

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1426 Session of
2005

INTRODUCED BY McCALL, PRESTON, RUBLEY, BENNINGHOFF, BISHOP,
BLAUM, BROWNE, CALTAGIRONE, CASORIO, COHEN, CORRIGAN, COSTA,
CRAHALLA, DeLUCA, DeWEESE, DiGIROLAMO, FABRIZIO, FRANKEL,
GOODMAN, GRUCELA, HENNESSEY, HERSHEY, HESS, JAMES, JOSEPHS,
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PISTELLA, SHAPIRO, STEIL, SURRA, E. Z. TAYLOR, THOMAS, TIGUE,
WALKO, WATSON, WOJNAROSKI AND YOUNGBLOOD, APRIL 26, 2005

REFERRED TO COMMITTEE ON JUDICIARY, APRIL 26, 2005

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.

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11 The General Assembly of the Commonwealth of Pennsylvania
12 hereby enacts as follows:

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 \$5,000 during any period
30 of 12 consecutive months.

1 "Fund." The Home Improvement Guaranty Fund established in
2 section 14 (relating to Home Improvement Guaranty Fund).

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 (7) The provision by the contractor, or employee
12 thereof, of only advice or informational assistance to any
13 person seeking such advice or informational assistance in
14 regard to such person's selection and purchase of materials
15 that will be installed by a person or entity other than the
16 contractor even if such installation is arranged by the
17 contractor or employee thereof.

18 "Home improvement contract." An agreement between a
19 contractor or salesperson and an owner for the performance of a
20 home improvement.

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

28 "Person." An individual, partnership, limited partnership,
29 limited liability company, joint venture or corporation.

30 "Private residence." A single family dwelling, a multifamily

1 dwelling consisting of not more than three units or a single
2 unit located within any multifamily dwelling, including, but not
3 limited to, condominiums and co-op units.

4 "Salesperson." Any person who negotiates or offers to
5 negotiate a home improvement contract with an owner or solicits
6 or otherwise endeavors to procure by any means whatsoever,
7 directly or indirectly, a home improvement contract from an
8 owner. The term does not include a person who lacks the
9 authorization of his employer to negotiate the material
10 alteration of standard terms, conditions or pricing of the
11 employer's home improvement contract or who provides only advice
12 or informational assistance in support of the sale or attempted
13 sale of a home improvement product or service.

14 "Special order material." Any material purchased by a
15 contractor exclusively for the performance of a specific home
16 improvement contract and that has no value in the performance of
17 another home improvement contract.

18 Section 3. Registration of contractors and salespersons.

19 (a) General rule.--No person shall hold himself out as a
20 contractor or salesperson, nor shall that person perform any
21 home improvement, without first obtaining a certificate from the
22 bureau as provided in this act, except that a person registered
23 as a contractor shall not be required to obtain a salesperson's
24 certificate. An individual who has provided personal information
25 to the bureau when registering on behalf of a business is not
26 required to register as an individual so long as the person
27 performs home improvements solely on behalf of the registered
28 business.

29 (b) Salespersons.--

30 (1) No contractor shall employ or use the services of

1 any salesperson to procure business from an owner unless the
2 salesperson is registered under this act.

3 (2) No person shall act as a home improvement
4 salesperson on behalf of an unregistered contractor.

5 (c) Liability.--No business entity registered pursuant to
6 this act shall be relieved of responsibility under this act for
7 the conduct and acts of its agents, employees, officers or
8 directors, nor shall any person be relieved of responsibility
9 under this act by reason of his employment or relationship with
10 such business entity.

11 (d) Effects of unregistered status.--No unregistered
12 contractor or salesperson shall have standing to sue, countersue
13 or raise a defense of nonpayment in any dispute arising from a
14 home improvement. No unregistered contractor or salesperson may
15 file a mechanic's lien with respect to a home improvement.

