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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 1000 Session of  
2005

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INTRODUCED BY TOMLINSON, CONTI, WONDERLING, BOSCOLA, PILEGGI,  
STACK, ERICKSON, LAVALLE AND FONTANA, NOVEMBER 14, 2005

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REFERRED TO CONSUMER PROTECTION AND PROFESSIONAL LICENSURE,  
NOVEMBER 14, 2005

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AN ACT

1 Providing for the regulation of home improvement contracts and  
2 for the registration of certain contractors; prohibiting  
3 certain acts; and providing for penalties.

4 The General Assembly of the Commonwealth of Pennsylvania  
5 hereby enacts as follows:

6 Section 1. Short title.

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

9 Section 2. Definitions.

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

13 "Bureau." The Bureau of Consumer Protection in the Office of  
14 Attorney General.

15 "Contractor." Any person, including a subcontractor or  
16 employee of another contractor, who owns and operates a home  
17 improvement business or who undertakes, offers to undertake or  
18 agrees to perform any home improvement. The term does not

1 include a person for whom the total cash value of all of that  
2 person's home improvements is less than \$5,000 during any period  
3 of 12 consecutive months.

4 "Home improvement."

5 (1) The term includes all of the following done in  
6 connection with land or a portion of the land adjacent to a  
7 private residence or a building or a portion of the building  
8 which is used or designed to be used as a private residence  
9 for which the total cash price of all work agreed upon  
10 between the contractor and owner is more than \$200.

11 (i) Repair, replacement, remodeling, demolition,  
12 removal, renovation, installation, alteration,  
13 conversion, modernization, improvement, rehabilitation or  
14 sandblasting.

15 (ii) Construction, replacement, installation or  
16 improvement of driveways, swimming pools, pool houses,  
17 porches, garages, roofs, siding, insulation, solar energy  
18 systems, security systems, flooring, patios, fences,  
19 gazebos, sheds, cabanas, landscaping of a type that is  
20 not excluded under paragraph (2)(vi), painting, doors and  
21 windows and waterproofing.

22 (iii) Without regard to affixation, the installation  
23 of central heating or air conditioning or storm windows  
24 or awnings.

25 (iv) The conversion of existing commercial  
26 structures into residential or noncommercial structures.

27 (2) The term does not include:

28 (i) The construction of a new home.

29 (ii) The sale of goods or materials by a seller who  
30 neither arranges to nor performs, directly or indirectly,

1 any work or labor in connection with the installation or  
2 application of the goods or materials.

3 (iii) The sale of services furnished for commercial  
4 or business use or for resale, if the service takes place  
5 somewhere other than at a private residence.

6 (iv) The sale of appliances, including stoves,  
7 refrigerators, freezers, room air conditioners and others  
8 which are designed for and are easily removable from the  
9 premises without material alteration the cost of which is  
10 more than \$200.

11 (v) Any work performed without compensation by the  
12 owner of the owner's private residence or residential  
13 rental property.

14 (vi) Any work performed by a landscaper certified by  
15 the Department of Agriculture under the act of December  
16 16, 1992 (P.L.1228, No.162), known as the Plant Pest Act,  
17 except to the extent that the work involves any of the  
18 following at a private residence:

19 (A) The construction, replacement, installation  
20 or improvement of buildings, driveways, swimming  
21 pools, porches, garages, roofs, siding, insulation,  
22 solar energy systems, security systems, flooring,  
23 patios, nondecorative fences, doors, lighting  
24 systems, concrete walkways and windows.

25 (B) The placement of retaining walls, fountains  
26 or drainage systems.

27 "Home improvement contract." An agreement between a  
28 contractor, subcontractor or salesperson and an owner for the  
29 performance of a home improvement which includes all agreements  
30 for labor, services and materials to be furnished and performed

1 under the contract.

2 "Owner."

3 (1) The term includes any of the following:

4 (i) An owner of a private residence, including any  
5 person authorized by an owner to act on the owner's  
6 behalf to order, contract for or purchase a home  
7 improvement.

8 (ii) A person entitled to the performance of the  
9 work of a contractor pursuant to a home improvement  
10 contract.

