

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL**No. 297** Session of
2017

INTRODUCED BY TOMLINSON, GREENLEAF, BROWNE, COSTA, SCHWANK,
HAYWOOD, YUDICHAK, MENSCH, RAFFERTY AND VULAKOVICH,
FEBRUARY 6, 2017

SENATOR TOMLINSON, CONSUMER PROTECTION AND PROFESSIONAL
LICENSURE, AS AMENDED, FEBRUARY 8, 2017

AN ACT

1 Amending the act of October 17, 2008 (P.L.1645, No.132),
2 entitled "An act providing for the regulation of home
3 improvement contracts and for the registration of certain
4 contractors; prohibiting certain acts; and providing for
5 penalties," further providing for definitions, for
6 registration of contractors, for home improvement fraud and
7 for prohibited acts.

8 The General Assembly of the Commonwealth of Pennsylvania
9 hereby enacts as follows:

10 Section 1. Section 2 of the act of October 17, 2008
11 (P.L.1645, No.132), known as the Home Improvement Consumer
12 Protection Act, is amended by adding definitions to read:

13 Section 2. Definitions.

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

17 * * *

18 "Appeals officer." The appeals officer designated under
19 section 3(g)(1).

1 "Applicant." A person seeking registration under this act.

2 * * *

3 Section 2. Section 3 of the act is amended by adding
4 subsections to read:

5 Section 3. Registration of contractors.

6 * * *

7 (e) Nonissuance, suspension or revocation.--The bureau may,
8 in the bureau's discretion, refuse to register a person or
9 suspend or revoke a registration issued to a person upon proof
10 that a person has:

11 (1) obtained a registration through fraud, deception,
12 misrepresentation or providing false, misleading, inaccurate
13 or incomplete information in an application for registration
14 or application to renew or update a registration to the
15 bureau under this act;

16 (2) engaged in the use or employment of dishonesty,
17 fraud, deception, misrepresentation, false promise or false
18 pretense to encourage or solicit a person to enter into a
19 written or oral agreement for home improvements;

20 (3) failed to perform or complete home improvements for
21 which compensation has been accepted;

22 (4) failed to perform home improvements in a workmanlike
23 manner or failed to meet the standard required for the home
24 improvements;

25 (5) been convicted of a crime relating to a home
26 improvement transaction involving, theft, deception, fraud, <--
27 misrepresentation or moral turpitude or a crime adverse to
28 the provisions of this act. As used in this paragraph, the
29 term "convicted" shall include a judgment, an admission of
30 guilt, a plea of nolo contendere or the equivalent, whether

1 or not a sentence has been imposed;

2 (6) received a final civil judgment entered against the
3 person that was related to a home improvement transaction;

4 (7) had a suspended or revoked registration as a
5 contractor imposed by any other state agency outside this
6 Commonwealth for reasons similar to those listed under this
7 subsection; or

8 (8) violated or failed to comply with the provisions of
9 this act.

10 (f) Notice.--Upon a determination by the bureau of
11 nonissuance, suspension or revocation of a registration under
12 subsection (e), the bureau shall notify the applicant in writing
13 at the address provided on the registration application of the
14 determination. The notice shall indicate the reason for the
15 determination and shall inform the applicant of the procedure to
16 appeal the determination.

17 (g) Filing of appeal to the appeals officer.--

18 (1) The bureau shall designate an appeals officer who
19 shall review the determination of nonissuance, suspension or
20 revocation of a registration upon an appeal filed by an
21 applicant.

22 (2) If the bureau makes a determination of nonissuance,
23 suspension or revocation of a registration of an applicant
24 under this act, the applicant may file an appeal with the
25 appeals officer within 15 business days of the mailing date
26 of the notice under subsection (f). The appeal shall state
27 the reasons for allowing the applicant to be a registered
28 contractor under this act.

29 (3) The appeals officer:

30 (i) Shall set a schedule for the applicant and for

1 the bureau to submit supporting documentation.

2 (ii) Shall review all information provided by the
3 parties to the appeal.

4 (iii) May hold a hearing which shall be transcribed.
5 The decision to hold a hearing may not be appealed. The
6 appeals officer may admit testimony, evidence and
7 documents into evidence that are reasonably probative and
8 relevant to the issue in dispute, as determined by the
9 appeals officer. The appeals officer may limit the nature
10 and extent of evidence found to be cumulative.

11 (iv) Shall consider the the following factors in
12 making a determination under this section:

13 (A) The nature and responsibility of the
14 position which the applicant would hold.

15 (B) The date, nature, seriousness and
16 circumstances surrounding the reasons for
17 nonissuance, suspension or revocation of the
18 registration under this act.

19 (C) Whether the reasons for nonissuance,
20 suspension or revocation of the registration under
21 this act were isolated or repeated incidents.

