

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 507 Session of
2007

INTRODUCED BY McCALL, BENNINGTON, BIANCUCCI, BUXTON,
CALTAGIRONE, CAPPELLI, CARROLL, COHEN, COSTA, CURRY, DALLY,
DeLUCA, EACHUS, FABRIZIO, FRANKEL, GEIST, GERGELY, GIBBONS,
GOODMAN, GRUCELA, HARHAI, HENNESSEY, HESS, JAMES, JOSEPHS,
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PALLONE, PASHINSKI, PETRONE, READSHAW, REICHLEY, SABATINA,
SANTONI, SCAVELLO, SIPTROTH, SOLOBAY, STAIRS, STEIL, SURRA,
J. TAYLOR, WALKO, WATSON, J. WHITE, WOJNAROSKI, YOUNGBLOOD,
YUDICHAK AND W. KELLER, MARCH 6, 2007

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, MARCH 6, 2007

AN ACT

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

6 The General Assembly of the Commonwealth of Pennsylvania
7 hereby enacts as follows:

8 Section 1. Short title.

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

11 Section 2. Definitions.

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

15 "Arbitration clause." A process in which a neutral

1 arbitrator or panel of neutral arbitrators is engaged by the
2 parties to settle a dispute between a contractor and an owner.

3 "Bureau." The Bureau of Consumer Protection in the Office of
4 Attorney General.

5 "Certificate." A certificate of registration as a
6 contractor, issued by the Bureau of Consumer Protection, which
7 contains a registration number assigned by the Bureau of
8 Consumer Protection.

9 "Contractor." Any person who owns and operates a home
10 improvement business or who undertakes, offers to undertake or
11 agrees to perform any home improvement. The term includes a
12 subcontractor or independent contractor who has contracted with
13 a home improvement retailer, regardless of the retailer's net
14 worth, to provide home improvement services to the retailer's
15 customers. The term does not include any of the following:

16 (1) A person for whom the total cash value of all of
17 that person's home improvements was less than \$5,000 during
18 the previous taxable year.

19 (2) A home improvement retailer having a net worth of
20 more than \$50,000,000 or an employee of that retailer.

21 "Fund." The Home Improvement Guaranty Fund established in
22 section 13.

23 "Home improvement."

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

30 (i) Repair, replacement, remodeling, demolition,

1 removal, renovation, installation, alteration,
2 conversion, modernization, improvement, rehabilitation or
3 sandblasting.

4 (ii) Construction, replacement, installation or
5 improvement of driveways, swimming pools, pool houses,
6 porches, garages, roofs, siding, insulation, solar energy
7 systems, security systems, flooring, patios, fences,
8 gazebos, sheds, cabanas, landscaping of a type that is
9 not excluded under paragraph (2)(vi), painting, doors and
10 windows and waterproofing.

11 (iii) Without regard to affixation, the installation
12 of central heating or air conditioning or storm windows
13 or awnings.

14 (2) The term does not include:

15 (i) The construction of a new home.

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

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

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

27 (v) Any work performed without compensation by the
28 owner of the owner's private residence or residential
29 rental property.

30 (vi) Any work performed by a landscaper certified by

1 the Department of Agriculture under the act of December
2 16, 1992 (P.L.1228, No.162), known as the Plant Pest Act,
3 except to the extent that the work involves any of the
4 following at a private residence:

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

11 (B) The placement of retaining walls, fountains
12 or drainage systems.

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

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

21 "Owner."

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

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

27 (ii) A person entitled to the performance of the
28 work of a contractor pursuant to a home improvement
29 contract.

30 (2) An owner of a private residence shall not be

1 required to reside in the residence to be deemed an owner
2 under this act.

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

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

9 "Private residence." Any of the following:

10 (1) A single family dwelling.

11 (2) A multifamily dwelling consisting of not more than
12 three units.