11 (2) An owner of a private residence shall not be  
12 required to reside in the residence to be deemed an owner  
13 under this act.

14 (3) A person who owns three or more private residences  
15 in this Commonwealth shall not be deemed an owner except with  
16 respect to the person's primary residence or the part of the  
17 building which houses the primary residence of the owner.

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

20 "Private residence." Any of the following:

21 (1) A single family dwelling.

22 (2) A multifamily dwelling consisting of not more than  
23 three units.

24 (3) A single unit located within any multifamily  
25 dwelling, including condominiums and co-op units.

26 "Special order material." Materials that, prior to their  
27 delivery to the worksite, meet all of the following  
28 requirements:

29 (1) Require processing by a manufacturer to meet the  
30 designated specifications of a particular home improvement

1 project.

2 (2) Cannot be returned to the supplier for a refund or  
3 credit because of features that limit their use to the  
4 particular home improvement project.

5 (3) Have no value in the performance of another home  
6 improvement project other than the particular home  
7 improvement project they were procured for.

8 "Specifications." The plans, detailed drawings, lists of  
9 materials, stated allowances or other methods customarily used  
10 in the home improvement industry as a whole to describe with  
11 particularity the work, workmanship, materials and quality of  
12 materials for each home improvement.

13 "Tenant." A person who has entered into a lease or other  
14 contractual arrangement with the owner.

15 Section 3. Registration of contractors.

16 (a) General rule.--No person shall hold himself out as a  
17 contractor nor shall a person perform any home improvement  
18 without first registering with the bureau as provided for in  
19 this act.

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

26 (c) Public access to registration information.--The bureau  
27 shall maintain a toll-free telephone number from which a caller  
28 can obtain information as to whether a contractor is registered  
29 with the bureau pursuant to this act.

30 (d) Nongrant or renewal of license.--The Department of

1 Banking shall not grant or renew a license to any person  
2 registered, or required to be registered, as a home improvement  
3 contractor pursuant to any of the following:

4 (1) The act of December 12, 1980 (P.L.1179, No.219),  
5 known as the Secondary Mortgage Loan Act.

6 (2) The act of December 22, 1989 (P.L.687, No.90), known  
7 as the Mortgage Bankers and Brokers and Consumer Equity  
8 Protection Act.

9 Section 4. Procedures for registration as a contractor.

10 (a) Application.--A person shall apply to the bureau in  
11 writing on a form provided by the bureau. The application shall  
12 include the following information:

13 (1) For an individual applicant, the name, home address,  
14 home telephone number and driver's license identification  
15 number of the applicant, as well as the individual's business  
16 name, address and telephone number if different, and all  
17 prior business names and addresses of home improvement  
18 businesses.

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

23 (3) For a corporation, limited liability company or  
24 limited partnership applicant, the name, home address, home  
25 telephone number and driver's license identification number  
26 of each officer, each director or each individual holding  
27 greater than a 5% stake in the business, as well as the  
28 entity's business name, address and telephone number.

29 (4) For an out-of-State corporation, limited liability  
30 or limited partnership, the name and address of the entity's

1 resident agent or registered office provider within this  
2 Commonwealth and any registration number or license number  
3 issued to the entity by its home state or political  
4 subdivision of such other state, if applicable.

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

11 (6) A complete description of the nature of the  
12 contracting business of the applicant.

13 (7) A statement whether:

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

24 (ii) The applicant's certificate or the certificate  
25 of a business with which the person making application  
26 held an interest has ever been revoked or suspended  
27 pursuant to an order issued by a court of competent  
28 jurisdiction in this Commonwealth or any other state or  
29 political subdivision thereof.

30 (8) Whether within the last ten years the applicant has

1 ever been suspended or debarred from participating in any  
2 Federal, State or local program through which funding or  
3 other assistance is provided to consumers for home  
4 improvements.

