

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 563 Session of
2001

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CIVERA, TANGRETTI, DALEY AND PRESTON, FEBRUARY 7, 2001

AS REPORTED FROM COMMITTEE ON CONSUMER AFFAIRS, HOUSE OF
REPRESENTATIVES, AS AMENDED, OCTOBER 1, 2002

AN ACT

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

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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 ~~\$3,000~~ \$5,000 during any <—
30 period 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~~ EXCEEDING \$200. <—

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

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

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

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

23 "Person." An individual, partnership, limited partnership,
24 limited liability company, joint venture or corporation.

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

29 "Salesperson." Any ~~individual~~ PERSON who negotiates or
30 offers to negotiate a home improvement contract with an owner or

<—

1 solicits or otherwise endeavors to procure by any means
2 whatsoever, directly or indirectly, a home improvement contract
3 from an owner.

4 "SPECIAL ORDER MATERIAL." ANY MATERIAL PURCHASED BY A <—
5 CONTRACTOR EXCLUSIVELY FOR THE PERFORMANCE OF A SPECIFIC HOME
6 IMPROVEMENT CONTRACT AND THAT HAS NO VALUE IN THE PERFORMANCE OF
7 ANOTHER HOME IMPROVEMENT CONTRACT.

8 Section 3. Registration of contractors and salespersons.

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

19 (b) Salespersons.--

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

23 (2) No ~~individual~~ PERSON shall act as a home improvement <—
24 salesperson on behalf of an unregistered contractor.

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

1 (d) Effects of unregistered status.--No unregistered
2 contractor or salesperson shall have standing to sue, countersue
3 or raise a defense of nonpayment in any dispute arising from a
4 home improvement. No unregistered contractor or salesperson may
5 file a mechanic's lien with respect to a home improvement.

6 (e) Public access to registration information.--The
7 ~~department~~ BUREAU shall maintain a toll-free telephone number <—
8 from which a caller can obtain information as to whether a
9 contractor or salesperson is registered with the ~~department~~ <—
10 BUREAU pursuant to this act. <—

11 Section 4. Procedures for registration.

12 (a) Application.--A person desiring a certificate as a
13 contractor or salesperson shall apply to the ~~department~~ BUREAU <—
14 in writing on a form provided by the ~~department~~ BUREAU. The <—
15 application shall include the following information:

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

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

24 (3) For a corporation, limited liability company or
25 limited partnership applicant, the name, home address, home
26 telephone number and driver's license identification number
27 of each officer, each director or each individual holding
28 greater ~~than a 10%~~ THAN A 5% stake in the business, as well <—
29 as the entity's business name, address and telephone number.

30 (4) For an out-of-State corporation, limited liability

1 or limited partnership, the name and address of the entity's
2 resident agent or registered office provider within this
3 Commonwealth and any registration number or license number
4 issued to the entity by its home state or political
5 subdivision of such other state, if applicable.

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

12 (6) If the applicant is applying for a contractor
13 registration, a complete description of the nature of the
14 contracting business of the applicant.

15 (7) A statement whether:

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

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

1 any other state or political subdivision thereof.

2 (8) Whether within the last ten years the applicant has
3 ever been suspended or debarred from participating in any
4 Federal, State or local program through which funding or
5 other assistance is provided to consumers for home
6 improvements.

7 (9) If the ~~department or the~~ bureau determines that <—
8 additional information is necessary to effectuate the purpose
9 of this act, the ~~department or the~~ bureau shall promulgate <—
10 regulations to require the submission of the additional
11 information.

12 (b) Grounds for refusal of certificate.--The ~~department~~ <—
13 BUREAU may not provide a certificate of registration to any <—
14 applicant:

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

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

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

23 (c) Contractual relationships.--In addition to the
24 information required in subsection (a), a contractor shall be
25 required to notify the ~~department~~ BUREAU of any employment or <—
26 other contractual relationship between the contractor and any
27 salesperson. A contractor shall be required to submit such
28 information within 20 days of entering into an employment or
29 other contractual relationship with a salesperson. Information
30 under this subsection shall be updated by the contractor, on a

1 form provided by the ~~department~~ BUREAU, on an as-needed basis <—
2 throughout the period of registration.

