

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 608 Session of  
1999

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AND GANNON, FEBRUARY 17, 1999

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, FEBRUARY 17, 1999

AN ACT

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

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

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12 Section 1. Short title.

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

15 Section 2. Definitions.

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

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

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

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

30 "Department." The Department of Labor and Industry of the

1 Commonwealth.

2 "Fund." The Home Improvement Guaranty Fund established in  
3 section 14.

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

17 (1) The construction of a new home.

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

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

26 (4) The sale of appliances, such as stoves,  
27 refrigerators, freezers, room air conditioners and others  
28 which are designed for and are easily removable from the  
29 premises without material alteration thereof.

30 (5) Any work performed without compensation by the owner

1 on the owner's private residence or residential rental  
2 property.

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

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

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

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

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

28 "Salesperson." Any individual who negotiates or offers to  
29 negotiate a home improvement contract with an owner or solicits  
30 or otherwise endeavors to procure by any means whatsoever,

1 directly or indirectly, a home improvement contract from an  
2 owner.

3 Section 3. Registration of contractors and salespersons.

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

14 (b) Salespersons.--

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

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

20 (c) 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 individual be relieved of  
24 responsibility under this act by reason of his employment or  
25 relationship with such business entity.

26 (d) Effects of unregistered status.--No unregistered  
27 contractor or salesperson shall have standing to sue, countersue  
28 or raise a defense of nonpayment in any dispute arising from a  
29 home improvement. No unregistered contractor or salesperson may  
30 file a mechanic's lien with respect to a home improvement.

1 (e) Public access to registration information.--The  
2 department shall maintain a toll-free telephone number from  
3 which a caller can obtain information as to whether a contractor  
4 or salesperson is registered with the department pursuant to  
5 this act.

6 Section 4. Procedures for registration.

7 (a) Application.--A person desiring a certificate as a  
8 contractor or salesperson shall apply to the department in  
9 writing on a form provided by the department. The application  
10 shall include the following information:

11 (1) For an individual applicant, the name, home address,  
12 home telephone number and driver's license identification  
13 number of the applicant, as well as the individual's business  
14 name, address and telephone number if different.

15 (2) For a partnership applicant, the name, home address,  
16 home telephone number and driver's license identification  
17 number of each partner as well as the partnership name,  
18 address and telephone number.

19 (3) For a corporation, limited liability company or  
20 limited partnership applicant, the name, home address, home  
21 telephone number and driver's license identification number  
22 of each officer, each director or each individual holding  
23 greater than a 10% stake in the business, as well as the  
24 entity's business name, address and telephone number.

25 (4) For an out-of-State corporation, limited liability  
26 or limited partnership, the name and address of the entity's  
27 resident agent or registered office provider within this  
28 Commonwealth.

29 (5) For a joint venture applicant, the name, address and  
30 telephone number of the joint venture, as well as the name,

1 address and telephone number of each party to the joint  
2 venture. When the parties to a joint venture include business  
3 entities, the information required from such entities  
4 pursuant to paragraphs (2) and (3) shall also be provided.

5 (6) If the applicant is applying for a contractor  
6 registration, a complete description of the nature of the  
7 contracting business of the applicant.

8 (7) A statement whether:

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

19 (ii) Whether the applicant's certificate or the  
20 certificate of a business with which the individual  
21 making application held an interest, has ever been  
22 revoked or suspended pursuant to an order issued by a  
23 court of competent jurisdiction.

24 (8) Whether within the last ten years the applicant has  
25 ever been suspended or debarred from participating in any  
26 Federal, State or local program through which funding or  
27 other assistance is provided to consumers for home  
28 improvements.

29 (9) If the department or the bureau determines that  
30 additional information is necessary to effectuate the purpose

1 of this act, the department or the bureau shall promulgate  
2 regulations to require the submission of the additional  
3 information.

4 (b) Grounds for refusal of certificate.--The department may  
5 not provide a certificate of registration to any applicant:

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

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

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

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

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

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

10 Section 5. Application fees.

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

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

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

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

25 (c) Multiple registrations.--Business entity applicants  
26 shall be required to pay the application fee in this section and  
27 the fund fee set forth in section 14 only as a business entity,  
28 regardless of the number of individuals who provide registration  
29 information pursuant to this act.

30 Section 6. Certificate of registration and renewal.

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

7 (b) Nontransferability.--Certificates issued to home  
8 improvement contractors or salespersons shall not be  
9 transferable or assignable.

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

18 (d) Grounds for denial and revocation of registration.--The  
19 department shall deny registration to any contractor or  
20 salesperson against whom a civil judgment has been entered in  
21 favor of an owner that was related to a home improvement  
22 transaction if the transaction occurred after the effective date  
23 of this act and the judgment remains unsatisfied. The  
24 department, with bureau approval, may permit a contractor or  
25 salesperson to receive a new or renewed certificate after the  
26 contractor has entered into a written agreement whereby the  
27 contractor agrees to pay the judgment in full in the form of  
28 periodic payments over a specific period of time. If the  
29 contractor or salesperson does not pay in accordance with the  
30 terms of the agreement, the department shall immediately revoke

1 the contractor's or salesperson's certificate of registration.

