

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2475 Session of
2002

INTRODUCED BY DeLUCA, BROWNE, CASORIO, CREIGHTON, CRUZ, CURRY,
DALEY, DeWEESE, DIVEN, FICHTER, GRUCELA, HORSEY, JAMES,
JOSEPHS, KELLER, LAUGHLIN, LEDERER, McGEEHAN, MELIO,
R. MILLER, PALLONE, PISTELLA, ROBINSON, ROEBUCK, ROONEY,
RUFFING, SCRIMENTI, STABACK, J. TAYLOR, WALKO, WANSACZ AND
J. WILLIAMS, APRIL 2, 2002

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, APRIL 2, 2002

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:

9 TABLE OF CONTENTS

- 10 Section 1. Short title.
- 11 Section 2. Definitions.
- 12 Section 3. Registration of contractors and salespersons.
- 13 Section 4. Procedures for registration.
- 14 Section 5. Application fees.
- 15 Section 6. Certificate of registration and renewal.
- 16 Section 7. Certificate holder to exhibit and advertise
17 certificate.
- 18 Section 8. Prohibited acts.

1 Section 9. Home improvement fraud.
2 Section 10. Unfair Trade Practices and Consumer Protection
3 Law.
4 Section 11. Regulations.
5 Section 12. Exemptions.
6 Section 13. Home improvement contracts.
7 Section 14. Home Improvement Guaranty Fund.
8 Section 15. Claims against fund.
9 Section 16. Procedure for submitting claims.
10 Section 17. Reimbursement of fund.
11 Section 18. Notice of suspension or revocation.
12 Section 19. Effective date.
13 Section 1. Short title.

14 This act shall be known and may be cited as the Home
15 Improvement Consumer Protection Act.
16 Section 2. Definitions.

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

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

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

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

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

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

16 (1) The construction of a new home.

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

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

25 (4) The sale of appliances, such as stoves,
26 refrigerators, freezers, room air conditioners and others
27 which are designed for and are easily removable from the
28 premises without material alteration exceeding \$200.

29 (5) Any work performed without compensation by the owner
30 on the owner's private residence or residential rental

1 property.

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

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

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

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

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

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

1 owner.

2 "Special order material." Any material purchased by a
3 contractor exclusively for the performance of a specific home
4 improvement contract and which has no value in the performance
5 of another home improvement contract.

6 Section 3. Registration of contractors and salespersons.

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

17 (b) Salespersons.--

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

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

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

29 (d) Effects of unregistered status.--No unregistered
30 contractor or salesperson shall have standing to sue, countersue

1 or raise a defense of nonpayment in any dispute arising from a
2 home improvement. No unregistered contractor or salesperson may
3 file a mechanic's lien with respect to a home improvement.

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

8 Section 4. Procedures for registration.

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

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

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

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

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

1 issued to the entity by its home state or political
2 subdivision of such other state.

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

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

12 (7) A statement whether:

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

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

29 (8) Whether within the last ten years the applicant has
30 ever been suspended or debarred from participating in any

1 Federal, State or local program through which funding or
2 other assistance is provided to consumers for home
3 improvements.

4 (9) If the bureau determines that additional information
5 is necessary to effectuate the purpose of this act, the
6 bureau shall promulgate regulations to require the submission
7 of the additional information.

8 (b) Grounds for refusal of certificate.--The bureau may not
9 provide a certificate of registration to any applicant:

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

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

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

18 (c) Contractual relationships.--In addition to the
19 information required in subsection (a), a contractor shall be
20 required to notify the bureau of any employment or other
21 contractual relationship between the contractor and any
22 salesperson. A contractor shall be required to submit such
23 information within 30 days of entering into an employment or
24 other contractual relationship with a salesperson. Information
25 under this subsection shall be updated by the contractor, on a
26 form provided by the bureau, on an as-needed basis throughout
27 the period of registration.

