
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2283 Session of
1998

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TRICH, D. W. SNYDER AND STEELMAN, MARCH 11, 1998

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, MARCH 11, 1998

AN ACT

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

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

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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 "Department." The Department of Labor and Industry of the
2 Commonwealth.

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

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

18 (1) The construction of a new home.

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

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

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

1 (5) Any work performed without compensation by the owner
2 on the owner's private residence or residential rental
3 property.

4 "Home improvement contract." An agreement between a
5 contractor or salesperson and an owner for the performance of a
6 home improvement.

7 "Owner." A person who owns or resides in a private residence
8 and includes any agent of that person. An owner of a private
9 residence shall not be required to reside in such residence to
10 be deemed an owner under this act. A person who owns four or
11 more private residences shall not be deemed an owner except with
12 respect to the person's primary residence or the part of the
13 building which houses the primary residence of the owner.

14 "Person." An individual, partnership, limited partnership,
15 limited liability company, joint venture or corporation.

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

20 "Salesperson." Any individual who negotiates or offers to
21 negotiate a home improvement contract with an owner or solicits
22 or otherwise endeavors to procure by any means whatsoever,
23 directly or indirectly, a home improvement contract from an
24 owner.

25 Section 3. Registration of contractors and salespersons.

26 (a) General rule.--No person shall hold himself out as a
27 contractor or salesperson, nor shall that person perform any
28 home improvement, without first obtaining a certificate from the
29 department as provided in this act, except that a person
30 registered as a contractor shall not be required to obtain a

1 salesperson's certificate. An individual who has provided
2 personal information to the department when registering on
3 behalf of a business is not required to register as an
4 individual so long as the person performs home improvements
5 solely on behalf of the registered business.

6 (b) Salespersons.--

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

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

12 (c) Liability.--No business entity registered pursuant to
13 this act shall be relieved of responsibility under this act for
14 the conduct and acts of its agents, employees, officers or
15 directors, nor shall any individual be relieved of
16 responsibility under this act by reason of his employment or
17 relationship with such business entity.

18 (d) Effects of unregistered status.--No unregistered
19 contractor or salesperson shall have standing to sue, countersue
20 or raise a defense of nonpayment in any dispute arising from a
21 home improvement. No unregistered contractor or salesperson may
22 file a mechanic's lien with respect to a home improvement.

23 (e) Public access to registration information.--The
24 department shall maintain a toll-free telephone number from
25 which a caller can obtain information as to whether a contractor
26 or salesperson is registered with the department pursuant to
27 this act.

28 Section 4. Procedures for registration.

29 (a) Application.--A person desiring a certificate as a
30 contractor or salesperson shall apply to the department in

1 writing on a form provided by the department. The application
2 shall include, but not be limited to, the following information:

3 (1) For an individual applicant, the name, home address,
4 home telephone number and driver's license identification
5 number of the applicant, as well as the individual's business
6 name, address and telephone number if different.

7 (2) For a partnership applicant, the name, home address,
8 home telephone number and driver's license identification
9 number of each partner as well as the partnership name,
10 address and telephone number.

11 (3) For a corporation, limited liability company or
12 limited partnership applicant, the name, home address, home
13 telephone number and driver's license identification number
14 of each officer, each director or each individual holding
15 greater than a 10% stake in the business, as well as the
16 entity's business name, address and telephone number.

17 (4) For an out-of-State corporation, limited liability
18 or limited partnership, the name and address of the entity's
19 resident agent or registered office provider within this
20 Commonwealth.

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

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

30 (7) A statement whether:

1 (i) The individual making application, even if doing
2 so as part of a business entity application, has ever
3 been convicted of a criminal offense related to a home
4 improvement transaction, fraud, theft, a crime of
5 deception or a crime involving fraudulent business
6 practices, as well as a statement whether the applicant
7 has ever had a civil judgment entered against the
8 applicant or a business in which the applicant held an
9 interest that was related to a home improvement
10 transaction.