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

20 (f) Contractor or salesperson restriction.--A person may not
21 act as a home improvement contractor or salesperson if the
22 person is licensed, or required to be licensed, by the
23 Department of Banking pursuant to the act of December 12, 1980
24 (P.L.1179, No.219), known as the Secondary Mortgage Loan Act, or
25 the act of December 22, 1989 (P.L.687, No.90), known as the
26 Mortgage Bankers and Brokers and Consumer Equity Protection Act.

27 (g) Nongrant or renewal of license.--The Department of
28 Banking shall not grant or renew a license pursuant to the
29 Secondary Mortgage Loan Act, or the Mortgage Bankers and Brokers
30 and Consumer Equity Protection Act to any person registered, or

1 required to be registered, as a home improvement contractor or
2 salesperson.

3 (h) Compliance.--All financing of home improvements by a
4 home improvement contractor shall comply with the act of August
5 14, 1963 (P.L.1082, No.464), known as the Home Improvement
6 Finance Act.

7 Section 4. Procedures for registration.

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

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

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

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

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

1 subdivision of such other state, if applicable.

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

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

11 (7) A statement whether:

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

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

28 (8) Whether within the last ten years the applicant has
29 ever been suspended or debarred from participating in any
30 Federal, State or local program through which funding or

1 other assistance is provided to consumers for home
2 improvements.

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

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

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

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

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

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

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

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

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

13 Section 5. Application fees.

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

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

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

19 (b) Credit for municipal fees.--

20 (1) The fee to be paid under subsection (a)(1) shall be
21 reduced by an amount equal to any fee required to be paid by
22 the home improvement contractor for the privilege of
23 conducting business within the municipality. In order for the
24 fee to be reduced, the home improvement contractor shall
25 provide the department with written proof of the amount paid
26 to the municipality at the time of the registration.

27 (2) The credit provided for in this subsection shall not
28 apply to fees paid by the home improvement contractor which
29 are specific to a particular home improvement.

30 (c) Dedicated use of fees.--The application fees collected

1 shall be used by the bureau for the purposes of fulfilling its
2 obligations under this act relating to registration. The balance
3 of the application fees collected shall be used by the bureau
4 for the purposes of carrying out and enforcing the provisions of
5 this act. The bureau shall establish rules or regulations
6 regarding payment, collection and distribution of money payable
7 to and received by the bureau pursuant to this section.

8 (d) Multiple registrations.--Home improvement contractors or
9 home improvement salespersons applying as a business must pay
10 the application fee in this section and the fund fee set forth
11 in section 14 (relating to Home Improvement Guaranty Fund) only
12 as a business entity, regardless of the number of persons who
13 provide registration information pursuant to this act.

14 Section 6. Certificate of registration and renewal.

15 (a) Duty of bureau.--Upon receipt of a completed application
16 and fee, the bureau shall issue and deliver to the applicant a
17 certificate to engage in the business for which the application
18 was made or refuse to issue the certificate pursuant to this act
19 or an order of a court of competent jurisdiction within seven
20 days.

21 (b) Nontransferability.--Certificates issued to home
22 improvement contractors or salespersons shall not be
23 transferable or assignable.

24 (c) Duration of certificate.--All certificates issued under
25 this act shall expire biennially. The expiration date shall be
26 placed upon the certificate. The fee for renewal of a
27 certificate shall be the same as the fee charged for an original
28 application under section 5 (relating to application fees). The
29 information required pursuant to section 4 (relating to
30 procedures for registration) shall also be required for renewal

1 of certification. The bureau shall provide a form for renewal of
2 registration.

3 (d) Grounds for denial and revocation of registration.--The
4 bureau shall deny registration to any contractor or salesperson
5 against whom a civil judgment has been entered in favor of an
6 owner that was related to a home improvement transaction if the
7 transaction occurred after the effective date of this act and
8 the judgment remains unsatisfied. The bureau may permit a
9 contractor or salesperson to receive a new or renewed
10 certificate after the contractor has entered into a written
11 agreement whereby the contractor agrees to pay the judgment in
12 full in the form of periodic payments over a specific period of
13 time. If the contractor or salesperson does not pay in
14 accordance with the terms of the agreement, the bureau shall
15 immediately revoke the contractor's or salesperson's certificate
16 of registration.

