

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2283 Session of 1998

INTRODUCED BY WOGAN, McCALL, PERZEL, BELARDI, COY, DeLUCA, ROONEY, SERAFINI, MELIO, FICHTER, TRAVAGLIO, WOJNAROSKI, BELFANTI, E. Z. TAYLOR, GIGLIOTTI, TRELLO, SURRA, LAUGHLIN, OLASZ, J. TAYLOR, STABACK, ORIE, SHANER, MARSICO, VAN HORNE, TRICH, D. W. SNYDER, STEELMAN AND LAGROTTA, MARCH 11, 1998

AS REPORTED FROM COMMITTEE ON CONSUMER AFFAIRS, HOUSE OF REPRESENTATIVES, AS AMENDED, APRIL 20, 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:

9 TABLE OF CONTENTS

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

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

13 Section 1. Short title.

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

16 Section 2. Definitions.

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

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

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

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

1 "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~~ THREE ←
11 or more private residences shall not be deemed an owner except
12 with respect to the person's primary residence or the part of
13 the 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)~~ (8) Whether within the last ten years the applicant <—
19 has 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 (9) IF THE DEPARTMENT OR THE BUREAU DETERMINES THAT <—
24 ADDITIONAL INFORMATION IS NECESSARY TO EFFECTUATE THE PURPOSE
25 OF THIS ACT, THE DEPARTMENT OR THE BUREAU SHALL PROMULGATE
26 REGULATIONS TO REQUIRE THE SUBMISSION OF THE ADDITIONAL
27 INFORMATION.

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

30 (1) who has had a certificate of registration revoked

1 within five years preceding the application; ~~or~~ <—

2 (2) whose officer or principal has had his registration
3 revoked within five years preceding the application; OR <—

4 (3) WHO HAS BEEN SUSPENDED OR DEBARRED WITHIN THE LAST
5 TEN YEARS FROM PARTICIPATING IN ANY FEDERAL, STATE OR LOCAL
6 PROGRAM WHICH PROVIDES FUNDING TO CONSUMERS FOR HOME
7 IMPROVEMENTS.

8 (c) Contractual relationships.--In addition to the
9 information required in subsection (a), a contractor shall be
10 required to notify the department of any employment or other
11 contractual relationship between the contractor and any
12 salesperson. Information under this subsection shall be updated <—

13 by the contractor, on a form provided by the department, on an
14 as needed basis throughout the period of registration. A
15 contractor shall be required to submit said information within
16 ten days of entering into that relationship with a salesperson.

17 SALESPERSON. A CONTRACTOR SHALL BE REQUIRED TO SUBMIT SUCH <—
18 INFORMATION WITHIN 20 DAYS OF ENTERING INTO AN EMPLOYMENT OR
19 OTHER CONTRACTUAL RELATIONSHIP WITH A SALESPERSON. INFORMATION
20 UNDER THIS SUBSECTION SHALL BE UPDATED BY THE CONTRACTOR, ON A
21 FORM PROVIDED BY THE DEPARTMENT, ON AN AS-NEEDED BASIS
22 THROUGHOUT THE PERIOD OF REGISTRATION.

23 (D) REPORTING OF MULTIPLE REGISTRATION OR LICENSURE.--ANY
24 REGISTERED CONTRACTOR OR SALESPERSON IN THIS COMMONWEALTH WHO IS
25 REGISTERED OR LICENSED AS A HOME IMPROVEMENT CONTRACTOR OR
26 SALESPERSON IN ANY OTHER STATE, OR POLITICAL SUBDIVISION
27 THEREOF, SHALL REPORT THIS INFORMATION TO THE DEPARTMENT ON THE
28 INITIAL REGISTRATION AND BIENNIAL REGISTRATION APPLICATION. ANY
29 DISCIPLINARY ACTION TAKEN IN SUCH OTHER JURISDICTION SHALL BE
30 REPORTED TO THE DEPARTMENT ON THE INITIAL REGISTRATION

1 APPLICATION OR, IF SUCH ACTION OCCURRED SUBSEQUENT TO SUBMISSION
2 OF AN INITIAL APPLICATION, ON THE BIENNIAL REGISTRATION
3 APPLICATION OR WITHIN 90 DAYS OF FINAL DISPOSITION, WHICHEVER IS
4 SOONER. MULTIPLE REGISTRATION OR LICENSURE SHALL BE NOTED BY THE
5 DEPARTMENT ON THE CONTRACTOR'S OR SALESPERSON'S RECORD, AND SUCH
6 STATE, OR POLITICAL SUBDIVISION THEREOF, SHALL BE NOTIFIED BY
7 THE DEPARTMENT OF ANY DISCIPLINARY ACTIONS TAKEN AGAINST SUCH
8 CONTRACTOR OR SALESPERSON IN THIS COMMONWEALTH.

