyone or

1 with knowledge that he is facilitating a fraud or injury to be  
2 perpetrated by anyone, the actor:

3 (1) makes a false or misleading statement to induce,  
4 encourage or solicit a person to enter into any written or  
5 oral agreement for home improvement services or provision of  
6 home improvement materials or to justify an increase in the  
7 previously agreed upon price;

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

15 (3) while soliciting a person to enter into an agreement  
16 for home improvement services or materials, misrepresents or  
17 conceals the contractor's or salesperson's real name, the  
18 name of the contractor's business, the contractor's business  
19 address or any other identifying information;

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

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

30 (6) alters a home improvement agreement, mortgage,

1 promissory note or other document incident to performing or  
2 selling a home improvement without the consent of the  
3 consumer; or

4 (7) directly or indirectly publishes a false or  
5 deceptive advertisement about home improvement.

6 (b) Grading.--

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

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

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

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

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

17 (ii) a misdemeanor of the first degree if the amount  
18 of the payment retained is \$2,000 or less or if the  
19 amount of the payment cannot be satisfactorily  
20 ascertained.

21 (3) Amounts involved pursuant to one scheme or course of  
22 conduct, whether involving one or more victims, may be  
23 aggregated in determining the grade of the offense pursuant  
24 to subsection (a).

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



1           (5) Notwithstanding any other provisions of this  
2 section, where a person commits a second or subsequent  
3 offense described in subsection (a), the offense will  
4 constitute a felony of the second degree regardless of the  
5 amount of money involved. For this paragraph to be  
6 applicable, the second or subsequent offense must have  
7 occurred after the first conviction. Paragraph (4) shall not  
8 be applicable to individuals whose sentences would be  
9 enhanced pursuant to this paragraph.

10          (6) In addition to any other penalty imposed by this  
11 act, the court may revoke or suspend the certificate of  
12 registration issued under section 6 (relating to certificate  
13 of registration and renewal). At the time of sentencing, the  
14 court shall state the reasons for such revocation or  
15 suspension.

16       (c) Jurisdiction.--

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

20          (2) In addition to the authority conferred upon the  
21 Attorney General by the act of October 15, 1980 (P.L.950,  
22 No.164), known as the Commonwealth Attorneys Act, the  
23 Attorney General shall have the authority to investigate and  
24 institute criminal proceedings for any violation of this  
25 section or any series of such violations involving more than  
26 one county of this Commonwealth or involving any county of  
27 this Commonwealth and another state. No person charged with a  
28 violation of this section by the Attorney General shall have  
29 standing to challenge the authority of the Attorney General  
30 to investigate or prosecute the case, and, if any such

challenge is made, the challenge shall be dismissed and no relief shall be available in the courts of this Commonwealth to the person making the challenge.

Section 10. Unfair Trade Practices and Consumer Protection Law.

(a) General rule.--A violation of any of the provisions of this act shall be deemed a violation of the act of December 17, 1968 (P.L.1224, No.387), known as the Unfair Trade Practices and Consumer Protection Law.

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

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

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

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

Section 11. Regulations.

The bureau may adopt rules and regulations necessary to carry out and enforce the provisions of this act.

Section 12. Exemptions.

Sections 3 (relating to registration of contractors and salespersons), 4 (relating to procedures for registration), 5 (relating to application fees), 6 (relating to certificate of registration and renewal), 7 (relating to holder to exhibit and advertise certificate), 12 (relating to exemptions), 13

(relating to home improvement contracts), 14 (relating to Home Improvement Guaranty Fund), 15 (relating to claims against fund), 16 (relating to procedure for submitting claims) and 18 (relating to notice of suspension or revocation) shall not apply to any of the following persons or organizations:

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

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

(3) Any school, public or private, offering as part of a vocational education program, courses and training in any aspect of home improvement.

#### Section 13. Home improvement contracts.

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

(1) Is in writing and legible.

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

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

(4) Contains the date of the transaction.

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

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

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

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

1           (i) each contractor and salesperson must be  
2           registered by the bureau; and  
3           (ii) anyone may inquire of the bureau regarding the  
4           status of a contractor or salesperson.

