
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 100 Session of
2007

INTRODUCED BY TOMLINSON, WONDERLING, BOSCOLA, RAFFERTY,
ERICKSON, LAVALLE, FERLO, BROWNE, PILEGGI, STACK AND LOGAN,
MARCH 2, 2007

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES,
OCTOBER 7, 2008

AN ACT

1 Providing for the regulation of home improvement contracts and
2 for the registration of certain contractors; prohibiting
3 certain acts; and providing for penalties.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Short title.

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

9 Section 2. Definitions.

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

13 "ADVERTISEMENT." A STATEMENT PROMOTING HOME IMPROVEMENT
14 SERVICES IN A NEWSPAPER, PERIODICAL, PAMPHLET, CIRCULAR,
15 BILLBOARD, SIGN, LETTERHEAD, BUSINESS CARD OR OTHER PRINTED
16 MATERIALS; OR IN ANNOUNCEMENTS TO THE PUBLIC ON RADIO,
17 TELEVISION OR THE INTERNET. THE TERM SHALL NOT INCLUDE THE

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1 FOLLOWING:

2 (1) SPONSORSHIP OR RECOGNITION OF SPONSORSHIPS OF CIVIC,
3 CHARITABLE OR NONPROFIT EVENTS, TEAMS OR PURPOSES.

4 (2) WRITINGS OR GRAPHICS ON PROMOTIONAL CLOTHING, PENS,
5 PENCILS, NOTEPADS OR SIMILAR ITEMS.

6 "Arbitration clause." A process in which a neutral
7 arbitrator or panel of neutral arbitrators is engaged by the
8 parties to settle a dispute between a contractor and an owner.

9 "Bureau." The Bureau of Consumer Protection in the Office of
10 Attorney General.

11 "CERTIFICATE." A CERTIFICATE OF REGISTRATION AS A
12 CONTRACTOR, ISSUED BY THE BUREAU OF CONSUMER PROTECTION, WHICH
13 CONTAINS A REGISTRATION NUMBER ASSIGNED BY THE BUREAU OF
14 CONSUMER PROTECTION.

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

22 (1) A person for whom the total cash value of all of
23 that person's home improvements is less than \$5,000 during
24 ~~any period of 12 consecutive months~~ THE PREVIOUS TAXABLE
25 YEAR.

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26 (2) A home improvement retailer having a net worth of
27 more than \$50,000,000 or an employee of that retailer that
28 does not perform home improvements.

29 "Home improvement."

30 (1) The term includes all of the following done in

1 connection with land or a portion of the land adjacent to a
2 private residence or a building or a portion of the building
3 which is used or designed to be used as a private residence
4 for which the total cash price of all work agreed upon
5 between the contractor and owner is more than \$500.

6 (i) Repair, replacement, remodeling, demolition,
7 removal, renovation, installation, alteration,
8 conversion, modernization, improvement, rehabilitation or
9 sandblasting.

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

17 (iii) Without regard to affixation, the installation
18 of central heating or air conditioning or storm windows
19 or awnings.

20 (2) The term does not include:

21 (i) The construction of a new home.

22 (ii) The sale of goods or materials by a seller who
23 neither arranges to nor performs, directly or indirectly,
24 any work or labor in connection with the installation or
25 application of the goods or materials.

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

29 (iv) The sale of appliances, including stoves,
30 refrigerators, freezers, room air conditioners and others

1 which are designed for and are easily removable from the
2 premises without material alteration.

3 (v) Any work performed without compensation by the
4 owner of the owner's private residence or residential
5 rental property.

6 (vi) Any work performed by a landscaper certified by
7 the Department of Agriculture under the act of December
8 16, 1992 (P.L.1228, No.162), known as the Plant Pest Act,
9 except to the extent that the work involves any of the
10 following at a private residence:

11 (A) The construction, replacement, installation
12 or improvement of buildings, driveways, swimming
13 pools, porches, garages, roofs, siding, insulation,
14 solar energy systems, security systems, flooring,
15 patios, nondecorative fences, doors, lighting
16 systems, concrete walkways and windows.

17 (B) The placement of retaining walls, fountains
18 or drainage systems.

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

22 (viii) The conversion of existing commercial
23 structures into residential or noncommercial structures.