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

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

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

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

30 Section 3. Registration of contractors.

1 (a) General rule.--No person shall hold himself out as a
2 contractor nor shall a person perform any home improvement
3 without first registering with the bureau as provided for in
4 this act.

5 (b) Public access to registration information.--The bureau
6 shall maintain a toll-free telephone number from which a caller
7 can obtain information as to whether a contractor is registered
8 with the bureau pursuant to this act, as well as information
9 that may be obtained on the bureau's website.

10 (c) Confidentiality of personal information.--The bureau
11 shall create a policy for the disclosure of personal information
12 to the public. The bureau may not disclose to the public a
13 contractor's Social Security number, driver's license number or
14 any confidential information prohibited by law.

15 (d) Nongrant or renewal of license.--The Department of
16 Banking shall not grant or renew a license to any person
17 registered, or required to be registered, as a home improvement
18 contractor pursuant to any of the following:

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

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

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

30 (f) Effects of unregistered status.--No unregistered

1 contractor shall have standing to sue, countersue or raise a
2 defense of nonpayment in any dispute arising from a home
3 improvement. No unregistered contractor may file a mechanic's
4 lien with respect to a home improvement.

5 Section 4. Procedures for registration as a contractor.

6 (a) Application.--

7 (1) A person shall apply to the bureau in writing, or
8 electronically via a secure Internet connection, if permitted
9 by the bureau, on a form provided by the bureau. The
10 application shall include the following information:

11 (i) For an individual applicant, all of the
12 following:

13 (A) Name.

14 (B) Date of birth.

15 (C) Home address and home telephone number.

16 (D) Driver's license number or an identification
17 card issued by the state in which the individual
18 resides.

19 (E) Business name, address and telephone number.

20 (F) Federal employer identification number, if
21 available.

22 (G) Social Security number.

23 (H) All prior business names and addresses of
24 home improvement businesses operated by the
25 individual.

26 (ii) For a partnership applicant, all of the
27 following:

28 (A) Name of each partner.

29 (B) Date of birth of each partner.

30 (C) Home address and home telephone number of

1 each partner.

2 (D) Driver's license number or an identification
3 card issued by the state in which the partner
4 resides, of each partner.

5 (E) Partnership name, address and telephone
6 number.

7 (F) Federal employer identification number, if
8 available.

9 (G) Social Security number of each partner.

10 (H) All prior business names and addresses of
11 home improvement businesses operated by each partner.

12 (iii) For a corporation, limited liability company
13 or limited partnership, all of the following:

14 (A) Name of each officer.

15 (B) Date of birth of each officer.

16 (C) Home address and home telephone number of
17 each officer.

18 (D) Driver's license number or an identification
19 card issued by the state in which the officer
20 resides, of each officer.

21 (E) Entity's name, address and telephone number.

22 (F) Federal employer identification number, if
23 available.

24 (G) Social Security number of each officer.

25 (H) Each director or each individual holding
26 greater than a 5% stake in the entity.

27 (iv) For an out-of-State corporation, limited
28 liability or limited partnership, the name and address of
29 the entity's resident agent or registered office provider
30 within this Commonwealth and any registration number or

1 license number issued to the entity by its home state or
2 political subdivision of such other state, if applicable.

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 paragraph (2) and subsection
9 (b) shall also be provided.

10 (vi) A complete description of the nature of the
11 contracting business of the applicant.

12 (vii) A statement whether:

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

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

1 and, if so, the current status of the license.

2 (viii) Whether within the last ten years the
3 applicant has ever been suspended or debarred from
4 participating in any Federal, State or local program
5 through which funding or other assistance is provided to
6 consumers for home improvements.

7 (ix) Proof of general liability insurance covering
8 personal injury and property damage caused by the work of
9 a home improvement contractor.

10 (2) Information requested in paragraph (1)(i) through
11 (v) shall be for a ten-year period, prior to the time of
12 registration. The applicant shall provide information prior
13 to the last ten years or as further clarification of the
14 information provided, if the bureau requests such
15 information.

