

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1000 Session of 2005

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

AS AMENDED ON THIRD CONSIDERATION, JUNE 19, 2006

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 "ARBITRATION CLAUSE." A PROCESS IN WHICH A NEUTRAL
14 ARBITRATOR OR PANEL OF NEUTRAL ARBITRATORS IS ENGAGED BY THE
15 PARTIES TO SETTLE A DISPUTE BETWEEN A CONTRACTOR AND AN OWNER.

16 "Bureau." The Bureau of Consumer Protection in the Office of
17 Attorney General.

18 ~~"Contractor." Any person who owns and operates a home~~

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1 ~~improvement business or who undertakes, offers to undertake or~~
2 ~~agrees to perform any home improvement. The term does not~~
3 ~~include a person for whom the total cash value of all of that~~
4 ~~person's home improvements is less than \$5,000 during any period~~
5 ~~of 12 consecutive months.~~

6 "CONTRACTOR." ANY PERSON WHO OWNS AND OPERATES A HOME ←
7 IMPROVEMENT BUSINESS OR WHO UNDERTAKES, OFFERS TO UNDERTAKE OR
8 AGREES TO PERFORM ANY HOME IMPROVEMENT. THE TERM INCLUDES A
9 SUBCONTRACTOR OR INDEPENDENT CONTRACTOR WHO HAS CONTRACTED WITH
10 A HOME IMPROVEMENT RETAILER, REGARDLESS OF THE RETAILER'S NET
11 WORTH, TO PROVIDE HOME IMPROVEMENT SERVICES TO THE RETAILER'S
12 CUSTOMERS. THE TERM DOES NOT INCLUDE ANY OF THE FOLLOWING:

13 (1) A PERSON FOR WHOM THE TOTAL CASH VALUE OF ALL OF
14 THAT PERSON'S HOME IMPROVEMENTS IS LESS THAN \$5,000 DURING
15 ANY PERIOD OF 12 CONSECUTIVE MONTHS.

16 (2) A HOME IMPROVEMENT RETAILER HAVING A NET WORTH OF
17 MORE THAN \$50,000,000 OR AN EMPLOYEE OF THAT RETAILER.

18 "Home improvement."

19 (1) The term includes all of the following done in
20 connection with land or a portion of the land adjacent to a
21 private residence or a building or a portion of the building
22 which is used or designed to be used as a private residence
23 for which the total cash price of all work agreed upon
24 between the contractor and owner is more than \$500.

25 (i) Repair, replacement, remodeling, demolition,
26 removal, renovation, installation, alteration,
27 conversion, modernization, improvement, rehabilitation or
28 sandblasting.

29 (ii) Construction, replacement, installation or
30 improvement of driveways, swimming pools, pool houses,

1 porches, garages, roofs, siding, insulation, solar energy
2 systems, security systems, flooring, patios, fences,
3 gazebos, sheds, cabanas, landscaping of a type that is
4 not excluded under paragraph (2)(vi), painting, doors and
5 windows and waterproofing.

6 (iii) Without regard to affixation, the installation
7 of central heating or air conditioning or storm windows
8 or awnings.

9 (iv) The conversion of existing commercial
10 structures into residential or noncommercial structures.

11 (2) The term does not include:

12 (i) The construction of a new home.

13 (ii) The sale of goods or materials by a seller who
14 neither arranges to nor performs, directly or indirectly,
15 any work or labor in connection with the installation or
16 application of the goods or materials.

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

20 (iv) The sale of appliances, including stoves,
21 refrigerators, freezers, room air conditioners and others
22 which are designed for and are easily removable from the
23 premises without material alteration.

24 (v) Any work performed without compensation by the
25 owner of the owner's private residence or residential
26 rental property.

27 (vi) Any work performed by a landscaper certified by
28 the Department of Agriculture under the act of December
29 16, 1992 (P.L.1228, No.162), known as the Plant Pest Act,
30 except to the extent that the work involves any of the

1 following at a private residence:

2 (A) The construction, replacement, installation
3 or improvement of buildings, driveways, swimming
4 pools, porches, garages, roofs, siding, insulation,
5 solar energy systems, security systems, flooring,
6 patios, nondecorative fences, doors, lighting
7 systems, concrete walkways and windows.