24 "Home improvement contract." An agreement between a
25 contractor, subcontractor or salesperson and an owner for the
26 performance of a home improvement which includes all agreements
27 for labor, services and materials to be furnished and performed
28 under the contract.

29 "Owner."

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

1 (i) An owner of a private residence, including any
2 person authorized by an owner to act on the owner's
3 behalf to order, contract for or purchase a home
4 improvement.

5 (ii) A person entitled to the performance of the
6 work of a contractor pursuant to a home improvement
7 contract.

8 (2) An owner of a private residence shall not be
9 required to reside in the residence to be deemed an owner
10 under this act.

11 (3) A person who owns three or more private residences
12 in this Commonwealth shall not be deemed an owner except with
13 respect to the person's primary residence or the part of the
14 building which houses the primary residence of the owner AND <—
15 THOSE PRIVATE RESIDENCES THE PERSON USES FOR PERSONAL
16 RECREATIONAL PURPOSES.

17 "Person." An individual, partnership, limited partnership,
18 limited liability company, joint venture or corporation.

19 "Private residence." Any of the following:

20 (1) A single family dwelling.

21 (2) A multifamily dwelling consisting of not more than
22 two units.

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

25 "Special order material." Any material, product or equipment
26 that is not a stock item and must be specially ordered from the
27 factory or distributor and which is produced or processed for
28 the contractor for a specific home improvement contract. Special
29 order materials are not returnable by the contractor for a
30 refund or credit and have no usefulness for other home

1 improvement contracts because they are specially ordered for a
2 specific home improvement contract.

3 "Specifications." The plans, detailed drawings, lists of
4 materials, stated allowances or other methods customarily used
5 in the home improvement industry as a whole to describe with
6 particularity the work, workmanship, materials and quality of
7 materials for each home improvement.

8 ~~"Tenant." A person who has entered into a lease or other~~ <—
9 ~~contractual arrangement with the owner.~~

10 Section 3. Registration of contractors.

11 (a) General rule.--No person shall hold himself out as a
12 contractor nor shall a person perform any home improvement
13 without first registering with the bureau as provided for in
14 this act.

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

20 (c) Confidentiality of personal information.--The bureau
21 shall create a policy for the disclosure of personal information
22 to the public. The bureau may not disclose to the public a
23 contractor's Social Security number ~~or driver's license number.~~ <—
24 DRIVER'S LICENSE NUMBER OR ANY CONFIDENTIAL INFORMATION <—
25 PROHIBITED BY LAW FROM BEING DISCLOSED, PROVIDED THAT A
26 CONTRACTOR'S HOME ADDRESS AND HOME TELEPHONE NUMBER SHALL BE
27 DISCLOSED ONLY IF IT IS ALSO USED AS THE CONTRACTOR'S BUSINESS
28 ADDRESS AND BUSINESS TELEPHONE NUMBER.

29 (d) Nongrant or renewal of license.--The Department of
30 Banking shall not grant or renew a license to any person

1 registered, or required to be registered, as a home improvement
2 contractor pursuant to any of the following:

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

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

8 Section 4. Procedures for registration as a contractor.

9 (a) Application.--

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

14 ~~(i) For an individual applicant, the name, home~~ <—
15 ~~address, home telephone number and driver's license~~
16 ~~identification number of the applicant or an~~
17 ~~identification card issued by the Pennsylvania Department~~
18 ~~of Transportation, as well as the individual's business~~
19 ~~name, address and telephone number if different, and all~~
20 ~~prior business names and addresses of home improvement~~
21 ~~businesses.~~

22 ~~(ii) For a partnership applicant, the name, home~~
23 ~~address, home telephone number and driver's license~~
24 ~~identification number of each partner as well as the~~
25 ~~partnership name, address and telephone number.~~

26 ~~(iii) For a corporation, limited liability company~~
27 ~~or limited partnership applicant, the name, home address,~~
28 ~~home telephone number and driver's license identification~~
29 ~~number of each officer, each director or each individual~~
30 ~~holding greater than a 5% stake in the business, as well~~

1 ~~as the entity's business name, address and telephone~~
2 ~~number.~~

3 (I) FOR AN INDIVIDUAL APPLICANT, ALL OF THE
4 FOLLOWING:

5 (A) NAME.

6 (B) DATE OF BIRTH.

7 (C) HOME ADDRESS AND HOME TELEPHONE NUMBER.