28 (d) Reporting of multiple registration or licensure.--Any
29 registered contractor or salesperson in this Commonwealth who is
30 registered or licensed as a home improvement contractor or

1 salesperson in any other state, or political subdivision
2 thereof, shall report this information to the bureau on the
3 initial registration and biennial registration application. Any
4 disciplinary action taken in such other jurisdiction shall be
5 reported to the bureau on the initial registration application
6 or, if such action occurred subsequent to submission of an
7 initial application, on the biennial registration application or
8 within 90 days of final disposition, whichever is sooner.

9 Multiple registration or licensure shall be noted by the bureau
10 on the contractor's or salesperson's record, and such state, or
11 political subdivision thereof, shall be notified by the bureau
12 of any disciplinary actions taken against such contractor or
13 salesperson in this Commonwealth.

14 Section 5. Application fees.

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

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

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

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

27 (c) Multiple registrations.--A home improvement contractor
28 or salesperson applying as a business entity shall be required
29 to pay the application fee in this section and the fund fee set
30 forth in section 14 only as a business entity, regardless of the

1 number of individuals who provide registration information
2 pursuant to this act.

3 Section 6. Certificate of registration and renewal.

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

10 (b) Nontransferability.--Certificates issued to home
11 improvement contractors or salespersons shall not be
12 transferable or assignable.

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

21 (d) Grounds for denial and revocation of registration.--The
22 bureau shall deny registration to any contractor or salesperson
23 against whom a civil judgment has been entered in favor of an
24 owner that was related to a home improvement transaction if the
25 transaction occurred after the effective date of this act and
26 the judgment remains unsatisfied. The bureau may permit a
27 contractor or salesperson to receive a new or renewed
28 certificate after the contractor has entered into a written
29 agreement whereby the contractor agrees to pay the judgment in
30 full in the form of periodic payments over a specific period of

1 time. If the contractor or salesperson does not pay in
2 accordance with the terms of the agreement, the bureau shall
3 immediately revoke the contractor's or salesperson's certificate
4 of registration.

5 (e) Refusal.--The bureau may refuse to issue a certificate
6 of registration to any contractor or salesperson if it
7 determines that such contractor or salesperson has engaged in a
8 pattern of conduct contrary to the provisions of this act,
9 regardless of whether a civil judgment relating to a home
10 improvement contract has ever been entered against the home
11 improvement contractor or salesperson.

12 Section 7. Certificate holder to exhibit and advertise
13 certificate.

14 Contractors and salespersons shall exhibit their certificates
15 upon request by any interested party. All advertisements of a
16 home improvement contractor or salesperson shall include the
17 registration number issued by the bureau. Any home improvement
18 contract shall include the registration number of the home
19 improvement contractor who is a party to the contract.

20 Section 8. Prohibited acts.

21 No person shall:

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

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

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

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

30 (5) Offer to make or make any home improvement without

1 having a current certificate under this act.

2 (6) Represent in any manner that his registration
3 constitutes an endorsement of the quality of his workmanship
4 or of his competency by the bureau.

5 (7) Fail to refund the amount paid for a home
6 improvement within ten days of either the acceptance and
7 execution of a return receipt for certified mail containing a
8 written request for a refund or the refusal to accept such
9 certified mail sent to the contractor's last known address,
10 if:

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

13 (ii) More than 30 days has elapsed since the
14 starting date specified in the written contract or the
15 date of the contract if such contract does not specify a
16 starting date.

17 (8) Accept a municipal certificate of occupancy or other
18 proof that performance of a home improvement contract is
19 complete or satisfactorily concluded with knowledge that the
20 document or proof is false and the performance is incomplete.

21 (9) Utter, offer or use a completion certificate or
22 other proof that a home improvement contract is complete or
23 satisfactorily concluded:

24 (i) to make or accept an assignment or negotiation
25 of the right to receive payment under a home improvement
26 contract; or

27 (ii) to get or grant credit or a loan on security of
28 the right to receive payment under a home improvement
29 contract;

30 when the person knows or has reason to know that such

1 document or proof is false.

2 (10) Abandon or fail to perform, without justification,
3 a home improvement contract. Justification for the
4 abandonment or failure to perform a home improvement contract
5 by a contractor shall include, but not be limited to,
6 nonpayment by the owner as required under the contract or any
7 other violation of the contract by the owner.