8 (B) The placement of retaining walls, fountains
9 or drainage systems.

10 (vii) Emergency work pursuant to section 7 of the
11 act of December 17, 1968 (P.L.1224, No.387), known as the
12 Unfair Trade Practices and Consumer Protection Law.

13 "Home improvement contract." An agreement between a
14 contractor, subcontractor or salesperson and an owner for the
15 performance of a home improvement which includes all agreements
16 for labor, services and materials to be furnished and performed
17 under the contract.

18 "Owner."

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

20 (i) An owner of a private residence, including any
21 person authorized by an owner to act on the owner's
22 behalf to order, contract for or purchase a home
23 improvement.

24 (ii) A person entitled to the performance of the
25 work of a contractor pursuant to a home improvement
26 contract.

27 (2) An owner of a private residence shall not be
28 required to reside in the residence to be deemed an owner
29 under this act.

30 (3) A person who owns three or more private residences

1 in this Commonwealth shall not be deemed an owner except with
2 respect to the person's primary residence or the part of the
3 building which houses the primary residence of the owner.

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

6 "Private residence." Any of the following:

7 (1) A single family dwelling.

8 (2) A multifamily dwelling consisting of not more than
9 three units.

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

12 "Special order material." Any material, product or equipment
13 that is not a stock item and must be specially ordered from the
14 factory or distributor and which is produced or processed for
15 the contractor for a specific home improvement contract. Special
16 order materials are not returnable by the contractor for a
17 refund or credit and have no usefulness for other home
18 improvement contracts because they are specially ordered for a
19 specific home improvement contract.

20 "Specifications." The plans, detailed drawings, lists of
21 materials, stated allowances or other methods customarily used
22 in the home improvement industry as a whole to describe with
23 particularity the work, workmanship, materials and quality of
24 materials for each home improvement.

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

27 Section 3. Registration of contractors.

28 (a) General rule.--No person shall hold himself out as a
29 contractor nor shall a person perform any home improvement
30 without first registering with the bureau as provided for in

1 this act.

2 ~~(b) Liability. No business entity registered pursuant to~~ <—
3 ~~this act shall be relieved of responsibility under this act for~~
4 ~~the conduct and acts of its agents, employees, officers or~~
5 ~~directors, nor shall any person be relieved of responsibility~~
6 ~~under this act by reason of his employment or relationship with~~
7 ~~such business entity.~~

8 ~~(e)~~ (B) Public access to registration information.--The <—
9 bureau shall maintain a toll-free telephone number from which a
10 caller can obtain information as to whether a contractor is
11 registered with the bureau pursuant to this act, as well as
12 information that may be obtained on the bureau's website.

13 ~~(d)~~ (C) Confidentiality of personal information.--The bureau <—
14 shall create a policy for the disclosure of personal information
15 to the public. The bureau may not disclose to the public a
16 contractor's Social Security number.

17 ~~(e)~~ (D) Nongrant or renewal of license.--The Department of <—
18 Banking shall not grant or renew a license to any person
19 registered, or required to be registered, as a home improvement
20 contractor pursuant to any of the following:

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

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

26 Section 4. Procedures for registration as a contractor.

27 ~~(a) Application. A person shall apply to the bureau in~~ <—

28 (A) APPLICATION.-- <—

29 (1) A PERSON SHALL APPLY TO THE BUREAU IN writing, or
30 electronically via a secure Internet connection, if permitted

1 by the bureau, on a form provided by the bureau. The
2 application shall include the following information:

3 ~~(1) For an individual applicant, the name, home address,~~ <—

4 (I) FOR AN INDIVIDUAL APPLICANT, THE NAME, HOME <—
5 ADDRESS, home telephone number and driver's license
6 identification number of the applicant OR AN <—
7 IDENTIFICATION CARD ISSUED BY THE PENNSYLVANIA DEPARTMENT
8 OF TRANSPORTATION, as well as the individual's business
9 name, address and telephone number if different, and all
10 prior business names and addresses of home improvement
11 businesses.