8 (D) DRIVER'S LICENSE NUMBER OR A COPY OF AN
9 IDENTIFICATION CARD ISSUED BY THE STATE IN WHICH THE
10 INDIVIDUAL RESIDES.

11 (E) BUSINESS NAME, ADDRESS AND TELEPHONE NUMBER.

12 (F) FEDERAL EMPLOYER IDENTIFICATION NUMBER, IF
13 APPLICABLE.

14 (G) SOCIAL SECURITY NUMBER.

15 (H) ALL PRIOR BUSINESS NAMES AND ADDRESSES OF
16 HOME IMPROVEMENT BUSINESSES OPERATED BY THE
17 INDIVIDUAL.

18 (II) FOR A GENERAL PARTNERSHIP APPLICANT, ALL OF THE
19 FOLLOWING:

20 (A) NAME OF EACH PARTNER.

21 (B) DATE OF BIRTH OF EACH PARTNER.

22 (C) HOME ADDRESS AND HOME TELEPHONE NUMBER OF
23 EACH PARTNER.

24 (D) DRIVER'S LICENSE NUMBER OR A COPY OF AN
25 IDENTIFICATION CARD ISSUED BY THE STATE IN WHICH THE
26 PARTNER RESIDES, OF EACH PARTNER.

27 (E) PARTNERSHIP NAME, ADDRESS AND TELEPHONE
28 NUMBER.

29 (F) FEDERAL EMPLOYER IDENTIFICATION NUMBER, IF
30 APPLICABLE.

1 (G) SOCIAL SECURITY NUMBER OF EACH PARTNER.

2 (H) ALL PRIOR BUSINESS NAMES AND ADDRESSES OF
3 HOME IMPROVEMENT BUSINESSES OPERATED BY THE APPLICANT
4 AND EACH PARTNER.

5 (III) FOR A CORPORATION, LIMITED LIABILITY COMPANY
6 OR LIMITED PARTNERSHIP, ALL OF THE FOLLOWING:

7 (A) NAME OF EACH OFFICER, MANAGER AND GENERAL
8 PARTNER.

9 (B) DATE OF BIRTH OF EACH OFFICER, MANAGER AND
10 GENERAL PARTNER.

11 (C) HOME ADDRESS AND HOME TELEPHONE NUMBER OF
12 EACH OFFICER, MANAGER AND GENERAL PARTNER.

13 (D) DRIVER'S LICENSE NUMBER OR A COPY OF AN
14 IDENTIFICATION CARD ISSUED BY THE STATE IN WHICH THE
15 INDIVIDUAL RESIDES, OF EACH OFFICER, MANAGER AND
16 GENERAL PARTNER.

17 (E) ENTITY'S NAME, ADDRESS AND TELEPHONE NUMBER.

18 (F) FEDERAL EMPLOYER IDENTIFICATION NUMBER, IF
19 APPLICABLE.

20 (G) SOCIAL SECURITY NUMBER OF EACH OFFICER,
21 MANAGER AND GENERAL PARTNER.

22 (H) THE NAME OF EACH DIRECTOR OR EACH INDIVIDUAL
23 HOLDING GREATER THAN A 5% EQUITY INTEREST IN THE
24 ENTITY.

25 (I) ALL PRIOR BUSINESS NAMES AND ADDRESSES OF
26 HOME IMPROVEMENT BUSINESSES OPERATED BY EACH OFFICER,
27 MANAGER AND GENERAL PARTNER.

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

1 within this Commonwealth and any registration number or
2 license number issued to the entity by its home state or
3 political subdivision of such other state, if applicable.

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

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

13 (vii) A statement whether:

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

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

1 ~~or any other state or political subdivision thereof~~
2 ~~and, if so, the current status of the license.~~

3 (B) THE APPLICANT'S CERTIFICATE OR A SIMILAR <—
4 CERTIFICATE OR LICENSE ISSUED BY ANY OTHER STATE OR
5 POLITICAL SUBDIVISION THEREOF HAS EVER BEEN REVOKED
6 OR SUSPENDED PURSUANT TO AN ORDER ISSUED BY A COURT
7 OF COMPETENT JURISDICTION AND, IF SO, THE CURRENT
8 STATUS OF THE CERTIFICATE OR SIMILAR CERTIFICATE OR
9 LICENSE. THE STATEMENT REQUIRED BY THIS CLAUSE SHALL
10 INCLUDE THE SAME INFORMATION WITH RESPECT TO ANY
11 OTHER BUSINESS IN WHICH THE PERSON MAKING APPLICATION
12 HAS OR HAS EVER HAD AN INTEREST.