3 (d) Reporting of multiple registration or licensure.--Any
4 registered contractor or salesperson in this Commonwealth who is
5 registered or licensed as a home improvement contractor or
6 salesperson in any other state, or political subdivision
7 thereof, shall report this information to the ~~department~~ BUREAU <—
8 on the initial registration and biennial registration
9 application. Any disciplinary action taken in such other
10 jurisdiction shall be reported to the ~~department~~ BUREAU on the <—
11 initial registration application or, if such action occurred
12 subsequent to submission of an initial application, on the
13 biennial registration application or within 90 days of final
14 disposition, whichever is sooner. Multiple registration or
15 licensure shall be noted by the ~~department~~ BUREAU on the <—
16 contractor's or salesperson's record, and such state, or
17 political subdivision thereof, shall be notified by the
18 ~~department~~ BUREAU of any disciplinary actions taken against such <—
19 contractor or salesperson in this Commonwealth.

20 Section 5. Application fees.

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

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

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

26 ~~(b) Dedicated use of fees. Fifty percent of the application~~ <—

27 (B) CREDIT FOR MUNICIPAL FEES.-- <—

28 (1) THE FEE TO BE PAID UNDER SUBSECTION (A)(1) SHALL BE
29 REDUCED BY AN AMOUNT EQUAL TO ANY FEE REQUIRED TO BE PAID BY
30 THE HOME IMPROVEMENT CONTRACTOR FOR THE PRIVILEGE OF

1 CONDUCTING BUSINESS WITHIN THE MUNICIPALITY. IN ORDER FOR THE
2 FEE TO BE REDUCED, THE HOME IMPROVEMENT CONTRACTOR SHALL
3 PROVIDE THE DEPARTMENT WITH WRITTEN PROOF OF THE AMOUNT PAID
4 TO THE MUNICIPALITY AT THE TIME OF THE REGISTRATION.

5 (2) THE CREDIT PROVIDED FOR IN THIS SUBSECTION SHALL NOT
6 APPLY TO FEES PAID BY THE HOME IMPROVEMENT CONTRACTOR WHICH
7 ARE SPECIFIC TO A PARTICULAR HOME IMPROVEMENT.

8 (C) DEDICATED USE OF FEES.--THE APPLICATION fees collected
9 shall be used by the ~~department~~ BUREAU for the purposes of <—
10 fulfilling its obligations under this act relating to
11 registration. The balance of the application fees collected
12 shall be used by the bureau for the purposes of carrying out and
13 enforcing the provisions of this act. The ~~department and the~~ <—
14 bureau shall establish rules or regulations regarding payment,
15 collection and distribution of money payable to and received by
16 the ~~department~~ BUREAU pursuant to this section. <—

17 ~~(c) Multiple registrations. Business entity applicants~~ <—
18 ~~shall be required to~~

19 (D) MULTIPLE REGISTRATIONS.--HOME IMPROVEMENT CONTRACTORS OR <—
20 HOME IMPROVEMENT SALESPERSONS APPLYING AS A BUSINESS MUST pay
21 the application fee in this section and the fund fee set forth
22 in section 14 only as a business entity, regardless of the
23 number of ~~individuals~~ PERSONS who provide registration <—
24 information pursuant to this act.

25 Section 6. Certificate of registration and renewal.

26 (a) Duty of ~~department~~ BUREAU.--Upon receipt of a completed <—
27 application and fee, the ~~department~~ BUREAU shall issue and <—
28 deliver to the applicant a certificate to engage in the business
29 for which the application was made or refuse to issue the
30 certificate pursuant to this act or an order of a court of

1 competent jurisdiction within seven days.

2 (b) Nontransferability.--Certificates issued to home
3 improvement contractors or salespersons shall not be
4 transferable or assignable.

5 (c) Duration of certificate.--All certificates issued under
6 this act shall expire biennially. The expiration date shall be
7 placed upon the certificate. The fee for renewal of a
8 certificate shall be the same as the fee charged for an original
9 application under section 5. The information required pursuant
10 to section 4 shall also be required for renewal of
11 certification. The ~~department~~ BUREAU shall provide a form for <—
12 renewal of registration.

13 ~~(d) Grounds for denial and revocation of registration.~~ <—

14 ~~(1) The department shall deny registration to any~~

15 (D) GROUNDS FOR DENIAL AND REVOCATION OF REGISTRATION.--THE <—
16 BUREAU SHALL DENY REGISTRATION TO ANY contractor or salesperson
17 against whom a civil judgment has been entered in favor of an
18 owner that was related to a home improvement transaction if the
19 transaction occurred after the effective date of this act and
20 the judgment remains unsatisfied. The ~~department, with bureau~~ <—
21 ~~approval,~~ BUREAU may permit a contractor or salesperson to <—
22 receive a new or renewed certificate after the contractor has
23 entered into a written agreement whereby the contractor agrees
24 to pay the judgment in full in the form of periodic payments
25 over a specific period of time. If the contractor or salesperson
26 does not pay in accordance with the terms of the agreement, the
27 ~~department~~ BUREAU shall immediately revoke the contractor's or <—
28 salesperson's certificate of registration.