16 (b) Reporting of multiple registrations or licensures.--Any
17 registered contractor in this Commonwealth who is registered or
18 licensed as a home improvement contractor in any other state, or
19 political subdivision thereof, shall report this information to
20 the bureau on the initial registration and biennial registration
21 application. Any disciplinary action taken in such other
22 jurisdiction shall be reported to the bureau on the initial
23 registration application or, if such action occurred subsequent
24 to submission of an initial application, on the biennial
25 registration application or within 90 days of final disposition,
26 whichever is sooner. Multiple registrations or licensures shall
27 be noted by the bureau on the contractor's registration, and
28 such state, or political subdivision thereof, shall be notified
29 by the bureau of any disciplinary actions taken against such
30 contractor in this Commonwealth.

1 Section 5. Application fees.

2 Each application for a certificate for a home improvement
3 contractor or renewal of that certificate shall be accompanied
4 by a fee of \$50. After completion of the application and payment
5 of the fee, the bureau shall issue the home improvement
6 contractor a registration certificate identifying the name of
7 the individual contractor, name and address of the business and
8 a registration number. Renewals shall be on a biennial basis.

9 Section 6. Proof of registration.

10 A contractor shall include its registration number in all
11 advertisements, including business cards, distributed within
12 this Commonwealth and on all contracts, estimates and proposals
13 with consumers of home improvement services in this
14 Commonwealth.

15 Section 7. Home improvement contracts.

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

18 (1) Is in writing and legible and contains the home
19 improvement contractor registration number of the performing
20 contractor.

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

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

23 (ii) The contractor or a salesperson on behalf of a
24 contractor.

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

28 (4) Contains the date of the transaction.

29 (5) Contains the name, address and telephone number of
30 the contractor. For the purposes of this paragraph, a post

1 office box number alone shall not be considered an address.

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

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

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

10 (9) Includes the amount of any down payment plus any
11 amount advanced for the purchase of special order materials.
12 The amount of the down payment and the cost of the special
13 order materials must be listed separately.

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

19 (11) Except as provided in section 19, provides that the
20 contractor agrees to maintain liability insurance covering
21 personal injury in an amount not less than \$50,000 and
22 insurance covering property damage caused by the work of a
23 home improvement contractor in an amount not less than
24 \$50,000 and identifies the current amount of insurance
25 coverage maintained at the time of signing the contract.

26 (12) Includes the toll-free telephone number under
27 section 3(b).

28 (b) Right of rescission.--An individual signing a home
29 improvement contract, except as provided in the emergency
30 provisions of section 7 of the act of December 17, 1968

1 (P.L.1224, No.387), known as the Unfair Trade Practices and
2 Consumer Protection Law, shall be permitted to rescind the
3 contract without penalty regardless of where the contract was
4 signed, within three days of the date of signing.

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) Arbitration clause.--Nothing in this act shall preclude
10 the court from setting aside an arbitration clause on any basis
11 permitted under Pennsylvania law. If the contract contains an
12 arbitration clause, it shall meet the following requirements or
13 be deemed void by the court upon motion of either party, filed
14 prior to the commencement of arbitration:

15 (1) The text of the clause must be in capital letters.

16 (2) The text shall be printed in 12-point boldface type
17 and the arbitration clause must appear on a separate page
18 from the rest of the contract.

19 (3) The clause shall contain a separate line for each of
20 the parties to indicate their assent to be bound thereby.

21 (4) The clause shall not be effective unless both
22 parties have assented as evidenced by signature and date,
23 which shall be the date on which the contract was executed.

24 (5) The clause shall state clearly whether the decision
25 of the arbitration is binding on the parties or may be
26 appealed to the court of common pleas.

27 (6) The clause shall state whether the facts of the
28 dispute, related documents and the decision are confidential.