13 (viii) Whether within the last ten years the
14 applicant has ever been suspended or debarred from
15 participating in any Federal, State ~~or local~~, LOCAL OR <—
16 NOT-FOR-PROFIT program through which PUBLIC funding or <—
17 other assistance is provided to ~~consumers~~ OWNERS for home <—
18 improvements.

19 (ix) Proof of liability insurance covering personal
20 injury in an amount not less than \$50,000 and insurance
21 covering property damage caused by the work of a home
22 improvement contractor in an amount not less than
23 \$50,000.

24 (2) Information requested in paragraph (1)(i) through
25 (v) shall be for a ten-year period, prior to the time of
26 registration. The applicant shall provide information prior
27 to the last ten years or as further clarification of the
28 information provided, if the bureau requests such
29 information.

30 (b) Reporting of multiple registrations or licensures.--Any

1 registered contractor in this Commonwealth who is registered or
2 licensed as a home improvement contractor in any other state, or
3 political subdivision thereof, shall report this information to
4 the bureau on the initial registration and biennial registration
5 application. Any disciplinary action taken in such other
6 jurisdiction shall be reported to the bureau on the initial
7 registration application or, if such action occurred subsequent
8 to submission of an initial application, on the biennial
9 registration application or within 90 days of final disposition,
10 whichever is sooner. Multiple registrations or licensures shall
11 be noted by the bureau on the contractor's registration, and
12 such state, or political subdivision thereof, shall be notified
13 by the bureau of any disciplinary actions taken against such
14 contractor in this Commonwealth.

15 Section 5. Application fees.

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

23 SECTION 6. PROOF OF REGISTRATION. <—

24 A CONTRACTOR SHALL INCLUDE ITS REGISTRATION NUMBER IN ALL
25 ADVERTISEMENTS, ~~INCLUDING BUSINESS CARDS,~~ DISTRIBUTED WITHIN <—
26 THIS COMMONWEALTH AND ON ALL CONTRACTS, ESTIMATES AND PROPOSALS
27 WITH OWNERS IN THIS COMMONWEALTH. THIS SECTION SHALL APPLY TO
28 ALL ADVERTISEMENTS, CONTRACTS, ESTIMATES AND PROPOSALS CREATED
29 BY A CONTRACTOR AFTER THE EFFECTIVE DATE OF THIS ACT.

30 Section 6 7. Home improvement contracts. <—

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

3 (1) Is in writing and legible and contains the home
4 improvement contractor registration number of the performing
5 contractor.

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

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

8 (ii) The contractor or a salesperson on behalf of a
9 contractor.

10 (3) Contains the entire agreement between the owner and
11 the contractor, including attached copies of all required
12 notices.

13 (4) Contains the date of the transaction.

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

17 (6) Contains the approximate starting date and
18 completion date.

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

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

25 (9) Includes the amount of any down payment plus any
26 amount advanced for the purchase of special order materials.
27 The amount of the down payment and the cost of the special
28 order materials must be listed separately.

29 (10) Includes the names, addresses and telephone numbers
30 of all subcontractors on the project known at the date of

1 signing the contract. For the purposes of this paragraph, a
2 post office box number alone shall not be considered an
3 address.

4 (11) Except as provided in section 12, agrees to
5 maintain liability insurance covering personal injury in an
6 amount not less than \$50,000 and insurance covering property
7 damage caused by the work of a home improvement contractor in
8 an amount not less than \$50,000 and identifies the current
9 amount of insurance coverage maintained at the time of
10 signing the contract.

11 (12) INCLUDES THE TOLL-FREE TELEPHONE NUMBER UNDER
12 SECTION 3(B).

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13 (13) INCLUDES A NOTICE OF THE RIGHT OF RESCISSION UNDER
14 SUBSECTION (B).

15 (b) Right of rescission.--An individual signing a home
16 improvement contract, except as provided in the emergency
17 provisions of section 7 of the act of December 17, 1968
18 (P.L.1224, No.387), known as the Unfair Trade Practices and
19 Consumer Protection Law, shall be permitted to rescind the
20 contract without penalty regardless of where the contract was
21 signed, within three business days of the date of signing.