29 ~~(2) The department may refuse to issue a certificate of~~ <—
30 ~~registration to any contractor or salesperson if it~~

~~determines, in collaboration with the bureau, that such contractor or salesperson has engaged in a pattern of conduct contrary to the provisions of this act, regardless of whether a civil judgment relating to a home improvement contract has ever been entered against the home improvement contractor or salesperson.~~

Section 7. Certificate holder to exhibit and advertise certificate.

Contractors and salespersons shall exhibit their certificates upon request by any interested party. All advertisements of a home improvement contractor or salesperson shall include the registration number issued by the ~~department~~. BUREAU. ANY HOME IMPROVEMENT CONTRACT SHALL INCLUDE A REGISTRATION NUMBER OF THE HOME IMPROVEMENT CONTRACTOR WHO IS PARTY TO THE CONTRACT.

Section 8. Prohibited acts.

No person shall:

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

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

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

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

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

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

~~(7) Fail to refund the amount paid for a home~~

~~improvement within ten days of a written request mailed or
delivered to the contractor's last known address, if:~~

(7) FAIL TO REFUND THE APPROXIMATE AMOUNT PAID FOR A
HOME IMPROVEMENT WITHIN TEN DAYS OF EITHER THE ACCEPTANCE AND
EXECUTION OF A RETURN RECEIPT FOR CERTIFIED MAIL CONTAINING A
WRITTEN REQUEST FOR A REFUND OR THE REFUSAL TO ACCEPT SUCH
CERTIFIED MAIL SENT TO THE CONTRACTOR'S LAST KNOWN ADDRESS,
IF:

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

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

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

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

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

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

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

(10) Abandon or fail to perform, without justification,

1 a home improvement contract. The term "without justification"
2 shall include, but not be limited to, nonpayment by the owner
3 as required under the contract or any other violation of the
4 contract by the owner.

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

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

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

15 (i) to accept a home improvement contract;

16 (ii) to perform the home improvement; or

17 (iii) to charge for the home improvement at the
18 price advertised or offered.

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

24 ~~(15) Fail to pay all taxes associated with home~~
25 ~~improvement sales or contracting.~~

26 ~~(16)~~ (14) Perform or sell a home improvement with or <—
27 through another person who is required to hold a certificate
28 pursuant to this act but who does not hold the certificate.

29 ~~(17)~~ (15) Act as a contractor or sell a home improvement <—
30 under a name other than that which is stated on the person's

1 certificate.

2 ~~(18)~~ (16) Demand or receive any payment for a home <—
3 improvement before the home improvement contract is signed.

4 ~~(19)~~ (17) Receive a deposit of more than one-third of <—
5 the home improvement contract price unless the total price of
6 the contract is less than \$500. FOR THE PURPOSE OF <—
7 CALCULATING A DEPOSIT, THE TOTAL CONTRACT PRICE SHALL NOT
8 INCLUDE THE COST OF ANY SPECIAL ORDER MATERIAL PURCHASED OR
9 TO BE PURCHASED BY THE CONTRACTOR FOR THE HOME IMPROVEMENT
10 CONTRACT.

11 ~~(20)~~ (18) While acting as a salesperson, fail to account <—
12 for or remit to the contractor whom the salesperson
13 represents a payment received in connection with a home
14 improvement.

15 ~~(21)~~ (19) Fail to pay fees or assessments required by <—
16 this act.

17 ~~(22)~~ (20) Be suspended or debarred from a Federal, State <—
18 or local program as described in section 4(a)(8).

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

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

25 Section 9. Home improvement fraud.

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

30 (1) makes a false or misleading statement to induce,

1 encourage or solicit a person to enter into any written or
2 oral agreement for home improvement services or provision of
3 home improvement materials or to justify an increase in the
4 previously agreed upon price;

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

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

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

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

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

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

3 (b) Grading.--

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

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

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

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

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

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

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

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

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

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

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

12 (c) Jurisdiction.--

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

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

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

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

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

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

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

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

18 Section 11. Regulations.

19 The ~~department~~ BUREAU may adopt rules and regulations <—
20 necessary to carry out the provisions of this act relating to
21 registration, and the bureau may adopt rules and regulations
22 necessary to carry out and enforce the other provisions of this
23 act.