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

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

16 (13) Advertise or offer, by any means, to perform a home
17 improvement if the person does not intend:

18 (i) to accept a home improvement contract;

19 (ii) to perform the home improvement; or

20 (iii) to charge for the home improvement at the
21 price advertised or offered.

22 (14) Violate a building law or ordinance of this
23 Commonwealth or political subdivision, a safety or labor law
24 of this Commonwealth or political subdivision, or the act of
25 June 2, 1915 (P.L.736, No.338), known as the Workers'
26 Compensation Act.

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

29 (16) Perform or sell a home improvement with or through
30 another person who is required to hold a certificate pursuant

1 to this act but who does not hold the certificate.

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

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

7 (19) Receive a deposit of more than one-third of the
8 home improvement contract price unless the total price of the
9 contract is less than \$500. For the purpose of calculating a
10 deposit, the total contract price shall not include the cost
11 of any special order material purchased or to be purchased by
12 the contractor for the home improvement contract.

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

16 (21) Fail to pay fees or assessments required by this
17 act.

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

20 (23) Fail to report registration or licensure held in
21 another state or political subdivision thereof on the initial
22 registration and biennial registration application.

23 (24) Fail to report the revocation or suspension of a
24 registration in another state or political subdivision
25 thereof.

26 Section 9. Home improvement fraud.

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

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

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

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

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

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

28 (6) alters a home improvement agreement, mortgage,
29 promissory note or other document incident to performing or
30 selling a home improvement without the consent of the

1 consumer; or

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

4 (b) Grading.--

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

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

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

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

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

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

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

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

29 (5) Notwithstanding any other provisions of this
30 section, where a person commits a second or subsequent

1 offense described in subsection (a), the offense will
2 constitute a felony of the second degree regardless of the
3 amount of money involved. For this paragraph to be
4 applicable, the second or subsequent offense must have
5 occurred after the first conviction. Paragraph (4) shall not
6 be applicable to individuals whose sentences would be
7 enhanced pursuant to this paragraph.

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

13 (c) Jurisdiction.--

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

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

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

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

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

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

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

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

19 Section 11. Regulations.

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

22 Section 12. Exemptions.

23 Sections 3, 4, 5, 6, 7, 12, 13, 14, 15, 16 and 18 shall not
24 apply to any of the following persons or organizations:

25 (1) The Commonwealth, municipalities and political
26 subdivisions within the Commonwealth or any department or
27 agency of the Commonwealth or such municipalities.

28 (2) The government of the United States or any of its
29 departments or agencies.

30 (3) Any school, public or private, offering as part of a

1 vocational education program, courses and training in any
2 aspect of home improvement.

3 Section 13. Home improvement contracts.

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

6 (1) Is in writing and legible.

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

9 (3) Contains the entire agreement between the owner and
10 the contractor.

11 (4) Contains the date of the transaction.

12 (5) Contains the name, address and certificate number of
13 the contractor.

14 (6) Contains the approximate starting date and
15 completion date.

16 (7) Is entered into by a registered contractor or a
17 registered salesperson.

18 (8) Provides a notice that gives the toll-free telephone
19 number of the bureau and states that:

20 (i) each contractor and salesperson must be
21 registered by the bureau; and

22 (ii) anyone may inquire of the bureau regarding the
23 status of a contractor or salesperson.

24 (b) Rescission right.--All home improvement contracts shall
25 be subject to section 7 of the act of December 17, 1968
26 (P.L.1224, No.387), known as the Unfair Trade Practices and
27 Consumer Protection Law.

28 (c) Copy to be provided.--A contractor or salesperson shall
29 provide and deliver to the owner, without charge, a completed
30 copy of the home improvement contract at the time the contract

1 is executed.

2 Section 14. Home Improvement Guaranty Fund.

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

6 (b) Biennial fund fee.--Each salesperson who applies for a
7 certificate or renewal thereof pursuant to this act shall pay a
8 fee of \$50 biennially, and each contractor who applies for a
9 certificate, or renewal thereof, pursuant to this act shall pay
10 a fee of \$100 biennially to the fund. The fee shall be payable
11 with the fee for an application for a certificate or renewal
12 thereof as provided in section 5 and shall be refunded in full
13 in the event the applicant is denied a certificate.