12 ~~(2) For a partnership applicant, the name, home address,~~ <—

13 (II) FOR A PARTNERSHIP APPLICANT, THE NAME, HOME <—
14 ADDRESS, home telephone number and driver's license
15 identification number of each partner as well as the
16 partnership name, address and telephone number.

17 ~~(3) For a corporation, limited liability company or~~ <—

18 (III) FOR A CORPORATION, LIMITED LIABILITY COMPANY <—
19 OR limited partnership applicant, the name, home address,
20 home telephone number and driver's license identification
21 number of each officer, each director or each individual
22 holding greater than a 5% stake in the business, as well
23 as the entity's business name, address and telephone
24 number.

25 ~~(4) For an out of State corporation, limited liability~~ <—

26 (IV) FOR AN OUT-OF-STATE CORPORATION, LIMITED <—
27 LIABILITY or limited partnership, the name and address of
28 the entity's resident agent or registered office provider
29 within this Commonwealth and any registration number or
30 license number issued to the entity by its home state or

1 political subdivision of such other state, if applicable.

2 ~~(5) For a joint venture applicant, the name, address and~~ <—

3 (V) FOR A JOINT VENTURE APPLICANT, THE NAME, ADDRESS <—

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

10 ~~(6) A complete description of the nature of the~~ <—
11 ~~contracting business of the applicant.~~

12 ~~(7) A statement whether:~~

13 ~~(i) The individual or individuals making~~
14 ~~application, even if doing so as part of a business~~

15 (VI) A COMPLETE DESCRIPTION OF THE NATURE OF THE <—
16 CONTRACTING BUSINESS OF THE APPLICANT.

17 (VII) A STATEMENT WHETHER:

18 (A) THE INDIVIDUAL OR INDIVIDUALS MAKING
19 APPLICATION, EVEN IF DOING SO AS PART OF A BUSINESS
20 entity application, has ever been convicted of a
21 criminal offense related to a home improvement
22 transaction, fraud, theft, a crime of deception or a
23 crime involving fraudulent business practices, as
24 well as a statement whether the applicant has ever
25 ~~had a civil judgment~~ FILED A PETITION IN BANKRUPTCY <—
26 OR WITHIN THE LAST TEN YEARS RECEIVED A FINAL CIVIL
27 JUDGMENT entered against the applicant or businesses
28 in which the applicant held an interest that was
29 related to a home improvement transaction.

30 ~~(ii) The applicant's certificate or the certificate~~ <—

1 (B) THE APPLICANT'S CERTIFICATE OR THE ←
2 CERTIFICATE of a business with which the person
3 making application held an interest has ever been
4 revoked or suspended pursuant to an order issued by a
5 court of competent jurisdiction in this Commonwealth
6 or any other state or political subdivision thereof
7 and, if so, the current status of the license.

8 ~~(8) Whether within the last ten years the applicant has~~ ←

9 (VIII) WHETHER WITHIN THE LAST TEN YEARS THE ←
10 APPLICANT HAS ever been suspended or debarred from
11 participating in any Federal, State or local program
12 through which funding or other assistance is provided to
13 consumers for home improvements.

14 (IX) PROOF OF LIABILITY INSURANCE COVERING PERSONAL ←
15 INJURY IN AN AMOUNT NOT LESS THAN \$50,000 AND INSURANCE
16 COVERING PROPERTY DAMAGE CAUSED BY THE WORK OF A HOME
17 IMPROVEMENT CONTRACTOR IN AN AMOUNT NOT LESS THAN
18 \$50,000.

19 (2) INFORMATION REQUESTED IN PARAGRAPH (1)(I) THROUGH
20 (V) SHALL BE FOR A TEN-YEAR PERIOD, PRIOR TO THE TIME OF
21 REGISTRATION. THE APPLICANT SHALL PROVIDE INFORMATION PRIOR
22 TO THE LAST TEN YEARS OR AS FURTHER CLARIFICATION OF THE
23 INFORMATION PROVIDED, IF THE BUREAU REQUESTS SUCH
24 INFORMATION.