11 (ii) Whether the applicant's certificate or the
12 certificate of a business with which the individual
13 making application held an interest, has ever been
14 revoked or suspended pursuant to an order issued by a
15 court of competent jurisdiction.

16 (8) Any financial information deemed appropriate by the
17 department or the bureau.

18 (9) Whether within the last ten years the applicant has
19 ever been suspended or debarred from participating in any
20 Federal, State or local program through which funding or
21 other assistance is provided to consumers for home
22 improvements.

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

25 (1) who has had a certificate of registration revoked
26 within five years preceding the application; or

27 (2) whose officer or principal has had his registration
28 revoked within five years preceding the application.

29 (c) Contractual relationships.--In addition to the
30 information required in subsection (a), a contractor shall be

1 required to notify the department of any employment or other
2 contractual relationship between the contractor and any
3 salesperson. Information under this subsection shall be updated
4 by the contractor, on a form provided by the department, on an
5 as-needed basis throughout the period of registration. A
6 contractor shall be required to submit said information within
7 ten days of entering into that relationship with a salesperson.
8 Section 5. Application fees.

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

10 (1) A home improvement contractor or renewal of that
11 certificate shall be accompanied by a fee of \$100.

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

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

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

28 Section 6. Certificate of registration and renewal.

29 (a) Duty of department.--Upon receipt of a completed
30 application and fee, the department shall issue and deliver to

1 the applicant a certificate to engage in the business for which
2 the application was made or refuse to issue the certificate
3 pursuant to this act or an order of a court of competent
4 jurisdiction.

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

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

17 (d) Renewal obligation.--Failure to receive a notice of
18 expiration or a renewal application shall not exempt a
19 contractor or salesperson from the obligation to renew.

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

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

4 Section 7. Certificate holder to exhibit and advertise
5 certificate.

6 Contractors and salespersons shall exhibit their certificates
7 upon request by any interested party, state in any advertisement
8 the fact that they are registered, and include their
9 registration numbers.

10 Section 8. Prohibited acts.

11 No person shall:

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

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

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

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

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

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

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

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

30 (ii) More than 30 days has elapsed since the

1 starting date specified in the written contract or the
2 date of the contract if such contract does not specify a
3 starting date.

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

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

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

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

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

19 (10) Abandon or fail to perform, without justification,
20 a home improvement contract.

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

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

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

- 1 (i) to accept a home improvement contract;
- 2 (ii) to perform the home improvement; or
- 3 (iii) to charge for the home improvement at the
- 4 price advertised or offered.

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

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

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

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

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

20 (19) Receive a deposit of more than one-third of the
21 home improvement contract price.

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

25 (21) Fail to pay fees or assessments required by this
26 act.

27 (22) Be suspended or debarred from a Federal, State or
28 local program as described in section 4(a)(9).

29 Section 9. Home improvement fraud.

30 (a) Offense defined.--A person commits the offense of home

1 improvement fraud if, with intent to defraud or injure anyone or
2 with knowledge that he is facilitating a fraud or injury to be
3 perpetrated by anyone, the actor:

4 (1) makes a false or misleading statement for the
5 purpose of inducing, encouraging or soliciting a person to
6 enter into any written or oral contract or agreement for a
7 home improvement or purchase of home improvement materials;

8 (2) performs services or uses materials which cause the
9 cost of the home improvement to exceed any previously agreed-
10 to price without the permission of the consumer;

11 (3) misrepresents or conceals, while soliciting for a
12 home improvement or purchasing home improvement materials,
13 the contractor's or salesperson's real name, the name of the
14 contractor's business, the contractor's business address or
15 any other identifying information;

16 (4) damages the property of a person with the intent of
17 having that person enter into a written or oral agreement or
18 contract for home improvement or purchase of home improvement
19 materials;

20 (5) misrepresents himself, herself or another to be an
21 employee or agent of any unit of the Federal, Commonwealth or
22 municipal government or any other governmental unit, or an
23 employee or agent of any public utility, with the intent to
24 cause a person to enter into, with himself, herself or
25 another, any contract or agreement for home improvement or
26 purchase of home improvement materials;

27 (6) executes or materially alters a home improvement
28 contract, mortgage, promissory note or other document
29 incident to performing or selling a home improvement; or

30 (7) directly or indirectly publishes a false, deceptive

1 or misleading advertisement about home improvement.