14 (c) Minimum balance.--

15 (1) Payments received under subsection (b) shall be
16 credited to the fund which shall maintain a balance of at
17 least \$2,000,000. If the bureau finds that, because of
18 pending claims, the amount of the fund may fall below
19 \$1,000,000, the bureau shall assess each contractor \$25 and
20 each salesperson \$10. However, under this subsection the
21 bureau may not make more than one assessment in any calendar
22 year.

23 (2) Failure to make payments to the fund as required by
24 this act shall result in suspension of registration. Barring
25 the existence of other grounds for suspension or revocation
26 of registration, the contractor's or salesperson's
27 certificate of registration shall be reinstated upon full
28 payment of all the required fees.

29 (d) Investment.--The moneys of the fund shall be invested by
30 the State Treasurer and the interest arising from the

1 investments shall be credited to the fund.

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

6 Section 15. Claims against fund.

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

24 (b) Acts of subcontractors, salespersons and employees.--For
25 purposes of recovery from the fund, the act or omission of a
26 registered contractor or registered salesperson includes the act
27 or omission of a subcontractor, salesperson or employee of the
28 registered contractor or registered salesperson whether or not
29 any express agency relationship exists so long as the
30 subcontractor, salesperson or employee was acting within the

1 scope of the home improvement contract.

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

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

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

8 (d) Limitation on recovery.--

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

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

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

20 (iii) An amount for any attorney fees, consequential
21 damages, court costs, interest, personal injury damages
22 or punitive damages.

23 (2) In addition to the limits set forth in paragraph
24 (1), a claimant may not recover from the fund more than that
25 claimant's actual loss, to a maximum of \$10,000, for a claim
26 made on one contract. A court may, however, allocate
27 responsibility on one contract between contractors and
28 salespersons to a maximum combined responsibility of \$10,000.

29 (e) Excluded claimants.--

30 (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 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 claimant must offer proof to the bureau that the claimant has caused to be issued a writ of execution upon a judgment obtained

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

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

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

22 (j) Investigation by bureau.--As provided in section 17, if
23 the bureau pays any amount from the fund as a result of a claim
24 against a contractor or salesperson, the bureau may conduct an
25 investigation to determine if the contractor or salesperson is
26 possessed of assets liable to be sold or applied in satisfaction
27 of the claim on the fund. If the bureau discovers any such
28 assets, the bureau may take any lawful action necessary for the
29 reimbursement of the fund.

30 (k) Revocation caused by payment of claim.--If the bureau

1 makes a payment of an amount as a result of a claim against a
2 contractor or salesperson, the bureau shall revoke the
3 certificate of the contractor or salesperson and the contractor
4 or salesperson shall not be eligible to receive a new or renewed
5 certificate until that contractor or salesperson 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 or
8 salesperson to receive a new or renewed certificate after that
9 contractor or salesperson has entered into an agreement with the
10 bureau whereby the contractor or salesperson agrees to repay the
11 fund in full in the form of periodic payments over a set period
12 of time. If the contractor or salesperson fails to pay in
13 accordance with the terms of the agreement, the bureau shall
14 automatically suspend the contractor's or salesperson's
15 certificate.

16 Section 16. Procedure for submitting claims.

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

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

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

30 Failure to respond to the claim shall constitute a waiver of any

1 defense or objection to the claim.

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

5 Section 17. Reimbursement of fund.

6 (a) General rule.--After the bureau pays a claim from the
7 fund:

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

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

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

14 (i) The amount paid from the fund.

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

18 All money that the bureau recovers on a claim shall be deposited
19 in the fund.

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

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

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

30 (2) The contractor or salesperson has not reimbursed the

1 fund in full.

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

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

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

17 Section 18. Notice of suspension or revocation.

18 The Administrative Office of Pennsylvania Courts shall report
19 to the bureau any suspension or revocation of a certificate of
20 registration ordered by a court.

21 Section 19. Effective date.

22 This act shall take effect in 180 days.