29 (e) Voidable clauses.--If a home improvement contract
30 contains any of the following clauses, the home improvement

1 contract shall be voidable:

2 (1) A hold harmless clause.

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

5 (3) A confession of judgment clause.

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

8 (5) (Reserved).

9 (6) An assignment of or order for payment of wages or
10 other compensation for services.

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

13 (8) A provision that the contractor shall be awarded
14 attorney fees and costs.

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

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

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

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

28 (ii) such procedure is clearly and conspicuously
29 disclosed in the agreement; and

30 (iii) the contract includes a provision requiring

1 the contractor to notify the consumer of any automatic or
2 recurring renewal, and the consumer's option to cancel
3 such renewal, by mail not earlier than 20 days and not
4 later than ten days prior to the date of any such
5 renewal.

6 (f) Home improvement retailer contracts.--A home improvement
7 retailer having a net worth of more than \$50,000,000 or an
8 employee of that retailer shall comply with the provisions of
9 this subsection. No home improvement contract issued by a home
10 improvement retailer having a net worth of more than \$50,000,000
11 or an employee of that retailer shall be valid or enforceable
12 against an owner unless the contract:

13 (1) Is in writing and legible and contains all of the
14 following:

15 (i) The name, address and telephone number of the
16 retailer.

17 (ii) The name of the person signing the contract on
18 behalf of the retailer and the person's position with the
19 retailer or the person's authority to sign the contract.

20 (iii) The signature of the owner, the owner's agent
21 or other contracted party.

22 (2) Complies with subsections (a)(3), (4), (6), (7), (8)
23 and (9), (b), (c), (d) and (e).

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

30 Section 8. Home improvement fraud.

1 (a) Offense defined.--A person commits the offense of home
2 improvement fraud if the person intentionally or knowingly:

3 (1) makes a materially false 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 and fails to perform or provide such services or materials
11 when specified in the contract taking into account any force
12 majeure or unforeseen labor strike that would extend the time
13 frame or unless extended by agreement with the consumer and
14 fails to return the payment received for such services or
15 materials which were not provided by that date;

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

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

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

1 improvement materials;

2 (6) misrepresents an item as a special order material or
3 to misrepresent the cost of the special order material;

4 (7) alters a home improvement agreement, mortgage,
5 promissory note or other document incident to performing or
6 selling a home improvement without the consent of the
7 consumer; or

8 (8) directly or indirectly publishes a false or
9 deceptive advertisement in violation of State law governing
10 advertising about home improvement.

11 (b) Grading.--

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

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

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

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

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

22 (ii) a misdemeanor of the first degree if the amount
23 of the payment retained is \$2,000 or less or if the
24 amount of the payment cannot be satisfactorily
25 ascertained.

26 (3) Amounts involved pursuant to one scheme or course of
27 conduct, whether involving one or more victims, may be
28 aggregated in determining the grade of the offense pursuant
29 to subsection (a).

30 (4) Where a person commits an offense under subsection

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

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

15 (6) In addition to any other penalty imposed by this
16 act, the court may revoke or suspend the certificate of
17 registration issued under section 3. At the time of
18 sentencing, the court shall state the reasons for such
19 revocation or suspension. A person whose registration has
20 been revoked or suspended may petition the court of original
21 jurisdiction for reinstatement after a period of five years
22 from the date of revocation or suspension, or as specified in
23 the court's order.

24 (c) Jurisdiction.--

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

28 (2) In addition to the authority conferred upon the
29 Attorney General by the act of October 15, 1980 (P.L.950,
30 No.164), known as the Commonwealth Attorneys Act, the

1 Attorney General shall have the authority to investigate and
2 institute criminal proceedings for any violation of this
3 section or any series of such violations involving more than
4 one county of this Commonwealth or involving any county of
5 this Commonwealth and another state. No person charged with a
6 violation of this section by the Attorney General shall have
7 standing to challenge the authority of the Attorney General
8 to investigate or prosecute the case, and, if any such
9 challenge is made, the challenge shall be dismissed and no
10 relief shall be available in the courts of this Commonwealth
11 to the person making the challenge.