9 Section 5. Application fees.

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

11 (1) A home improvement contractor or renewal of that
12 certificate shall be accompanied by a fee of ~~\$100~~ \$50. ←

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

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

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

29 Section 6. Certificate of registration and renewal.

30 (a) Duty of department.--Upon receipt of a completed

1 application and fee, the department shall issue and deliver to
2 the applicant a certificate to engage in the business for which
3 the application was made or refuse to issue the certificate
4 pursuant to this act or an order of a court of competent
5 jurisdiction WITHIN SEVEN DAYS. <—

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

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

19 ~~(d) Renewal obligation. Failure to receive a notice of <—~~
20 ~~expiration or a renewal application shall not exempt a~~
21 ~~contractor or salesperson from the obligation to renew.~~

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

1 contractor agrees to pay the judgment in full in the form of
2 periodic payments over a specific period of time. If the
3 contractor or salesperson does not pay in accordance with the
4 terms of the agreement, the department shall immediately revoke
5 the contractor's or salesperson's certificate of registration.

6 Section 7. Certificate holder to exhibit and advertise
7 certificate.

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

12 Section 8. Prohibited acts.

13 No person shall:

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

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

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

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

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

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

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

30 (i) No substantial portion of the contracted work

1 has been performed at the time of the request.

2 (ii) More than 30 days has elapsed since the
3 starting date specified in the written contract or the
4 date of the contract if such contract does not specify a
5 starting date.

6 (8) Accept a ~~completion certificate~~ MUNICIPAL ←
7 CERTIFICATE OF OCCUPANCY or other proof that performance of a
8 home improvement contract is complete or satisfactorily
9 concluded with knowledge that the document or proof is false
10 and the performance is incomplete.

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

14 (i) to make or accept an assignment or negotiation
15 of the right to receive payment under a home improvement
16 contract; or

17 (ii) to get or grant credit or a loan on security of
18 the right to receive payment under a home improvement
19 contract;

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

22 (10) Abandon or fail to perform, without justification,
23 a home improvement contract. THE TERM "WITHOUT JUSTIFICATION" ←
24 SHALL INCLUDE, BUT NOT BE LIMITED TO, NONPAYMENT BY THE OWNER
25 AS REQUIRED UNDER THE CONTRACT OR ANY OTHER VIOLATION OF THE
26 CONTRACT BY THE OWNER.

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

29 (12) Prepare, arrange, accept or participate in
30 arranging a mortgage, promissory note or other evidence of

1 debt for performing or selling a home improvement with
2 knowledge that the evidence of debt states a greater monetary
3 obligation than the consideration, including a time sale
4 price, for a home improvement.

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

7 (i) to accept a home improvement contract;

8 (ii) to perform the home improvement; or

9 (iii) to charge for the home improvement at the
10 price advertised or offered.

11 (14) Violate a building law or ordinance of this
12 Commonwealth or political subdivision, a safety or labor law
13 of this Commonwealth or political subdivision, or the act of
14 June 2, 1915 (P.L.736, No.338), known as the Workers'
15 Compensation Act.

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

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

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

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

26 (19) Receive a deposit of more than one-third of the
27 home improvement contract price UNLESS THE TOTAL PRICE OF THE ←
28 CONTRACT IS LESS THAN \$500.

29 (20) While acting as a salesperson, fail to account for
30 or remit to the contractor whom the salesperson represents a

1 payment received in connection with a home improvement.

2 (21) Fail to pay fees or assessments required by this
3 act.