2 (b) Grading of the offense.--

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

5 (i) a felony of the third degree if the amount of
6 the contract or agreement solicited, or the amount of the
7 damage pursuant to paragraph (4), exceeds \$1,000;

8 (ii) a misdemeanor of the first degree if the amount
9 of the contract or agreement solicited, or the amount of
10 the damage pursuant to paragraph (4), is \$1,000 or less;
11 or

12 (iii) a misdemeanor of the first degree if the
13 amount involved cannot be satisfactorily ascertained.

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

15 (i) a felony of the third degree if the amount of
16 the overcharge is greater than 25% over the previously
17 agreed-to price;

18 (ii) a misdemeanor of the first degree if the amount
19 of the overcharge is 25% or less of the previously
20 agreed-to price; or

21 (iii) a misdemeanor of the first degree if the
22 amount of the overcharge cannot be satisfactorily
23 ascertained.

24 (3) A violation of subsection (a)(7) constitutes a
25 misdemeanor of the first degree.

26 (4) Amounts involved pursuant to one scheme or course of
27 conduct, whether involving one or more victims, may be
28 aggregated in determining the grade of the offense pursuant
29 to paragraph (1) or (2).

30 (5) Where the person commits an offense under subsection

1 (a) and the victim of the offense is 60 years of age or
2 older, the grading of the offense shall be one grade higher
3 than specified in paragraphs (1), (2) and (3).

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

13 (7) In addition to any other penalty imposed by the
14 court, the court may revoke or suspend the certificate of
15 registration issued under 12 Pa.C.S. Ch. 53 (relating to home
16 improvement practices). At the time of sentencing, the court
17 shall state the reasons for such revocation or suspension.

18 (c) Jurisdiction.--

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

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

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

6 (d) Definition.--As used in this section, the term "home
7 improvement" means the same as "home improvement" in 12 Pa.C.S.
8 § 5302 (relating to definitions).

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

10 (a) General rule.--A violation of any of the provisions of
11 this act shall be deemed a violation of the act of December 17,
12 1968 (P.L.1224, No.387), known as the Unfair Trade Practices and
13 Consumer Protection Law.

14 (b) Suspension or revocation of registration.--Upon the
15 request of the Attorney General or a district attorney, a court
16 may suspend or revoke a certificate of registration for
17 violations of this act. The court may suspend or revoke a
18 certificate of registration as follows:

19 (1) For the first violation, a suspension of up to one
20 year.

21 (2) For the second violation, a suspension of up to two
22 years.

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

26 Section 11. Regulations.

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

1 Section 12. Exemptions.

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

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

7 (2) The government of the United States or any of its
8 departments or agencies.

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

12 Section 13. Home improvement contracts.

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

15 (1) Is in writing and legible.

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

18 (3) Contains the entire agreement between the owner and
19 the contractor.

20 (4) Contains the date of the transaction.

21 (5) Contains the name, address and certificate number of
22 the contractor.

23 (6) Contains the approximate starting date and
24 completion date.

25 (7) Is entered into by a registered contractor or a
26 registered salesperson.

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

29 (i) each contractor and salesperson must be
30 registered by the department; and

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

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

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

11 Section 14. Home Improvement Guaranty Fund.

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

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

23 (c) Minimum balance.--

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

1 calendar year.

2 (2) Failure to make payments to the fund as required by
3 this act shall result in suspension of registration. Barring
4 the existence of other grounds for suspension or revocation
5 of registration, the contractor's or salesperson's
6 certificate of registration shall be reinstated upon full
7 payment of all the required fees.