12 Section 9. Prohibited acts.

13 No person shall:

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

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

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

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

25 (3) Accept a municipal certificate of occupancy or other
26 proof that performance of a home improvement contract is
27 complete or satisfactorily concluded with knowledge that the
28 document or proof is false and the performance is incomplete.

29 (4) Utter, offer or use a completion certificate or
30 other proof that a home improvement contract is complete or

1 satisfactorily concluded when the person knows or has reason
2 to know that the document or proof is false and is made to
3 accomplish any of the following:

4 (i) Make or accept an assignment or negotiation of
5 the right to receive payment under a home improvement
6 contract.

7 (ii) Get or grant credit or a loan on security of
8 the right to receive payment under a home improvement
9 contract.

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

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

20 (7) Prepare, arrange, accept or participate in the
21 financing of a home improvement contract with knowledge that
22 the home improvement contract states a greater monetary
23 obligation than the actual price of the home improvement.

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

27 (i) Accept a home improvement contract.

28 (ii) Perform the home improvement.

29 (iii) Charge for the home improvement at the price
30 advertised or offered.

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

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

5 (i) one-third of the home improvement contract
6 price; or

7 (ii) one-third of the home improvement contract
8 price in the event special order materials are included.

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

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

13 A violation of any of the provisions of this act shall be
14 deemed a violation of the act of December 17, 1968 (P.L.1224,
15 No.387), known as the Unfair Trade Practices and Consumer
16 Protection Law. Nothing in this act shall preclude a consumer
17 from exercising any right provided under the Unfair Trade
18 Practices and Consumer Protection Law.

19 Section 11. Regulations.

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

22 Section 12. Preemption of local registration.

23 Registration under this act shall preclude any requirement of
24 payment of a fee or registration or licensing of any home
25 improvement contractor by any political subdivision. Political
26 subdivisions shall be permitted to require building permits and
27 local enforcement of the building code for that political
28 subdivision, for which a reasonable fee may be charged. This
29 provision does not affect a municipality's responsibilities or
30 authority under the act of November 10, 1999 (P.L.491, No.45),

1 known as the Pennsylvania Construction Code Act, or the
2 requirements under section 302(e) of the act of June 2, 1915
3 (P.L.736, No.338), known as the Workers' Compensation Act,
4 regarding workers' compensation. This provision does not affect
5 existing licensing standards in effect on the effective date of
6 this act, with respect to electricians, plumbers, sheet metal
7 workers, warm air installers and fire suppression workers, where
8 licensing is conditioned on requirements of testing or
9 possession of certificates obtained through specific training in
10 electricity, plumbing, sheet metal work, warm air installation
11 and fire suppression. This provision does not affect standards
12 for liability insurance adopted by a municipality prior to
13 January 1, 2006, and which are in effect on the effective date
14 of this section.

15 Section 13. Home Improvement Guaranty Fund.

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

19 (b) Biennial fund fee.--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 and shall be refunded in full
24 in the event the applicant is denied a certificate.

25 (c) Minimum balance.--

26 (1) Payments received under subsection (b) shall be
27 credited to the fund which shall maintain a balance of at
28 least \$2,000,000. If the bureau finds that, because of
29 pending claims, the amount of the fund may fall below
30 \$1,000,000, the bureau shall assess each contractor \$25.

1 However, under this subsection the bureau may not make more
2 than one assessment in any calendar year.

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

9 (d) Investment.--The moneys of the fund shall be invested
10 and the interest arising from the investments shall be credited
11 to the fund.