17 Section 7. Certificate holder to exhibit and advertise
18 certificate.

19 Contractors and salespersons shall exhibit their certificates
20 upon request by any interested party. All print advertisements
21 of a home improvement contractor or salesperson shall include
22 the registration number issued by the bureau. Any home
23 improvement contract shall include a registration number of the
24 home improvement contractor who is party to the contract.

25 Section 8. Prohibited acts.

26 No person shall:

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

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

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

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

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

7 (6) Represent in any manner that his registration
8 constitutes an endorsement of the quality of his workmanship
9 or of his competency by the bureau.

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

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

18 (ii) More than 30 days has elapsed since the
19 starting date specified in the written contract.

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

24 (9) Utter, offer or use a completion certificate or
25 other proof that a home improvement contract is complete or
26 satisfactorily concluded:

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

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

1 the right to receive payment under a home improvement
2 contract;
3 when the person knows or has reason to know that such
4 document or proof is false.

5 (10) Abandon or fail to perform, without justification,
6 a home improvement contract. The term "without justification"
7 shall include, but not be limited to, nonpayment by the owner
8 as required under the contract or any other violation of the
9 contract by the owner.

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

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

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

20 (i) to accept a home improvement contract;

21 (ii) to perform the home improvement; or

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

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

27 (15) Act as a contractor or sell a home improvement
28 under a name other than that which is stated on the person's
29 certificate.

30 (16) Demand or receive any payment for a home

1 improvement before the home improvement contract is signed.

2 (17) For a home improvement contract in which the total
3 price exceeds \$1,000, receive a deposit in excess of:

4 (i) one-half of the home improvement contract price;

5 or

6 (ii) the cost of any special order materials or
7 merchandise purchased or to be purchased under the home
8 improvement contract;

9 whichever amount is greater.

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

13 (19) Fail to pay fees or assessments required by this
14 act.

15 (20) Be suspended or debarred from a Federal, State or
16 local program as described in section 4(a)(8) (relating to
17 procedures for registration).

18 Section 9. Home improvement fraud.

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

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

28 (2) receives any advance payment for performing home
29 improvement services or providing home improvement materials,
30 fails to perform or provide such services or materials within

1 the date specified in the agreement taking into account any
2 force majeure or unforeseen labor strike that would extend
3 the time frame or unless extended by agreement with the
4 consumer and fails to return the payment received for such
5 services or 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) alters a home improvement agreement, mortgage,
22 promissory note or other document incident to performing or
23 selling a home improvement without the consent of the
24 consumer; or

25 (7) directly or indirectly publishes a false or
26 deceptive advertisement in violation of State law governing
27 advertising about home improvement.

28 (b) Grading.--

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

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

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

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

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

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

13 (3) Amounts involved pursuant to one scheme or course of
14 conduct, whether involving one or more victims, may be
15 aggregated in determining the grade of the offense pursuant
16 to subsection (a).

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

23 (5) Notwithstanding any other provisions of this
24 section, where a person commits a second or subsequent
25 offense described in subsection (a), the offense will
26 constitute a felony of the second degree regardless of the
27 amount of money involved. For this paragraph to be
28 applicable, the second or subsequent offense must have
29 occurred after the first conviction. Paragraph (4) shall not
30 be applicable to persons whose sentences would be enhanced

1 pursuant to this paragraph.

2 (6) In addition to any other penalty imposed by this
3 act, the court may revoke or suspend the certificate of
4 registration issued under section 6 (relating to certificate
5 of registration and renewal). At the time of sentencing, the
6 court shall state the reasons for such revocation or
7 suspension.

8 (c) Jurisdiction.--

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

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

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

27 (a) General rule.--A violation of any of the provisions of
28 this act shall be deemed a violation of the act of December 17,
29 1968 (P.L.1224, No.387), known as the Unfair Trade Practices and
30 Consumer Protection Law.