2 Section 7. Certificate holder to exhibit and advertise

3 certificate.

4 Contractors and salespersons shall exhibit their certificates

5 upon request by any interested party, state in any advertisement

6 the fact that they are registered, and include their

7 registration numbers.

8 Section 8. Prohibited acts.

9 No person shall:

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

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

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

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

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

20 (6) Represent in any manner that his registration  
21 constitutes an endorsement of the quality of his workmanship  
22 or of his competency by the department or the bureau.

23 (7) Fail to refund the amount paid for a home  
24 improvement within ten days of a written request mailed or  
25 delivered to the contractor's last known address, if:

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

28 (ii) More than 30 days has elapsed since the  
29 starting date specified in the written contract or the  
30 date of the contract if such contract does not specify a

1 starting date.

2 (8) Accept a municipal certificate of occupancy or other  
3 proof that performance of a home improvement contract is  
4 complete or satisfactorily concluded with knowledge that the  
5 document or proof is false and the performance is incomplete.

6 (9) Utter, offer or use a completion certificate or  
7 other proof that a home improvement contract is complete or  
8 satisfactorily concluded:

9 (i) to make or accept an assignment or negotiation  
10 of the right to receive payment under a home improvement  
11 contract; or

12 (ii) to get or grant credit or a loan on security of  
13 the right to receive payment under a home improvement  
14 contract;

15 when the person knows or has reason to know that such  
16 document or proof is false.

17 (10) Abandon or fail to perform, without justification,  
18 a home improvement contract. The term "without justification"  
19 shall include, but not be limited to, nonpayment by the owner  
20 as required under the contract or any other violation of the  
21 contract by the owner.

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

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

30 (13) Advertise or offer, by any means, to perform a home

1 improvement if the person does not intend:

2 (i) to accept a home improvement contract;

3 (ii) to perform the home improvement; or

4 (iii) to charge for the home improvement at the  
5 price advertised or offered.

6 (14) Violate a building law or ordinance of this  
7 Commonwealth or political subdivision, a safety or labor law  
8 of this Commonwealth or political subdivision, or the act of  
9 June 2, 1915 (P.L.736, No.338), known as the Workers'  
10 Compensation Act.

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

13 (16) Perform or sell a home improvement with or through  
14 another person who is required to hold a certificate pursuant  
15 to this act but who does not hold the certificate.

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

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

21 (19) Receive a deposit of more than one-third of the  
22 home improvement contract price unless the total price of the  
23 contract is less than \$500.

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

27 (21) Fail to pay fees or assessments required by this  
28 act.

29 (22) Be suspended or debarred from a Federal, State or  
30 local program as described in section 4(a)(8).

1 Section 9. Home improvement fraud.

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

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

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

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

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

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

1 performing home improvement services or providing home  
2 improvement materials;

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

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

9 (b) Grading.--

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

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

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

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

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

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

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

28 (4) Where a person commits an offense under subsection  
29 (a) and the victim is 60 years of age or older, the grading  
30 of the offense shall be one grade higher than specified in

1 paragraphs (1), (2) and (3). This paragraph shall not be  
2 applicable to individuals whose sentence would be enhanced  
3 pursuant to paragraph (5).

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

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

18 (c) Jurisdiction.--

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

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

standing to challenge the authority of the Attorney General to investigate or prosecute the case, and, if any such challenge is made, the challenge shall be dismissed and no relief shall be available in the courts of this Commonwealth to the person making the challenge.

Section 10. Unfair Trade Practices and Consumer Protection Law.

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

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

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

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

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

Section 11. Regulations.

The department may adopt rules and regulations necessary to carry out the provisions of this act relating to registration, and the bureau may adopt rules and regulations necessary to carry out and enforce the other provisions of this act.

Section 12. Exemptions.

Sections 3, 4, 5, 6, 7, 12, 13, 14, 15, 16 and 18 shall not

1 apply to any of the following persons or organizations:

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

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

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

10 Section 13. Home improvement contracts.

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

13 (1) Is in writing and legible.

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

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

18 (4) Contains the date of the transaction.

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

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

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

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

27 (i) each contractor and salesperson must be  
28 registered by the department; and

29 (ii) anyone may inquire of the department regarding  
30 the status of a contractor or salesperson.

1 (b) Rescission right.--All home improvement contracts shall  
2 be subject to section 7 of the act of December 17, 1968  
3 (P.L.1224, No.387), known as the Unfair Trade Practices and  
4 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.

9 Section 14. Home Improvement Guaranty Fund.

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

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

21 (c) Minimum balance.--

22 (1) Payments received under subsection (b) shall be  
23 credited to the fund which shall maintain a balance of at  
24 least \$2,000,000. If the bureau finds that, because of  
25 pending claims, the amount of the fund may fall below  
26 \$1,000,000, the bureau shall assess each contractor \$25 and  
27 each salesperson \$10. However, under this subsection the  
28 bureau may not make more than one assessment in any calendar  
29 year.