25 (b) Reporting of multiple registrations or licensures.--Any
26 registered contractor in this Commonwealth who is registered or
27 licensed as a home improvement contractor in any other state, or
28 political subdivision thereof, shall report this information to
29 the bureau on the initial registration and biennial registration
30 application. Any disciplinary action taken in such other

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

10 Section 5. Application fees.

11 Each application for a certificate for a home improvement
12 contractor or renewal of that certificate shall be accompanied
13 by a fee of \$50. After completion of the application and payment
14 of the fee, the bureau shall issue the home improvement
15 contractor a registration certificate identifying the name of
16 the individual contractor, name and address of the business and
17 a registration number. Renewals shall be on a biennial basis.

18 Section 6. Home improvement contracts.

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

21 (1) Is in writing and legible and contains the home
22 improvement contractor registration number of the performing
23 contractor.

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

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

26 (ii) The contractor or a salesperson on behalf of a
27 contractor.

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

1 (4) Contains the date of the transaction.

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

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

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

11 (8) Includes the total sales price due under the
12 contract.

13 (9) Includes the amount of ANY down payment plus any <—
14 amount advanced for the purchase of special order materials.
15 THE AMOUNT OF THE DOWN PAYMENT AND THE COST OF THE SPECIAL <—
16 ORDER MATERIALS MUST BE LISTED SEPARATELY.

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

22 (11) ~~Includes proof of~~ AGREES TO MAINTAIN liability <—
23 insurance covering personal injury in an amount not less than
24 \$50,000 and insurance covering property damage caused by the
25 work of a home improvement contractor in an amount not less
26 than \$50,000 AND IDENTIFIES THE CURRENT AMOUNT OF INSURANCE <—
27 COVERAGE MAINTAINED AT THE TIME OF SIGNING THE CONTRACT.

28 (b) Right of rescission. ~~Without regard to the location of~~ <—
29 ~~the transaction, all home improvement contracts shall be subject~~
30 ~~to section 7 of the act of December 17, 1968 (P.L.1224, No.387),~~

1 ~~known as the Unfair Trade Practices and Consumer Protection Law.~~

2 An individual signing a home improvement contract, except as
3 provided in the emergency provisions of section 7 of the Unfair
4 Trade Practices and Consumer Protection Law, shall be permitted
5 to rescind the contract without penalty regardless of where the
6 contract was signed, within three days of the date of signing.

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

11 (D) ARBITRATION CLAUSE.--NOTHING IN THIS ACT SHALL PRECLUDE <—
12 THE COURT FROM SETTING ASIDE AN ARBITRATION CLAUSE ON ANY BASIS
13 PERMITTED UNDER PENNSYLVANIA LAW. IF THE CONTRACT CONTAINS AN
14 ARBITRATION CLAUSE, IT SHALL MEET THE FOLLOWING REQUIREMENTS OR
15 BE DEEMED VOID BY THE COURT UPON MOTION OF EITHER PARTY, FILED
16 PRIOR TO THE COMMENCEMENT OF ARBITRATION:

17 (1) THE TEXT OF THE CLAUSE MUST BE IN CAPITAL LETTERS.

18 (2) THE TEXT SHALL BE PRINTED IN 12-POINT BOLDFACE TYPE
19 AND THE ARBITRATION CLAUSE MUST APPEAR ON A SEPARATE PAGE
20 FROM THE REST OF THE CONTRACT.

21 (3) THE CLAUSE SHALL CONTAIN A SEPARATE LINE FOR EACH OF
22 THE PARTIES TO INDICATE THEIR ASSENT TO BE BOUND THEREBY.

23 (4) THE CLAUSE SHALL NOT BE EFFECTIVE UNLESS BOTH
24 PARTIES HAVE ASSENTED AS EVIDENCED BY SIGNATURE AND DATE,
25 WHICH SHALL BE THE DATE ON WHICH THE CONTRACT WAS EXECUTED.