5 (b) Reporting of multiple registrations or licensures.--Any  
6 registered contractor in this Commonwealth who is registered or  
7 licensed as a home improvement contractor in any other state, or  
8 political subdivision thereof, shall report this information to  
9 the bureau on the initial registration and biennial registration  
10 application. Any disciplinary action taken in such other  
11 jurisdiction shall be reported to the bureau on the initial  
12 registration application or, if such action occurred subsequent  
13 to submission of an initial application, on the biennial  
14 registration application or within 90 days of final disposition,  
15 whichever is sooner. Multiple registrations or licensures shall  
16 be noted by the bureau on the contractor's registration, and  
17 such state, or political subdivision thereof, shall be notified  
18 by the bureau of any disciplinary actions taken against such  
19 contractor in this Commonwealth.

20 Section 5. Application fees.

21 Each application for a certificate for a home improvement  
22 contractor or renewal of that certificate shall be accompanied  
23 by a fee of \$50. Renewals shall be on a biennial basis.

24 Section 6. Home improvement contracts.

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

27 (1) Is in writing and legible.

28 (2) Is signed by all of the following:

29 (i) The owner, his agent or other contracted party.

30 (ii) The contractor or a salesperson on behalf of a



1 contractor.

2 (3) Contains the entire agreement between the owner and  
3 the contractor, including attached copies of all required  
4 notices.

5 (4) Contains the date of the transaction.

6 (5) Contains the name, address and telephone number of  
7 the contractor. For the purposes of this paragraph, a post  
8 office box number alone shall not be considered an address.

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

11 (7) Includes a description of the work to be performed,  
12 the materials to be used and a set of specifications that  
13 cannot be changed without a written change order signed by  
14 the owner and contractor.

15 (8) Includes the total sales price due under the  
16 contract.

17 (9) Includes the amount of down payment.

18 (10) Includes the names, addresses and telephone numbers  
19 of all subcontractors on the project. For the purposes of  
20 this paragraph, a post office box number alone shall not be  
21 considered an address.

22 (11) Includes a statement that any holder of the  
23 contract is subject to all claims and defenses which the  
24 owner could assert against the contractor and that recovery  
25 may not be more than the total contract price.

26 (12) Includes proof of liability insurance covering  
27 personal injury in an amount not less than \$50,000 and  
28 insurance covering property damage caused by the work of a  
29 home improvement contractor in an amount not less than  
30 \$50,000.

1 (b) Right of rescission.--Without regard to the location of  
2 the transaction, all home improvement contracts shall be subject  
3 to section 7 of the act of December 17, 1968 (P.L.1224, No.387),  
4 known as the Unfair Trade Practices and Consumer Protection Law.

5 (c) Copy to be provided.--A contractor or salesperson shall  
6 provide and deliver to the owner, without charge, a completed  
7 copy of the home improvement contract at the time the contract  
8 is executed which shall contain all required notices.

9 (d) Voidable clauses.--If a home improvement contract  
10 contains any of the following clauses, the home improvement  
11 contract shall be voidable:

12 (1) A hold harmless clause.

13 (2) A waiver of Federal, State or local health, life,  
14 safety or building code requirements.

15 (3) A confession of judgment clause.

16 (4) A waiver of any right to a jury trial in any action  
17 brought by or against the owner.

18 (5) A mandatory arbitration clause.

19 (6) An assignment of or order for payment of wages or  
20 other compensation for services.

21 (7) A provision by which the owner agrees not to assert  
22 any claim or defense arising out of the contract.

23 (8) A provision that the contractor may be awarded  
24 attorney fees and costs.

25 (9) A clause by which the owner relieves the contractor  
26 from liability for acts committed by the contractor or the  
27 contractor's agents in the collection of any payments or in  
28 the repossession of any goods.

29 (10) A waiver of any rights provided under this act.

30 (11) A provision providing for the automatic or

1 recurring renewal of any provisions of the agreement, unless:

2 (i) the contract establishes a procedure by which  
3 the consumer can choose not to renew the provision or  
4 provisions, thereby avoiding any new fees or charges, by  
5 providing written notice to the contractor via first  
6 class mail postmarked no later than three business days  
7 prior to any renewal;

8 (ii) such procedure is clearly and conspicuously  
9 disclosed in the agreement; and

10 (iii) the contract includes a provision requiring  
11 the contractor to notify the consumer of any automatic or  
12 recurring renewal, and the consumer's option to cancel  
13 such renewal, by mail not earlier than 20 days and not  
14 later than ten days prior to the date of any such  
15 renewal.