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

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

13      Section 14. Home Improvement Guaranty Fund.

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

17      (b) Biennial fund fee.--Each salesperson who applies for a  
18      certificate or renewal thereof pursuant to this act shall pay a  
19      fee of \$50 biennially, and each contractor who applies for a  
20      certificate, or renewal thereof, pursuant to this act shall pay  
21      a fee of \$100 biennially to the fund. The fee shall be payable  
22      with the fee for an application for a certificate or renewal  
23      thereof as provided in section 5 (relating to application fees)  
24      and shall be refunded in full in the event the applicant is  
25      denied a certificate.

26      (c) Minimum balance.--

27           (1) Payments received under subsection (b) shall be  
28      credited to the fund which shall maintain a balance of at  
29      least \$2,000,000. If the bureau finds that, because of  
30      pending claims, the amount of the fund may fall below

1       \$1,000,000, the bureau shall assess each contractor \$25 and  
2       each salesperson \$10. However, under this subsection the  
3       bureau may not make more than one assessment in any calendar  
4       year.

5           (2) Failure to make payments to the fund as required by  
6       this act shall result in suspension of registration. Barring  
7       the existence of other grounds for suspension or revocation  
8       of registration, the contractor's or salesperson's  
9       certificate of registration shall be reinstated upon full  
10      payment of all the required fees.

11      (d) Investment.--The moneys of the fund shall be invested by  
12      the State Treasurer and the interest arising from the  
13      investments shall be credited to the fund.

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

18      Section 15. Claims against fund.

19      (a) General rule.--An owner may be compensated from the fund  
20      for an actual loss that results from a violation of this act by  
21      a registered contractor or salesperson as found by a court of  
22      competent jurisdiction, upon the final determination of or  
23      expiration of time for appeal in connection with any such  
24      judgment. In the event the bureau and a contractor or  
25      salesperson enter into an assurance of voluntary compliance, as  
26      described in section 5 of the act of December 17, 1968

27      (P.L.1224, No.387), known as the Unfair Trade Practices and  
28      Consumer Protection Law, which requires payment of restitution  
29      to an owner and the contractor or salesperson fails to pay as  
30      required by the terms of the assurance of voluntary compliance,

1 the bureau shall issue an order of payment from the fund to the  
2 owner. The payment made pursuant to an assurance of voluntary  
3 compliance shall be considered a claim for purposes of  
4 reimbursement of the fund, however, subsection (g) shall not be  
5 applicable.

6 (b) Acts of subcontractors, salespersons and employees.--For  
7 purposes of recovery from the fund, the act or omission of a  
8 registered contractor or registered salesperson includes the act  
9 or omission of a subcontractor, salesperson or employee of the  
10 registered contractor or registered salesperson whether or not  
11 any express agency relationship exists so long as the  
12 subcontractor, salesperson or employee was acting within the  
13 scope of the home improvement contract.

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

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

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

20 (d) Limitation on recovery.--

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

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

24 (ii) More than \$50,000 to all claimants for acts or  
25 omissions of one contractor or salesperson unless, after  
26 the bureau has paid out \$50,000 on account of acts or  
27 omissions of the contractor or salesperson, the  
28 contractor or salesperson reimburses the fund. However,  
29 in no case shall any one contractor or salesperson be  
30 indebted, at any one time, to the fund for more than

1           \$50,000.

2           (iii) An amount for any attorney fees, consequential  
3 damages, court costs, interest, personal injury damages  
4 or punitive damages.

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

11       (e) Excluded claimants.--

12           (1) A claim against the fund based on the act or  
13 omission of a particular contractor or salesperson shall not  
14 be made by:

15           (i) a spouse or other immediate relative of the  
16 contractor or salesperson, or of a party which holds a  
17 financial stake in the business of the contractor or  
18 salesperson;

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

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

25           (2) An owner may make a claim against the fund only if  
26 the owner:

27           (i) resides in the residence as to which the claim  
28 is made; or

29           (ii) does not own more than two dwelling places,  
30 unless the dwelling place as to which the claim is made

1 is the primary residence of the owner or the part of the  
2 building which houses the primary residence of the owner.

3 (f) Limitations period.--A claim must be made against the  
4 fund within two years after the claimant obtains an entry of  
5 final judgment or decree against the contractor or salesperson  
6 and all appeal rights have expired or been exhausted, or, in the  
7 case of an assurance of voluntary compliance, within the later  
8 of two years of entry into such assurance or one year after  
9 nonpayment according to the terms of the assurance.