4 (22) Be suspended or debarred from a Federal, State or
5 local program as described in section ~~4(a)(9)~~ 4(A)(8). <—

6 Section 9. Home improvement fraud.

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

11 ~~(1) makes a false or misleading statement for the~~ <—
12 ~~purpose of inducing, encouraging or soliciting a person to~~
13 ~~enter into any written or oral contract or agreement for a~~
14 ~~home improvement or purchase of home improvement materials;~~

15 ~~(2) performs services or uses materials which cause the~~
16 ~~cost of the home improvement to exceed any previously agreed~~
17 ~~to price without the permission of the consumer;~~

18 ~~(3) misrepresents or conceals, while soliciting for a~~
19 ~~home improvement or purchasing home improvement materials,~~

20 (1) MAKES A FALSE OR MISLEADING STATEMENT TO INDUCE, <—
21 ENCOURAGE OR SOLICIT A PERSON TO ENTER INTO ANY WRITTEN OR
22 ORAL AGREEMENT FOR HOME IMPROVEMENT SERVICES OR PROVISION OF
23 HOME IMPROVEMENT MATERIALS OR TO JUSTIFY AN INCREASE IN THE
24 PREVIOUSLY AGREED UPON PRICE;

25 (2) RECEIVES ANY ADVANCE PAYMENT FOR PERFORMING HOME
26 IMPROVEMENT SERVICES OR PROVIDING HOME IMPROVEMENT MATERIALS,
27 FAILS TO PERFORM OR PROVIDE SUCH SERVICES OR MATERIALS WITHIN
28 THE DATE SPECIFIED IN THE AGREEMENT UNLESS EXTENDED BY
29 AGREEMENT WITH THE CONSUMER AND FAILS TO RETURN THE PAYMENT
30 RECEIVED FOR SUCH SERVICES OR MATERIALS WHICH WERE NOT

1 PROVIDED BY THAT DATE;

2 (3) WHILE SOLICITING A PERSON TO ENTER INTO AN AGREEMENT
3 FOR HOME IMPROVEMENT SERVICES OR MATERIALS, MISREPRESENTS OR
4 CONCEALS the contractor's or salesperson's real name, the
5 name of the contractor's business, the contractor's business
6 address or any other identifying information;

7 ~~(4) damages the property of a person with the intent of~~ <—
8 ~~having that person enter into a written or oral agreement or~~
9 ~~contract for home improvement or purchase of home improvement~~
10 ~~materials;~~

11 ~~(5) misrepresents himself, herself or another to be an~~
12 ~~employee or agent of any unit of the Federal, Commonwealth or~~
13 ~~municipal government or any other governmental unit, or an~~
14 ~~employee or agent of any public utility, with the intent to~~
15 ~~cause a person to enter into, with himself, herself or~~
16 ~~another, any contract or agreement for home improvement or~~
17 ~~purchase of home improvement materials;~~

18 ~~(6) executes or materially alters a home improvement~~
19 ~~contract~~

20 (4) DAMAGES A PERSON'S PROPERTY WITH THE INTENT TO <—
21 INDUCE, ENCOURAGE OR SOLICIT THAT PERSON TO ENTER INTO A
22 WRITTEN OR ORAL AGREEMENT FOR PERFORMING HOME IMPROVEMENT
23 SERVICES OR PROVIDING HOME IMPROVEMENT MATERIALS;

24 (5) MISREPRESENTS HIMSELF OR ANOTHER AS AN EMPLOYEE OR
25 AGENT OF THE FEDERAL, COMMONWEALTH OR MUNICIPAL GOVERNMENT,
26 ANY OTHER GOVERNMENTAL UNIT OR ANY PUBLIC UTILITY, WITH THE
27 INTENT TO CAUSE A PERSON TO ENTER INTO ANY AGREEMENT FOR
28 PERFORMING HOME IMPROVEMENT SERVICES OR PROVIDING HOME
29 IMPROVEMENT MATERIALS;

30 (6) ALTERS A HOME IMPROVEMENT AGREEMENT, mortgage,

1 promissory note or other document incident to performing or
2 selling a home improvement WITHOUT THE CONSENT OF THE
3 CONSUMER; or

4 (7) directly or indirectly publishes a false, OR
5 deceptive ~~or misleading~~ advertisement about home improvement.