16 (e) Contractor's recovery right.--Nothing in this section  
17 shall preclude a contractor who has complied with subsection (a)  
18 from the recovery of payment for work performed based on the  
19 reasonable value of services which were requested by the owner  
20 if a court determines that it would be inequitable to deny such  
21 recovery.

22 Section 7. Home improvement fraud.

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

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

1 previously agreed upon price;

2 (2) receives any advance payment for performing home  
3 improvement services or providing home improvement materials,  
4 fails to perform or provide such services or materials within  
5 the date specified in the agreement taking into account any  
6 force majeure or unforeseen labor strike that would extend  
7 the time frame or unless extended by agreement with the  
8 consumer and fails to return the payment received for such  
9 services or materials which were not 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 in violation of State law governing

1 advertising about home improvement.

2 (b) Grading.--

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

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

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

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

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

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

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

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

27 (5) Notwithstanding any other provisions of this  
28 section, where a person commits a second or subsequent  
29 offense described in subsection (a), the offense will  
30 constitute a felony of the second degree regardless of the

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

6 (6) In addition to any other penalty imposed by this  
7 act, the court may revoke or suspend the certificate of  
8 registration issued under section 3. At the time of  
9 sentencing, the court shall state the reasons for such  
10 revocation or suspension.

11 (c) Jurisdiction.--

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

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

29 Section 8. Prohibited acts.

30 No person shall:

1           (1) Fail to register as required by this act.

2           (2) Fail to refund the amount paid for a home  
3 improvement within ten days of either the acceptance and  
4 execution of a return receipt for certified mail containing a  
5 written request for a refund or the refusal to accept the  
6 certified mail sent to the contractor's last known address if  
7 all of the following apply:

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

10              (ii) More than 30 days have elapsed since the  
11 starting date specified in the written contract.

12           (3) Accept a municipal certificate of occupancy or other  
13 proof that performance of a home improvement contract is  
14 complete or satisfactorily concluded with knowledge that the  
15 document or proof is false and the performance is incomplete.

16           (4) Utter, offer or use a completion certificate or  
17 other proof that a home improvement contract is complete or  
18 satisfactorily concluded when the person knows or has reason  
19 to know that the document or proof is false and is made to  
20 accomplish any of the following:

21               (i) Make or accept an assignment or negotiation of  
22 the right to receive payment under a home improvement  
23 contract.

24               (ii) Get or grant credit or a loan on security of  
25 the right to receive payment under a home improvement  
26 contract.

27           (5) Abandon or fail to perform, without justification,  
28 any home improvement contract or project engaged in or  
29 undertaken by a contractor. For the purposes of this  
30 paragraph, the term "justification" shall include nonpayment

1 by the owner as required under the contract or any other  
2 violation of the contract by the owner.

3 (6) Deviate from or disregard plans or specifications,  
4 in any material respect, without a written change order dated  
5 and signed by both the contractor and owner, which contains  
6 the accompanying price changes for each deviation.

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

13 (8) Advertise or offer, by any means, to perform a home  
14 improvement if the person does not intend to do any of the  
15 following:

16 (i) Accept a home improvement contract.

17 (ii) Perform the home improvement.

18 (iii) Charge for the home improvement at the price  
19 advertised or offered.

20 (9) Demand or receive any payment for a home improvement  
21 before the home improvement contract is signed.

22 (10) For a home improvement contract in which the total  
23 price is more than \$1,000, receive a deposit in excess of the  
24 greater of any of the following:

25 (i) One-third of the home improvement contract  
26 price.

27 (ii) The cost of any special-order materials or  
28 merchandise purchased or to be purchased under the home  
29 improvement contract.

30 (11) While acting as a salesperson, fail to account for



1 or remit to the contractor whom the salesperson represents a  
2 payment received in connection with a home improvement.

3 Section 9. Unfair Trade Practices and Consumer Protection Law.

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

8 Section 10. Regulations.

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

11 Section 11. Exemptions.

12 This act shall not apply to any of the following persons or  
13 organizations:

14 (1) The Commonwealth, or any of its political  
15 subdivisions.

16 (2) The Federal Government.

17 Section 20. Effective date.

18 This act shall take effect in 180 days.