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

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

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

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

14 Section 11. Regulations.

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

19 Section 12. Exemptions.

20 Sections 3 (relating to registration of contractors and
21 salespersons), 4 (relating to procedures for registration), 5
22 (relating to application fees), 6 (relating to certificate of
23 registration and renewal), 7 (relating to certificate holder to
24 exhibit and advertise certificate), 13 (relating to home
25 improvement contracts), 14 (relating to Home Improvement
26 Guaranty Fund), 15 (relating to claims against fund), 16
27 (relating to procedure for submitting claims), 18 (relating to
28 notice of suspension or revocation) and this section shall not
29 apply to any of the following persons or organizations:

30 (1) The Commonwealth, municipalities and political

1 subdivisions within the Commonwealth or any department or
2 agency of the Commonwealth or such municipalities.

3 (2) The government of the United States or any of its
4 departments or agencies.

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

8 Section 13. Home improvement contracts.

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

11 (1) Is in writing and legible.

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

14 (3) Contains the entire agreement between the owner and
15 the contractor.

16 (4) Contains the date of the transaction.

17 (5) Contains the name, address and certificate number of
18 the contractor.

19 (6) Contains the approximate starting date and
20 completion date.

21 (7) Is entered into by a registered contractor or a
22 registered salesperson.

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

25 (i) each contractor and salesperson must be
26 registered by the bureau; and

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

29 (b) Rescission right.--All home improvement contracts shall
30 be subject to section 7 of the act of December 17, 1968

1 (P.L.1224, No.387), known as the Unfair Trade Practices and
2 Consumer Protection Law.

3 (c) Copy to be provided.--A contractor or salesperson shall
4 provide and deliver to the owner, without charge, a completed
5 copy of the home improvement contract at the time the contract
6 is executed.

7 Section 14. Home Improvement Guaranty Fund.

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

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

20 (c) Minimum balance.--

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

29 (2) Failure to make payments to the fund as required by
30 this act shall result in suspension of registration. Barring

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

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

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

12 Section 15. Claims against fund.

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

30 (b) Acts of subcontractors, salespersons and employees.--For

1 purposes of recovery from the fund, the act or omission of a
2 registered contractor or registered salesperson includes the act
3 or omission of a subcontractor, salesperson or employee of the
4 registered contractor or registered salesperson whether or not
5 any express agency relationship exists so long as the
6 subcontractor, salesperson or employee acted within the scope of
7 the home improvement contract.

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

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

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

14 (d) Limitation on recovery.--

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

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

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

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

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

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

claimant's actual loss, to a maximum of \$10,000, for a claim made on one contract. 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 and all appeal rights have expired or been exhausted, or, in the

1 case of an assurance of voluntary compliance, within the later
2 of two years of entry into such assurance or one year after
3 nonpayment according to the terms of the assurance.

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

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

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

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

1 or salesperson, the bureau may conduct an investigation to
2 determine if the contractor or salesperson is possessed of
3 assets liable to be sold or applied in satisfaction of the claim
4 on the fund. If the bureau discovers any such assets, the bureau
5 may take any lawful action necessary for the reimbursement of
6 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 bureau 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 bureau may permit a contractor or
15 salesperson to receive a new or renewed certificate after that
16 contractor or salesperson has entered into an agreement with the
17 bureau whereby the contractor or salesperson agrees to repay the
18 fund in full in the form of periodic payments over a set period
19 of time. If the contractor or salesperson fails to pay in
20 accordance with the terms of the agreement, the bureau shall
21 automatically suspend the contractor's or salesperson's
22 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) (relating to claims against fund), if
27 applicable, and the following information on a form provided by
28 the bureau:

29 (1) The amount claimed based on the actual loss.

30 (2) The facts giving rise to the claim.

1 (3) Any other evidence that supports the claim.

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

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

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

13 Section 17. Reimbursement of fund.

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

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

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

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

22 (i) The amount paid from the fund.

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

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

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

1 full, the bureau may initiate an action against the contractor
2 or salesperson in a court of competent jurisdiction for the
3 unreimbursed amount.

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

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

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

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

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

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

25 Section 18. Notice of suspension or revocation.

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

29 Section 19. Effective date.

30 This act shall take effect in 180 days.