6 (b) ~~Grading of the offense.--~~

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

9 (i) a felony of the third degree if the amount ~~of~~
10 ~~the contract or agreement solicited, or the amount of the~~
11 ~~damage pursuant to paragraph (4), exceeds \$1,000;~~

12 INVOLVED EXCEEDS \$2,000; OR

13 (ii) a misdemeanor of the first degree if the amount
14 ~~of the contract or agreement solicited, or the amount of~~
15 ~~the damage pursuant to paragraph (4), is \$1,000 or less;~~
16 ~~or~~

17 ~~(iii) a misdemeanor of the first degree if the~~
18 ~~amount involved cannot be satisfactorily ascertained.~~

19 INVOLVED IS \$2,000 OR LESS OR IF THE AMOUNT INVOLVED
20 CANNOT BE SATISFACTORILY ASCERTAINED.

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

22 (i) a felony of the third degree if the amount of
23 ~~the overcharge is greater than 25% over the previously~~
24 ~~agreed to price;~~ THE PAYMENT RETAINED EXCEEDS \$2,000; OR

25 (ii) a misdemeanor of the first degree if the amount
26 ~~of the overcharge is 25% or less of the previously~~
27 ~~agreed to price; or~~

28 ~~(iii) a misdemeanor of the first degree if the~~
29 ~~amount of the overcharge cannot be satisfactorily~~
30 ~~ascertained.~~

1 ~~(3) A violation of subsection (a)(7) constitutes a~~
2 ~~misdemeanor of the first degree.~~ OF THE PAYMENT RETAINED IS <—
3 \$2,000 OR LESS OR IF THE AMOUNT OF THE OVERCHARGE CANNOT BE
4 SATISFACTORILY ASCERTAINED.

5 ~~(4)~~ (3) Amounts involved pursuant to one scheme or <—
6 course of conduct, whether involving one or more victims, may
7 be aggregated in determining the grade of the offense
8 pursuant to ~~paragraph (1) or (2).~~ TO SUBSECTION (A). <—

9 ~~(5) Where the~~ (4) WHERE A person commits an offense <—
10 under subsection (a) and the victim ~~of the offense~~ is 60 <—
11 years of age or older, the grading of the offense shall be
12 one grade higher than specified in paragraphs (1), (2) and
13 (3). THIS PARAGRAPH SHALL NOT BE APPLICABLE TO INDIVIDUALS <—
14 WHOSE SENTENCE WOULD BE ENHANCED PURSUANT TO PARAGRAPH (5).

15 ~~(6)~~ (5) Notwithstanding any other provisions of this <—
16 section, where ~~the~~ A person commits a second or subsequent <—
17 offense described in subsection (a), the offense will
18 constitute a felony of the second degree regardless of the
19 amount of money involved. For this paragraph to be
20 applicable, ~~each element of~~ the second or subsequent offense <—
21 must have occurred after the first conviction. Paragraph ~~(5)~~ <—
22 (4) shall not be applicable to individuals ~~convicted~~ WHOSE <—
23 SENTENCES WOULD BE ENHANCED pursuant to this paragraph.

24 ~~(7)~~ (6) In addition to any other penalty imposed by ~~the~~ <—
25 ~~court~~ THIS ACT, the court may revoke or suspend the <—
26 certificate of registration issued under ~~12 Pa.C.S. Ch. 53~~ <—
27 ~~(relating to home improvement practices)~~ SECTION 6. At the <—
28 time of sentencing, the court shall state the reasons for
29 such revocation or suspension.

30 (c) Jurisdiction.--

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

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

18 ~~(d) Definition. As used in this section, the term "home~~ ←
19 ~~improvement" means the same as "home improvement" in 12 Pa.C.S.~~
20 ~~§ 5302 (relating to definitions).~~

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

22 (a) General rule.--A violation of any of the provisions of
23 this act shall be deemed a violation of the act of December 17,
24 1968 (P.L.1224, No.387), known as the Unfair Trade Practices and
25 Consumer Protection Law. COMPLIANCE WITH THIS ACT SHALL BE ←
26 DEEMED TO BE COMPLIANCE WITH THE UNFAIR TRADE PRACTICES AND
27 CONSUMER PROTECTION LAW AS IT APPLIES TO HOME IMPROVEMENT
28 CONTRACTS.