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

16 Section 14. Claims against fund.

17 (a) General rule.--An owner may be compensated from the fund
18 for an actual loss that results from an act or omission or a
19 violation of this act by a registered contractor as found by a
20 court of competent jurisdiction, upon the final determination of
21 or expiration of time for appeal in connection with any such
22 judgment. In the event the bureau and a contractor enter into an
23 assurance of voluntary compliance, as described in section 5 of
24 the act of December 17, 1968 (P.L.1224, No.387), known as the
25 Unfair Trade Practices and Consumer Protection Law, which
26 requires payment of restitution to an owner and the contractor
27 fails to pay as required by the terms of the assurance of
28 voluntary compliance, the bureau shall issue an order of payment
29 from the fund to the owner. The payment made pursuant to an
30 assurance of voluntary compliance shall be considered a claim

1 for purposes of reimbursement of the fund; however, subsection
2 (g) shall not be applicable.

3 (b) Acts of subcontractors and employees.--For purposes of
4 recovery from the fund, the act or omission of a registered
5 contractor includes the act or omission of a subcontractor or
6 employee of the registered contractor whether or not any express
7 agency relationship exists so long as the subcontractor or
8 employee acted within the scope of the home improvement
9 contract.

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

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

14 (2) failed to make good faith efforts to collect the
15 amount due from the contractor.

16 (d) Limitation on recovery.--

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

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

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

26 (iii) An amount for any attorney fees, consequential
27 damages, court costs, interest, personal injury damages
28 or punitive damages.

29 (2) In addition to the limits set forth in paragraph

30 (1), a claimant may not recover from the fund more than that

claimant's actual loss, to a maximum of \$10,000, for a claim made on one contract.

(e) Excluded claimants.--

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

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

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

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

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

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

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

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

(g) Offer of proof.--In order to recover from the fund the

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

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

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

24 (j) Investigation by bureau.--As provided in section 16, if
25 the bureau pays any amount from the fund as a result of a claim
26 against a contractor, the bureau may conduct an investigation to
27 determine if the contractor is possessed of assets liable to be
28 sold or applied in satisfaction of the claim on the fund. If the
29 bureau discovers any such assets, the bureau may take any lawful
30 action necessary for the reimbursement of the fund.

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

14 Section 15. Procedure for submitting claims.

15 (a) Initial claim.--In order to recover from the fund, a
16 claimant must submit to the bureau the documentation required
17 under section 14(g), if applicable, and the following
18 information on a form provided by the bureau:

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

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

30 (c) General order of payment.--Except as otherwise provided

1 in this act, the bureau shall pay from the fund approved claims
2 in the order that they are submitted.

3 Section 16. Reimbursement of fund.

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

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

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

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

12 (i) The amount paid from the fund.

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

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

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

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

25 (1) A claim was paid from the fund on account of the
26 contractor.

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

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

1 (d) Withholding of tax refund.--If a person is delinquent
2 for at least one year in making payments to the bureau for the
3 purposes of reimbursing the fund, the Department of Revenue
4 shall credit the amount of any refundable overpayment of tax
5 imposed by Article III of the act of March 4, 1971 (P.L.6,
6 No.2), known as the Tax Reform Code of 1971, against the
7 delinquency in respect to this act on the part of the person who
8 made the overpayment.

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

13 Section 17. Notice of suspension or revocation.

14 The Administrative Office of Pennsylvania Courts shall report
15 to the bureau any suspension or revocation of a certificate of
16 registration ordered by a court.

17 Section 18. Exemptions.

18 This act shall not apply to any of the following persons or
19 organizations:

20 (1) The Commonwealth, or any of its political
21 subdivisions.

22 (2) The Federal Government.

23 Section 19. Applicability.

24 This act shall not apply to local regulations, relating to
25 liability insurance coverage for contractors which were adopted
26 by a municipality prior to January 1, 2006, and which are in
27 effect on the effective date of this section.

28 Section 20. Repeal.

29 All acts and parts of acts are repealed insofar as they are
30 inconsistent with this act.

1 Section 21. Effective date.

2 This act shall take effect in 180 days.