26 (5) THE CLAUSE SHALL STATE CLEARLY WHETHER THE DECISION
27 OF THE ARBITRATION IS BINDING ON THE PARTIES OR MAY BE
28 APPEALED TO THE COURT OF COMMON PLEAS.

29 (6) THE CLAUSE SHALL STATE WHETHER THE FACTS OF THE
30 DISPUTE, RELATED DOCUMENTS AND THE DECISION ARE CONFIDENTIAL.

1 ~~(d)~~ (E) Voidable clauses.--If a home improvement contract ←
2 contains any of the following clauses, the home improvement
3 contract shall be voidable:

4 (1) A hold harmless clause.

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

7 (3) A confession of judgment clause.

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

10 (5) ~~A mandatory arbitration clause~~ (RESERVED). ←

11 (6) An assignment of or order for payment of wages or
12 other compensation for services.

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

15 (8) A provision that the contractor ~~may~~ SHALL be awarded ←
16 attorney fees and costs.

17 (9) A clause by which the owner relieves the contractor
18 from liability for acts committed by the contractor or the
19 contractor's agents in the collection of any payments or in
20 the repossession of any goods.

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

22 (11) A provision providing for the automatic or
23 recurring renewal of any provisions of the agreement, unless:

24 (i) the contract establishes a procedure by which
25 the consumer can choose not to renew the provision or
26 provisions, thereby avoiding any new fees or charges, by
27 providing written notice to the contractor via first
28 class mail postmarked no later than three business days
29 prior to any renewal;

30 (ii) such procedure is clearly and conspicuously

1 disclosed in the agreement; and

2 (iii) the contract includes a provision requiring
3 the contractor to notify the consumer of any automatic or
4 recurring renewal, and the consumer's option to cancel
5 such renewal, by mail not earlier than 20 days and not
6 later than ten days prior to the date of any such
7 renewal.

8 (F) HOME IMPROVEMENT RETAILER CONTRACTS.--A HOME IMPROVEMENT <—
9 RETAILER HAVING A NET WORTH OF MORE THAN \$50,000,000 OR AN
10 EMPLOYEE OF THAT RETAILER SHALL COMPLY WITH THE PROVISIONS OF
11 THIS SUBSECTION. NO HOME IMPROVEMENT CONTRACT ISSUED BY A HOME
12 IMPROVEMENT RETAILER HAVING A NET WORTH OF MORE THAN \$50,000,000
13 OR AN EMPLOYEE OF THAT RETAILER SHALL BE VALID OR ENFORCEABLE
14 AGAINST AN OWNER UNLESS THE CONTRACT:

15 (1) IS IN WRITING AND LEGIBLE AND CONTAINS ALL OF THE
16 FOLLOWING:

17 (I) THE NAME, ADDRESS AND TELEPHONE NUMBER OF THE
18 RETAILER.

19 (II) THE NAME OF THE PERSON SIGNING THE CONTRACT ON
20 BEHALF OF THE RETAILER AND THE PERSON'S POSITION WITH THE
21 RETAILER OR THE PERSON'S AUTHORITY TO SIGN THE CONTRACT.

22 (III) THE SIGNATURE OF THE OWNER, THE OWNER'S AGENT
23 OR OTHER CONTRACTED PARTY.

24 (2) COMPLIES WITH SUBSECTIONS (A)(3), (4), (6), (7), (8)
25 AND (9), (B), (C), (D) AND (E).

26 ~~(e)~~ (G) Contractor's recovery right.--Nothing in this <—
27 section shall preclude a contractor who has complied with
28 subsection (a) from the recovery of payment for work performed
29 based on the reasonable value of services which were requested
30 by the owner if a court determines that it would be inequitable

1 to deny such recovery.