29 (b) Suspension or revocation of registration.--Upon the
30 request of the Attorney General or a district attorney, a court

1 may, FOR JUST CAUSE AND AFTER NOTICE AND HEARING, suspend or <—
2 revoke a certificate of registration for violations of this act.
3 The court may suspend or revoke a certificate of registration as
4 follows:

5 (1) For the first violation, a suspension of up to ~~one~~ <—
6 ~~year~~ SIX MONTHS. <—

7 (2) For the second violation, a suspension of up to ~~two~~ <—
8 ~~years~~ ONE YEAR. <—

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

12 Section 11. Regulations.

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

17 Section 12. Exemptions.

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

20 (1) The Commonwealth, municipalities and political
21 subdivisions within the Commonwealth or any department or
22 agency of the Commonwealth or such municipalities.

23 (2) The government of the United States or any of its
24 departments or agencies.

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

28 Section 13. Home improvement contracts.

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

- 1 (1) Is in writing and legible.
- 2 (2) Is signed by the owner and the contractor, or a
3 salesperson on behalf of a contractor.
- 4 (3) Contains the entire agreement between the owner and
5 the contractor.
- 6 (4) Contains the date of the transaction.
- 7 (5) Contains the name, address and certificate number of
8 the contractor.
- 9 (6) Contains the approximate starting date and
10 completion date.
- 11 (7) Is entered into by a registered contractor or a
12 registered salesperson.
- 13 (8) Provides a notice that gives the toll-free telephone
14 number of the department and states that:

- 15 (i) each contractor and salesperson must be
16 registered by the department; and
- 17 (ii) anyone may inquire of the department regarding
18 the status of a contractor or salesperson.

19 (b) Rescission right.--All home improvement contracts shall
20 be subject to section 7 of the act of December 17, 1968
21 (P.L.1224, No.387), known as the Unfair Trade Practices and
22 Consumer Protection Law, UNLESS THE HOMEOWNER HAS WAIVED THIS <—
23 RIGHT PURSUANT TO SECTION 7(J) OF THE UNFAIR TRADE PRACTICES AND
24 CONSUMER PROTECTION LAW.

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

29 Section 14. Home Improvement Guaranty Fund.

30 (a) Establishment.--The Home Improvement Guaranty Fund is

1 hereby established in the State Treasury and shall be
2 administered by the bureau in accordance with this act.

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

11 (c) Minimum balance.--

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

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

26 (d) Investment.--The moneys of the fund shall be invested
27 and the interest arising from the investments shall be credited
28 to the fund.

29 (e) Waiver of biennial fund fee.--In the event that the
30 bureau finds that the fund is adequately funded, the bureau may ←

1 SHALL, during the first month of each fiscal year, adjust or
2 waive any biennial fund fee for the fiscal year.

3 Section 15. Claims against fund.

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

21 (b) Acts of subcontractors, salespersons and employees.--For
22 purposes of recovery from the fund, the act or omission of a
23 registered contractor or registered salesperson includes the act
24 or omission of a subcontractor, salesperson or employee of the
25 registered contractor or registered salesperson whether or not
26 any express agency relationship exists.

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

- 29 (1) unreasonably rejected good faith efforts by the
30 contractor or salesperson to resolve the claim; or

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

3 (d) Limitation on recovery.--

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

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

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

15 (iii) An amount for any attorney fees, consequential
16 damages, court costs, interest, personal injury damages
17 or punitive damages.

18 (iv) An amount as a result of a default judgment in
19 court.

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

26 (e) Excluded claimants.--

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

30 (i) a spouse or other immediate relative of the

1 contractor or salesperson, or of a party which holds a
2 financial stake in the business of the contractor or
3 salesperson;

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

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

10 (2) An owner may make a claim against the fund only if
11 the owner:

12 (i) resides in the residence as to which the claim
13 is made; or

14 (ii) does not own more than ~~three~~ TWO dwelling ←
15 places, unless the dwelling place as to which the claim
16 is made is the primary residence of the owner or the part
17 of the building which houses the primary residence of the
18 owner.

19 (f) Limitations period.--A claim must be made against the
20 fund within two years after the claimant obtains an entry of
21 final judgment or decree against the contractor or salesperson
22 and all appeal rights have expired or been exhausted, or, in the
23 case of an assurance of voluntary compliance, within the later
24 of two years of entry into such assurance or one year after
25 nonpayment according to the terms of the assurance.