22 (D) Evidence of rehabilitation, including good
23 conduct in prison or in the community, counseling or
24 psychiatric treatment received, additional academic
25 or vocational schooling, successful participation in
26 correctional work release programs or the
27 recommendation of people who have supervised the
28 applicant.

29 (v) Shall make a final determination which shall be
30 mailed to the applicant within 30 days of receipt of the

1 appeal in accordance with the following:

2 (A) The determination shall be a final order and
3 the appeals officer shall provide a written
4 explanation to both the applicant and the bureau.

5 (B) If the final determination is not mailed
6 within 30 days of the receipt of the appeal, the
7 appeal shall be deemed denied.

8 (h) Filing of appeal to Commonwealth Court.--

9 (1) Within 30 days of the mailing date of the final
10 determination by the appeals officer, the applicant or the
11 bureau may file a petition for review or another document as
12 may be required by rule of the Commonwealth Court.

13 (2) A petition for review under this section shall stay
14 the registration until a decision by the Commonwealth Court
15 under this section has been issued.

16 (3) The bureau, the appeals officer and the applicant
17 shall be served notice of actions commenced under this
18 subsection and shall have an opportunity to respond in
19 accordance with applicable court rules.

20 (4) The record before the Commonwealth Court shall
21 consist of the documentation produced by the bureau to the
22 appeals officer, the request for appeal, all documentation
23 submitted in support of the applicant to the appeals
24 officer, the hearing transcript and the final determination
25 of the appeals officer.

26 (5) The Commonwealth Court may award reasonable attorney
27 fees and costs of litigation or an appropriate portion of the
28 fees and costs to the bureau or to the applicant if the court
29 finds that the appeal to the court was frivolous. Nothing in
30 this subsection shall prohibit the Commonwealth Court from

1 imposing penalties and costs in accordance with the
2 applicable rules of court.

3 (6) The decision of the Commonwealth Court shall contain
4 findings of facts and conclusions of law based upon the
5 evidence as a whole. Decisions shall clearly and
6 conspicuously explain the rationale for the decision.

7 Section 3. Section 8(a) and (c)(1) of the act are amended to
8 read:

9 Section 8. Home improvement fraud.

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

14 (1) makes a false or misleading statement to induce,
15 encourage or solicit a person to enter into any written or
16 oral agreement for home improvement services or provision of
17 home improvement materials or to justify an increase in the
18 previously agreed upon price;

19 (2) receives any advance payment for performing home
20 improvement services or providing home improvement materials
21 and fails to perform or provide such services or materials
22 when specified in the contract taking into account any force
23 majeure or unforeseen labor strike that would extend the time
24 frame or unless extended by agreement with the owner and
25 fails to return the payment received for such services or
26 materials which were not provided by that date;

27 (3) while soliciting a person to enter into an agreement
28 for home improvement services or materials, misrepresents or
29 conceals the contractor's or salesperson's real name, the
30 name of the contractor's business, the contractor's business

1 address or any other identifying information;

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

6 (5) misrepresents himself or another as an employee or
7 agent of the Federal, Commonwealth or municipal government,
8 any other governmental unit or any public utility with the
9 intent to cause a person to enter into any agreement for
10 performing home improvement services or providing home
11 improvement materials;

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

14 (7) alters a home improvement agreement, mortgage,
15 promissory note or other document incident to performing or
16 selling a home improvement without the consent of the
17 consumer; [or]

18 (8) directly or indirectly publishes a false or
19 deceptive advertisement in violation of State law governing
20 advertising about home improvement[.]; or

21 (9) enters into a home improvement agreement, whether or
22 not the agreement is written or oral, without first
23 registering with the bureau as provided for under this act.

24 * * *

25 (c) Grading.--

26 (1) A violation of subsection (a) (1), (3), (4), (5),
27 (6), (7) [or], (8) or (9) constitutes:

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

30 (ii) a misdemeanor of the first degree if the amount

1 involved is \$2,000 or less or if the amount involved
2 cannot be satisfactorily ascertained.

3 * * *

4 Section 4. Section 9 of the act is amended by adding a
5 paragraph to read:

6 Section 9. Prohibited acts.

7 No person shall:

8 * * *

9 (13) Provide false or incomplete information on a
10 registration application to the bureau.

11 Section 5. The act is amended by adding sections to read:

12 Section 14. Construction.

13 Nothing in this act shall be construed to limit the bureau's
14 ability to bring an action in the name of the Commonwealth under
15 the act of December 17, 1968 (P.L.1224, No.387), known as the
16 Unfair Trade Practices and Consumer Protection Law.

17 Section 15. Applicability of 2 Pa.C.S.

18 The provisions of 2 Pa.C.S. (relating to administrative law
19 and procedure) may not apply to this act unless specifically
20 adopted by regulation or policy.

21 Section 6. This act shall take effect in 60 days.