2 Section 7. Home improvement fraud.

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

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

12 (2) receives any advance payment for performing home
13 improvement services or providing home improvement materials
14 and fails to perform or provide such services or materials
15 ~~within the date~~ WHEN specified in the contract taking into ←
16 account any force majeure or unforeseen labor strike that
17 would extend the time frame or unless extended by agreement
18 with the consumer and fails to return the payment received
19 for such services or materials which were not provided by
20 that date;

21 (3) while soliciting a person to enter into an agreement
22 for home improvement services or materials, misrepresents or
23 conceals the contractor's or salesperson's real name, the
24 name of the contractor's business, the contractor's business
25 address or any other identifying information;

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

30 (5) misrepresents himself or another as an employee or

1 agent of the Federal, Commonwealth or municipal government,
2 any other governmental unit or any public utility, with the
3 intent to cause a person to enter into any agreement for
4 performing home improvement services or providing home
5 improvement materials;

6 (6) MISREPRESENTS AN ITEM AS A SPECIAL ORDER MATERIAL OR <—
7 TO MISREPRESENT THE COST OF THE SPECIAL ORDER MATERIAL;

8 ~~(6)~~ (7) alters a home improvement agreement, mortgage, <—
9 promissory note or other document incident to performing or
10 selling a home improvement without the consent of the
11 consumer; or

12 ~~(7)~~ (8) directly or indirectly publishes a false or <—
13 deceptive advertisement in violation of State law governing
14 advertising about home improvement.

15 (b) Grading.--

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

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

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

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

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

26 (ii) a misdemeanor of the first degree if the amount
27 of the payment retained is \$2,000 or less or if the
28 amount of the payment cannot be satisfactorily
29 ascertained.

30 (3) Amounts involved pursuant to one scheme or course of

1 conduct, whether involving one or more victims, may be
2 aggregated in determining the grade of the offense pursuant
3 to subsection (a).

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

10 (5) Notwithstanding any other provisions of this
11 section, where a person commits a second or subsequent
12 offense described in subsection (a), the offense will
13 constitute a felony of the second degree regardless of the
14 amount of money involved. For this paragraph to be
15 applicable, the second or subsequent offense must have
16 occurred after the first conviction. Paragraph (4) shall not
17 be applicable to persons whose sentences would be enhanced
18 pursuant to this paragraph.

19 (6) In addition to any other penalty imposed by this
20 act, the court may revoke or suspend the certificate of
21 registration issued under section 3. At the time of
22 sentencing, the court shall state the reasons for such
23 revocation or suspension. A PERSON WHOSE REGISTRATION HAS
24 BEEN REVOKED OR SUSPENDED MAY PETITION THE COURT OF ORIGINAL
25 JURISDICTION FOR REINSTATEMENT AFTER A PERIOD OF FIVE YEARS
26 FROM THE DATE OF REVOCATION OR SUSPENSION, OR AS SPECIFIED IN
27 THE COURT'S ORDER.

28 (c) Jurisdiction.--

29 (1) The district attorneys of the several counties shall
30 have the authority to investigate and to institute criminal

1 proceedings for any violation of this section.

2 (2) In addition to the authority conferred upon the
3 Attorney General by the act of October 15, 1980 (P.L.950,
4 No.164), known as the Commonwealth Attorneys Act, the
5 Attorney General shall have the authority to investigate and
6 institute criminal proceedings for any violation of this
7 section or any series of such violations involving more than
8 one county of this Commonwealth or involving any county of
9 this Commonwealth and another state. No person charged with a
10 violation of this section by the Attorney General shall have
11 standing to challenge the authority of the Attorney General
12 to investigate or prosecute the case, and, if any such
13 challenge is made, the challenge shall be dismissed and no
14 relief shall be available in the courts of this Commonwealth
15 to the person making the challenge.

16 Section 8. Prohibited acts.

17 No person shall:

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

19 (2) Fail to refund the amount paid for a home
20 improvement within ten days of either the acceptance and
21 execution of a return receipt for certified mail containing a
22 written request for a refund or the refusal to accept the
23 certified mail sent to the contractor's last known address if
24 all of the following apply:

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

27 (ii) More than 45 days have elapsed since the
28 starting date specified in the written contract.