26 (g) Offer of proof.--In order to recover from the fund the
27 claimant must offer proof to the bureau that the claimant has
28 caused to be issued a writ of execution upon a judgment obtained
29 against the contractor or salesperson, and the officer executing
30 the same has made a return showing that no bank accounts or real

1 property of the contractor liable to be levied upon in
2 satisfaction of the judgment could be found, or that the amount
3 realized on the sale of them or of such of them as were found,
4 under the execution, was insufficient to satisfy the judgment or
5 stating the amount realized and the balance remaining due on the
6 judgment after application thereon of the amount realized. A
7 true and attested copy of the executing officer's return must be
8 attached to an application for fund reimbursement.

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

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

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

28 (k) Revocation caused by payment of claim.--If the bureau
29 makes a payment of an amount as a result of a claim against a
30 contractor or salesperson, the department shall revoke the

1 certificate of the contractor or salesperson and the contractor
2 or salesperson shall not be eligible to receive a new or renewed
3 certificate until that contractor or salesperson has repaid such
4 amount in full, plus interest, from the time the payment is made
5 from the fund, except that the department, with bureau approval,
6 may permit a contractor or salesperson to receive a new or
7 renewed certificate after that contractor or salesperson has
8 entered into an agreement with the bureau whereby the contractor
9 or salesperson agrees to repay the fund in full in the form of
10 periodic payments over a set period of time. If the contractor
11 or salesperson fails to pay in accordance with the terms of the
12 agreement, the department shall automatically suspend the
13 contractor's or salesperson's certificate.

14 Section 16. Procedure for submitting claims.

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

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

23 (b) Copy of claim to contractor.--On receipt of a claim
24 pursuant to this section, the bureau shall send a copy of the
25 claim to the contractor alleged to be responsible for the actual
26 loss. THE CONTRACTOR SHALL FILE A RESPONSE OR OBJECTION TO THE ←
27 CLAIM WITHIN 30 DAYS OF RECEIPT OF THE NOTICE OF SUCH CLAIM.
28 FAILURE TO RESPOND TO THE CLAIM SHALL CONSTITUTE A WAIVER OF ANY
29 DEFENSE OR OBJECTION TO THE CLAIM.

30 (c) General order of payment.--Except as otherwise provided

1 in this act, the bureau shall pay from the fund approved claims
2 in the order that they are submitted.

3 Section 17. Reimbursement of fund.

4 (a) General rule.--After the bureau pays a claim from the
5 fund:

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

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

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

12 (i) The amount paid from the fund.

13 (ii) Interest on the amount at an annual rate of ~~at~~ <—

14 ~~least 10%, as set by the bureau~~ 5% AS ADJUSTED BY THE <—

15 CONSUMER PRICE INDEX ON AN ANNUAL BASIS.

16 All money that the bureau recovers on a claim shall be deposited
17 in the fund.

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

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

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

28 (2) The contractor or salesperson has not reimbursed the
29 fund in full.

30 (3) The bureau directed payment based on a final

1 judgment of a court of competent jurisdiction or an assurance
2 of voluntary compliance.

3 ~~(d) Withholding of tax refund. The bureau may refer to the~~ <—
4 ~~Department of Revenue for collection, a debt owed to the bureau~~
5 ~~by an individual or business on whose account or under whose~~
6 ~~business a claim was paid from the fund and who is at least one~~
7 ~~year behind in reimbursement payments to the fund.~~

8 (D) WITHHOLDING OF TAX REFUND.--THE BUREAU MAY REQUEST THE <—
9 DEPARTMENT OF REVENUE TO WITHHOLD THE ANNUAL TAX REFUND DUE ANY
10 INDIVIDUAL OR BUSINESS ON WHOSE ACCOUNT OR UNDER WHOSE BUSINESS
11 A CLAIM WAS PAID FROM THE FUND AND WHO IS DELINQUENT FOR AT
12 LEAST ONE YEAR IN MAKING PAYMENTS TO THE BUREAU FOR THE PURPOSE
13 OF REIMBURSING THE FUND. ANY TAX REFUND WITHHELD BY THE
14 DEPARTMENT OF REVENUE PURSUANT TO THIS SUBSECTION SHALL BE
15 DEPOSITED IN THE FUND BY THAT DEPARTMENT. THE BUREAU AND THE
16 DEPARTMENT OF REVENUE SHALL JOINTLY ESTABLISH PROCEDURES TO
17 CARRY OUT THE REQUIREMENTS OF THIS SUBSECTION.

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

22 Section 18. Notice of suspension or revocation.

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

26 Section 19. Effective date.

27 This act shall take effect in 180 days.