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

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

15 Section 15. Claims against fund.

16 (a) General rule.--An owner may be compensated from the fund
17 for an actual loss that results from an act or omission or a
18 violation of this act by a registered contractor or salesperson
19 as found by a court of competent jurisdiction, upon the final
20 determination of or expiration of time for appeal in connection
21 with any such judgment. In the event the bureau and a contractor
22 or salesperson enter into an assurance of voluntary compliance,
23 as described in section 5 of the act of December 17, 1968
24 (P.L.1224, No.387), known as the Unfair Trade Practices and
25 Consumer Protection Law, which requires payment of restitution
26 to an owner and the contractor or salesperson fails to pay as
27 required by the terms of the assurance of voluntary compliance,
28 the bureau shall issue an order of payment from the fund to the
29 owner. The payment made pursuant to an assurance of voluntary
30 compliance shall be considered a claim for purposes of

1 reimbursement of the fund, however, subsection (g) shall not be
2 applicable.

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

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

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

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

15 (d) Limitation on recovery.--

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

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

19 (ii) More than \$50,000 to all claimants for acts or
20 omissions of one contractor or salesperson unless, after
21 the bureau has paid out \$50,000 on account of acts or
22 omissions of the contractor or salesperson, the
23 contractor or salesperson reimburses the fund. However,
24 in no case shall any one contractor or salesperson be
25 indebted, at any one time, to the fund for more than
26 \$50,000.

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

30 (iv) An amount as a result of a default judgment in

1 court.

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

8 (e) Excluded claimants.--

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

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

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

19 (iii) an immediate relative of an employee, officer,
20 director, partner or other party which holds a financial
21 stake in the business of the contractor or salesperson.

22 (2) An owner may make a claim against the fund only if
23 the owner:

24 (i) resides in the residence as to which the claim
25 is made; or

26 (ii) does not own more than three dwelling places,
27 unless the dwelling place as to which the claim is made
28 is the primary residence of the owner or the part of the
29 building which houses the primary residence of the owner.

30 (f) Limitations period.--A claim must be made against the

1 fund within two years after the claimant obtains an entry of
2 final judgment or decree against the contractor or salesperson
3 and all appeal rights have expired or been exhausted, or, in the
4 case of an assurance of voluntary compliance, within the later
5 of two years of entry into such assurance or one year after
6 nonpayment according to the terms of the assurance.

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

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

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

1 (j) Investigation by bureau.--As provided in section 17, if
2 the bureau pays any amount from the fund as a result of a claim
3 against a contractor or salesperson, the bureau may conduct an
4 investigation to determine if the contractor or salesperson is
5 possessed of assets liable to be sold or applied in satisfaction
6 of the claim on the fund. If the bureau discovers any such
7 assets, the bureau may take any action necessary for the
8 reimbursement of the fund.

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

25 Section 16. Procedure for submitting claims.

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

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

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

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

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

4 (b) Copy of claim to contractor.--On receipt of a claim
5 pursuant to this section, the bureau shall send a copy of the
6 claim to the contractor alleged to be responsible for the actual
7 loss.

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

11 Section 17. Reimbursement of fund.

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

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

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

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

20 (i) The amount paid from the fund.

21 (ii) Interest on the amount at an annual rate of at
22 least 10%, as set by the bureau.

23 All money that the bureau recovers on a claim shall be deposited
24 in the fund.

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

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

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

5 (2) The contractor or salesperson has not reimbursed the
6 fund in full.

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

10 (d) Withholding of tax refund.--The bureau may refer to the
11 Department of Revenue for collection, a debt owed to the bureau
12 by an individual or business on whose account or under whose
13 business a claim was paid from the fund and who is at least one
14 year behind in reimbursement payments to the fund.

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

19 Section 18. Notice of suspension or revocation.

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

23 Section 19. Effective date.

24 This act shall take effect in 180 days.