10 (g) Offer of proof.--In order to recover from the fund the  
11 claimant must offer proof to the bureau that the claimant has  
12 caused to be issued a writ of execution upon a judgment obtained  
13 against the contractor or salesperson, and the officer executing  
14 the same has made a return showing that no bank accounts or real  
15 property of the contractor liable to be levied upon in  
16 satisfaction of the judgment could be found, or that the amount  
17 realized on the sale of them or of such of them as were found,  
18 under the execution, was insufficient to satisfy the judgment or  
19 stating the amount realized and the balance remaining due on the  
20 judgment after application thereon of the amount realized. A  
21 true and attested copy of the executing officer's return must be  
22 attached to an application for fund reimbursement.

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

28 (i) Special order of payment.--If the money in the fund is  
29 insufficient to satisfy any duly authorized claim or portion  
30 thereof, the bureau shall, when sufficient money exists in the



1 fund, satisfy the unpaid claims or portions thereof, in the  
2 order that those claims or portions thereof were originally  
3 determined.

4 (j) Investigation by bureau.--As provided in section 17,  
5 (relating to reimbursement of fund) if the bureau pays any  
6 amount from the fund as a result of a claim against a contractor  
7 or salesperson, the bureau may conduct an investigation to  
8 determine if the contractor or salesperson is possessed of  
9 assets liable to be sold or applied in satisfaction of the claim  
10 on the fund. If the bureau discovers any such assets, the bureau  
11 may take any lawful action necessary for the reimbursement of  
12 the fund.

13 (k) Revocation caused by payment of claim.--If the bureau  
14 makes a payment of an amount as a result of a claim against a  
15 contractor or salesperson, the bureau shall revoke the  
16 certificate of the contractor or salesperson and the contractor  
17 or salesperson shall not be eligible to receive a new or renewed  
18 certificate until that contractor or salesperson has repaid such  
19 amount in full, plus interest, from the time the payment is made  
20 from the fund, except that the bureau may permit a contractor or  
21 salesperson to receive a new or renewed certificate after that  
22 contractor or salesperson has entered into an agreement with the  
23 bureau whereby the contractor or salesperson agrees to repay the  
24 fund in full in the form of periodic payments over a set period  
25 of time. If the contractor or salesperson fails to pay in  
26 accordance with the terms of the agreement, the bureau shall  
27 automatically suspend the contractor's or salesperson's  
28 certificate.

29 Section 16. Procedure for submitting claims.

30 (a) Initial claim.--In order to recover from the fund, a

1 claimant must submit to the bureau the documentation required  
2 under section 15(g) (relating to claims against fund), if  
3 applicable, and the following information on a form provided by  
4 the bureau:

- 5 (1) The amount claimed based on the actual loss.
- 6 (2) The facts giving rise to the claim.
- 7 (3) Any other evidence that supports the claim.
- 8 (4) Any other information that the bureau requires.

9 (b) Copy of claim to contractor.--On receipt of a claim  
10 pursuant to this section, the bureau shall send a copy of the  
11 claim to the contractor alleged to be responsible for the actual  
12 loss. The contractor shall file a response or objection to the  
13 claim within 30 days of receipt of the notice of such claim.  
14 Failure to respond to the claim shall constitute a waiver of any  
15 defense or objection to the claim.

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

19 Section 17. Reimbursement of fund.

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

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

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

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

28 (i) The amount paid from the fund.

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

1 basis.

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

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

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

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

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

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

19 (d) Withholding of tax refund.--If an individual is  
20 delinquent for at least one year in making payments to the  
21 bureau for the purpose of reimbursing the fund, the Department  
22 of Revenue shall credit the amount of any refundable overpayment  
23 of tax imposed by Article III of the act of March 4, 1971  
24 (P.L.6, No.2), known as the Tax Reform Code of 1971, against the  
25 delinquency in respect to this act on the part of the person who  
26 made the overpayment.

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

1 Section 18. Notice of suspension or revocation.

2 The Administrative Office of Pennsylvania Courts shall report  
3 to the bureau any suspension or revocation of a certificate of  
4 registration ordered by a court.

5 Section 19. Effective date.

6 This act shall take effect in 180 days.