30 (2) Failure to make payments to the fund as required by

1       this act shall result in suspension of registration. Barring  
2       the existence of other grounds for suspension or revocation  
3       of registration, the contractor's or salesperson's  
4       certificate of registration shall be reinstated upon full  
5       payment of all the required fees.

6       (d) Investment.--The moneys of the fund shall be invested  
7       and the interest arising from the investments shall be credited  
8       to the fund.

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

13      Section 15. Claims against fund.

14      (a) General rule.--An owner may be compensated from the fund  
15      for an actual loss that results from an act or omission or a  
16      violation of this act by a registered contractor or salesperson  
17      as found by a court of competent jurisdiction, upon the final  
18      determination of or expiration of time for appeal in connection  
19      with any such judgment. In the event the bureau and a contractor  
20      or salesperson enter into an assurance of voluntary compliance,  
21      as described in section 5 of the act of December 17, 1968  
22      (P.L.1224, No.387), known as the Unfair Trade Practices and  
23      Consumer Protection Law, which requires payment of restitution  
24      to an owner and the contractor or salesperson fails to pay as  
25      required by the terms of the assurance of voluntary compliance,  
26      the bureau shall issue an order of payment from the fund to the  
27      owner. The payment made pursuant to an assurance of voluntary  
28      compliance shall be considered a claim for purposes of  
29      reimbursement of the fund, however, subsection (g) shall not be  
30      applicable.

1 (b) Acts of subcontractors, salespersons and employees.--For  
2 purposes of recovery from the fund, the act or omission of a  
3 registered contractor or registered salesperson includes the act  
4 or omission of a subcontractor, salesperson or employee of the  
5 registered contractor or registered salesperson whether or not  
6 any express agency relationship exists.

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

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

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

13 (d) Limitation on recovery.--

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

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

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

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

28 (iv) An amount as a result of a default judgment in  
29 court.

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

(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. A court may, however, allocate responsibility on one contract between contractors and salespersons to a maximum combined responsibility of \$10,000.

(e) Excluded claimants.--

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

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

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

(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 or salesperson

1 and all appeal rights have expired or been exhausted, or, in the  
2 case of an assurance of voluntary compliance, within the later  
3 of two years of entry into such assurance or one year after  
4 nonpayment according to the terms of the assurance.

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

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

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

29 (j) Investigation by bureau.--As provided in section 17, if  
30 the bureau pays any amount from the fund as a result of a claim

1 against a contractor or salesperson, the bureau may conduct an  
2 investigation to determine if the contractor or salesperson is  
3 possessed of assets liable to be sold or applied in satisfaction  
4 of the claim on the fund. If the bureau discovers any such  
5 assets, the bureau may take any lawful action necessary for the  
6 reimbursement of the fund.

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

23 Section 16. Procedure for submitting claims.

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

- 28 (1) The amount claimed based on the actual loss.
- 29 (2) The facts giving rise to the claim.
- 30 (3) Any other evidence that supports the claim.

1           (4) Any other information that the bureau requires.

2           (b) Copy of claim to contractor.--On receipt of a claim  
3 pursuant to this section, the bureau shall send a copy of the  
4 claim to the contractor alleged to be responsible for the actual  
5 loss. The contractor shall file a response or objection to the  
6 claim within 30 days of receipt of the notice of such claim.  
7 Failure to respond to the claim shall constitute a waiver of any  
8 defense or objection to the claim.

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

12 Section 17. Reimbursement of fund.

13           (a) General rule.--After the bureau pays a claim from the  
14 fund:

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

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

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

21                   (i) The amount paid from the fund.

22                   (ii) Interest on the amount at an annual rate of 5%  
23 as adjusted by the Consumer Price Index on an annual  
24 basis.

25 All money that the bureau recovers on a claim shall be deposited  
26 in the fund.

27           (b) Suit for nonpayment.--If, within 30 days after the  
28 bureau gives notice, a contractor or salesperson on whose  
29 account a claim was paid shall fail to reimburse the fund in  
30 full, the bureau may initiate an action against the contractor

1 or salesperson in a court of competent jurisdiction for the  
2 unreimbursed amount.

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

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

7 (2) The contractor or salesperson has not reimbursed the  
8 fund in full.

9 (3) The bureau directed payment based on a final  
10 judgment of a court of competent jurisdiction or an assurance  
11 of voluntary compliance.

12 (d) Withholding of tax refund.--The bureau may request the  
13 Department of Revenue to withhold the annual tax refund due any  
14 individual or business on whose account or under whose business  
15 a claim was paid from the fund and who is delinquent for at  
16 least one year in making payments to the bureau for the purpose  
17 of reimbursing the fund. Any tax refund withheld by the  
18 Department of Revenue pursuant to this subsection shall be  
19 deposited in the fund by that department. The bureau and the  
20 Department of Revenue shall jointly establish procedures to  
21 carry out the requirements of this subsection.

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

26 Section 18. Notice of suspension or revocation.

27 The Administrative Office of Pennsylvania Courts shall report  
28 to the department and the bureau any suspension or revocation of  
29 a certificate of registration ordered by a court.

30 Section 19. Effective date.

1       This act shall take effect in 180 days.