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

26 (d) Arbitration clause.--Nothing in this act shall preclude
27 the court from setting aside an arbitration clause on any basis
28 permitted under Pennsylvania law. If the contract contains an
29 arbitration clause, it shall meet the following requirements or
30 be deemed void by the court upon motion of either party, filed

1 prior to the commencement of arbitration:

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

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

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

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

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

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

16 (e) Voidable clauses.--If a home improvement contract
17 contains any of the following clauses, the home improvement
18 contract shall be voidable BY THE OWNER:

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19 (1) A hold harmless clause.

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

22 (3) A confession of judgment clause.

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

25 (5) (Reserved).

26 (6) An assignment of or order for payment of wages or
27 other compensation for services.

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

30 (8) A provision that the contractor shall be awarded

1 attorney fees and costs.

2 (9) A clause by which the owner relieves the contractor
3 from liability for acts committed by the contractor or the
4 contractor's agents in the collection of any payments or in
5 the repossession of any goods.

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

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

9 (i) the contract establishes a procedure by which
10 the ~~consumer~~ OWNER can choose not to renew the provision <—
11 or provisions, thereby avoiding any new fees or charges,
12 by providing written notice to the contractor via first
13 class mail postmarked no later than three business days
14 prior to any renewal;

15 (ii) such procedure is clearly and conspicuously
16 disclosed in the agreement; and

17 (iii) the contract includes a provision requiring
18 the contractor to notify the ~~consumer~~ OWNER of any <—
19 automatic or recurring renewal, and the ~~consumer's~~ <—
20 OWNER'S option to cancel such renewal, by mail not <—
21 earlier than 20 days and not later than ten days prior to
22 the date of any such renewal.

23 (f) Home improvement retailer contracts.--A home improvement
24 retailer having a net worth of more than \$50,000,000 or an
25 employee of that retailer that does not perform home
26 improvements shall comply with the provisions of this
27 subsection. No home improvement contract issued by a home
28 improvement retailer having a net worth of more than \$50,000,000
29 or an employee of that retailer shall be valid or enforceable
30 against an owner unless the contract:

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

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

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

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

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

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

Section 7 8. Home improvement fraud.

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

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

(2) receives any advance payment for performing home improvement services or providing home improvement materials and fails to perform or provide such services or materials

1 when specified in the contract taking into account any force
2 majeure or unforeseen labor strike that would extend the time
3 frame or unless extended by agreement with the ~~consumer~~ OWNER ←
4 and fails to return the payment received for such services or
5 materials which were not provided by that date;

6 (3) while soliciting a person to enter into an agreement
7 for home improvement services or materials, misrepresents or
8 conceals the contractor's or salesperson's real name, the
9 name of the contractor's business, the contractor's business
10 address or any other identifying information;

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

15 (5) misrepresents himself or another as an employee or
16 agent of the Federal, Commonwealth or municipal government,
17 any other governmental unit or any public utility, with the
18 intent to cause a person to enter into any agreement for
19 performing home improvement services or providing home
20 improvement materials;

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

23 (7) alters a home improvement agreement, mortgage,
24 promissory note or other document incident to performing or
25 selling a home improvement without the consent of the
26 consumer; or

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

30 (b) Prosecution.--Prosecutions under this section shall not

1 bar prosecution or conviction for any other crimes.

2 (c) Grading.--

3 (1) A violation of subsection (a)(1), (3), (4), (5), (6)
4 ~~or (7)~~, (7) OR (8) constitutes: <—

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

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

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

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

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

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

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

27 (5) Notwithstanding any other provisions of this
28 section, where a person commits a second or subsequent
29 offense described in subsection (a), the offense will
30 constitute a felony of the second degree regardless of the

1 amount of money involved. For this paragraph to be
2 applicable, the second or subsequent offense must have
3 occurred after the first conviction. Paragraph (4) shall not
4 be applicable to persons whose sentences would be enhanced
5 pursuant to this paragraph.