29 (3) Accept a municipal certificate of occupancy or other
30 proof that performance of a home improvement contract is

1 complete or satisfactorily concluded with knowledge that the
2 document or proof is false and the performance is incomplete.

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

8 (i) Make or accept an assignment or negotiation of
9 the right to receive payment under a home improvement
10 contract.

11 (ii) Get or grant credit or a loan on security of
12 the right to receive payment under a home improvement
13 contract.

14 (5) Abandon or fail to perform, without justification,
15 any home improvement contract or project engaged in or
16 undertaken by a contractor. For the purposes of this
17 paragraph, the term "justification" shall include nonpayment
18 by the owner as required under the contract or any other
19 violation of the contract by the owner.

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

24 (7) Prepare, arrange, accept or participate in arranging <—
25 ~~a mortgage, promissory note or other evidence of debt for~~
26 ~~performing or selling a home improvement with knowledge that~~
27 ~~the evidence of debt states a greater monetary obligation~~
28 ~~than the consideration, including a time sale price, for a~~
29 ~~home improvement.~~ THE FINANCING OF A HOME IMPROVEMENT <—

30 CONTRACT WITH KNOWLEDGE THAT THE HOME IMPROVEMENT CONTRACT

1 STATES A GREATER MONETARY OBLIGATION THAN THE ACTUAL PRICE OF
2 THE HOME IMPROVEMENT.

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

6 (i) Accept a home improvement contract.

7 (ii) Perform the home improvement.

8 (iii) Charge for the home improvement at the price
9 advertised or offered.

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

12 (10) For a home improvement contract in which the total
13 price is more than \$1,000, receive a deposit in excess of: <—

14 (i) one-third of the home improvement contract
15 price; or

16 (ii) ~~one-quarter~~ ONE-THIRD of the home improvement <—
17 contract price in the event special order materials are
18 included.

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

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

23 A violation of any of the provisions of this act shall be
24 deemed a violation of the act of December 17, 1968 (P.L.1224,
25 No.387), known as the Unfair Trade Practices and Consumer
26 Protection Law. NOTHING IN THIS ACT SHALL PRECLUDE A CONSUMER <—
27 FROM EXERCISING ANY RIGHT PROVIDED UNDER THE UNFAIR TRADE
28 PRACTICES AND CONSUMER PROTECTION LAW.

29 Section 10. Regulations.

30 The bureau may adopt rules and regulations necessary to carry

1 out the provisions of this act.

2 Section 11. Preemption of local registration.

3 Registration under this act shall preclude any requirement of
4 payment of a fee or registration OR LICENSING of any home ←
5 improvement contractor by any political subdivision. Political
6 subdivisions shall be permitted to require building permits and
7 local enforcement of the building code for that political
8 subdivision, for which a reasonable fee may be charged. This
9 provision does not affect a municipality's responsibilities or
10 authority under the act of November 10, 1999 (P.L.491, No.45),
11 known as the Pennsylvania Construction Code Act, or the
12 requirements under section 302(e) of the act of June 2, 1915
13 (P.L.736, No.338), known as the Workers' Compensation Act,
14 regarding workers' compensation. THIS PROVISION DOES NOT AFFECT ←
15 EXISTING LICENSING STANDARDS IN EFFECT ON THE EFFECTIVE DATE OF
16 THIS ACT, WITH RESPECT TO ELECTRICIANS AND PLUMBERS, WHERE
17 LICENSING IS CONDITIONED ON REQUIREMENTS OF TESTING OR
18 POSSESSION OF CERTIFICATES OBTAINED THROUGH SPECIFIC TRAINING IN
19 ELECTRICITY OR PLUMBING.

20 Section 12. Exemptions.

21 This act shall not apply to any of the following persons or
22 organizations:

23 (1) The Commonwealth, or any of its political
24 subdivisions.

25 (2) The Federal Government.

26 SECTION 13. REPEAL. ←

27 ALL ACTS AND PARTS OF ACTS ARE REPEALED INSOFAR AS THEY ARE
28 INCONSISTENT WITH THIS ACT.

29 Section 20. Effective date.

30 This act shall take effect in 180 days.