6 (6) In addition to any other penalty imposed by this
7 act, the court may revoke or suspend the certificate of <—
8 ~~registration issued under section 3.~~ At the time of
9 sentencing, the court shall state the reasons for such
10 revocation or suspension. A person whose registration has
11 been revoked or suspended may petition the court of original
12 jurisdiction for reinstatement after a period of five years
13 from the date of revocation or suspension, or as specified in
14 the court's order. THE ADMINISTRATIVE OFFICE OF PENNSYLVANIA <—
15 COURTS SHALL REPORT TO THE BUREAU ANY SUSPENSION OR
16 REVOCATION OF A CERTIFICATE ORDERED BY A COURT.

17 (d) Jurisdiction.--

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

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

1 to investigate or prosecute the case, and, if any such
2 challenge is made, the challenge shall be dismissed and no
3 relief shall be available in the courts of this Commonwealth
4 to the person making the challenge.

5 Section 9. Prohibited acts.

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6 No person shall:

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

8 (2) Fail to refund the amount paid for a home
9 improvement within ten days of either the acceptance and
10 execution of a return receipt for certified mail containing a
11 written request for a refund or the refusal to accept the
12 certified mail sent to the contractor's last known address if
13 all of the following apply:

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

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

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

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

27 (i) Make or accept an assignment or negotiation of
28 the right to receive payment under a home improvement
29 contract.

30 (ii) Get or grant credit or a loan on security of

1 the right to receive payment under a home improvement
2 contract.

3 (5) Abandon or fail to perform, without justification,
4 any home improvement contract or project engaged in or
5 undertaken by a contractor. For the purposes of this
6 paragraph, the term "justification" shall include nonpayment
7 by the owner as required under the contract or any other
8 violation of the contract by the owner.

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

13 (7) Prepare, arrange, accept or participate in the
14 financing of a home improvement contract with knowledge that
15 the home improvement contract states a greater monetary
16 obligation than the actual price of the home improvement.

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

20 (i) Accept a home improvement contract.

21 (ii) Perform the home improvement.

22 (iii) Charge for the home improvement at the price
23 advertised or offered.

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

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

28 (i) one-third of the home improvement contract
29 price; or

30 (ii) one-third of the home improvement contract

price plus the cost of special order materials that have been ordered.

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

(12) SUBSEQUENT TO ENTERING INTO AN AGREEMENT FOR HOME IMPROVEMENT SERVICES OR MATERIALS, CHANGES THE NAME OF THE CONTRACTOR'S BUSINESS, LIABILITY INSURANCE INFORMATION, THE CONTRACTOR'S BUSINESS ADDRESS OR ANY OTHER IDENTIFYING INFORMATION IN A FRAUDULENT OR DECEPTIVE MANNER LIKELY TO CAUSE CONFUSION OR MISUNDERSTANDING WITHOUT ADVISING THE OWNER IN WRITING WITHIN TEN DAYS FOLLOWING ANY SUCH CHANGE.

Section 9 10. Unfair Trade Practices and Consumer Protection Law.

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. Nothing in this act shall preclude a ~~consumer~~ AN OWNER from exercising any right provided under the Unfair Trade Practices and Consumer Protection Law.

Section 10 11. Regulations.

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

Section 11 12. Preemption of local registration.

Registration under this act shall preclude any requirement of payment of a fee or registration or licensing of any home improvement contractor by any political subdivision. Political subdivisions shall be permitted to require building permits and local enforcement of the building code for that political subdivision, for which a reasonable fee may be charged. This

1 provision does not affect a municipality's responsibilities or
2 authority under the act of November 10, 1999 (P.L.491, No.45),
3 known as the Pennsylvania Construction Code Act, or the
4 requirements under section 302(e) of the act of June 2, 1915
5 (P.L.736, No.338), known as the Workers' Compensation Act,
6 regarding workers' compensation. This provision does not affect
7 existing licensing standards in effect on the effective date of
8 this act, with respect to electricians and plumbers and other
9 trades, where licensing is conditioned on requirements of
10 testing or possession of certificates obtained through specific
11 training in electricity or plumbing or other trades. This
12 provision does not affect LOCAL REGULATIONS OR standards for
13 liability insurance adopted by a municipality prior to January
14 1, 2006, and which are in effect on the effective date of this
15 section.

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16 Section ~~12~~ 13. Exemptions.

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

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

21 (2) The Federal Government.

22 ~~Section 18. Applicability.~~

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

27 Section ~~19~~ 18. Repeal.

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

30 Section ~~20~~ 19. Effective date.

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1 This act shall take effect ~~in 180 days~~ JULY 1, 2009.

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