24 Section 12. Exemptions.

25 Sections 3, 4, 5, 6, 7, ~~12~~, 13, 14, 15, 16 ~~and~~, 18 AND THIS <—
26 SECTION shall not apply to any of the following persons or
27 organizations:

28 (1) The Commonwealth, municipalities and political
29 subdivisions within the Commonwealth or any department or
30 agency of the Commonwealth or such municipalities.

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

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

6 Section 13. Home improvement contracts.

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

9 (1) Is in writing and legible.

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

12 (3) Contains the entire agreement between the owner and
13 the contractor.

14 (4) Contains the date of the transaction.

15 (5) Contains the name, address and certificate number of
16 the contractor.

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

19 (7) Is entered into by a registered contractor or a
20 registered salesperson.

21 (8) Provides a notice that gives the toll-free telephone
22 number of the ~~department~~ BUREAU and states that: <—

23 (i) each contractor and salesperson must be
24 registered by the ~~department~~ BUREAU; and <—

25 (ii) anyone may inquire of the ~~department~~ BUREAU <—
26 regarding the status of a contractor or salesperson.

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

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

5 Section 14. Home Improvement Guaranty Fund.

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

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

17 (c) Minimum balance.--

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

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

1 payment of all the required fees.

2 (d) Investment.--The moneys of the fund shall be invested
3 and the interest arising from the investments shall be credited
4 to the fund.

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

9 Section 15. Claims against fund.

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

27 (b) Acts of subcontractors, salespersons and employees.--For
28 purposes of recovery from the fund, the act or omission of a
29 registered contractor or registered salesperson includes the act
30 or omission of a subcontractor, salesperson or employee of the

1 registered contractor or registered salesperson whether or not
2 any express agency relationship exists SO LONG AS THE
3 SUBCONTRACTOR, SALESPERSON OR EMPLOYEE ACTED WITHIN THE SCOPE OF
4 THE HOME IMPROVEMENT CONTRACT.

<—

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

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

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

11 (d) Limitation on recovery.--

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

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

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

23 (iii) An amount for any attorney fees, consequential
24 damages, court costs, interest, personal injury damages
25 or punitive damages.

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

27 (1), a claimant may not recover from the fund more than that
28 claimant's actual loss, to a maximum of \$10,000, for a claim
29 made on one contract. A court may, however, allocate
30 responsibility on one contract between contractors and

1 salespersons to a maximum combined responsibility of \$10,000.

2 (e) Excluded claimants.--

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

6 (i) a spouse or other immediate relative of the
7 contractor or salesperson, or of a party which holds a
8 financial stake in the business of the contractor or
9 salesperson;

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

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

16 (2) An owner may make a claim against the fund only if
17 the owner:

18 (i) resides in the residence as to which the claim
19 is made; or

20 (ii) does not own more than two dwelling places,
21 unless the dwelling place as to which the claim is made
22 is the primary residence of the owner or the part of the
23 building which houses the primary residence of the owner.

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

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

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

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

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

1 assets, the bureau may take any lawful action necessary for the
2 reimbursement of the fund.

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

20 Section 16. Procedure for submitting claims.

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

- 25 (1) The amount claimed based on the actual loss.
- 26 (2) The facts giving rise to the claim.
- 27 (3) Any other evidence that supports the claim.
- 28 (4) Any other information that the bureau requires.

29 (b) Copy of claim to contractor.--On receipt of a claim
30 pursuant to this section, the bureau shall send a copy of the

1 claim to the contractor alleged to be responsible for the actual
2 loss. The contractor shall file a response or objection to the
3 claim within 30 days of receipt of the notice of such claim.
4 Failure to respond to the claim shall constitute a waiver of any
5 defense or objection to the claim.

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

9 Section 17. Reimbursement of fund.

10 (a) General rule.--After the bureau pays a claim from the
11 fund:

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

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

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

18 (i) The amount paid from the fund.

19 (ii) Interest on the amount at an annual rate of 5%
20 as adjusted by the Consumer Price Index on an annual
21 basis.

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

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

30 (c) Judgment.--The bureau is entitled to a judgment for the

1 unreimbursed amount if the bureau proves that:

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

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

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

9 ~~(d) Withholding of tax refund. The bureau may request the <—~~
10 ~~Department of Revenue to withhold the annual tax refund due any~~
11 ~~individual or business on whose account or under whose business~~
12 ~~a claim was paid from the fund and who is delinquent for at~~
13 ~~least one year in making payments to the bureau for the purpose~~
14 ~~of reimbursing the fund. Any tax refund withheld by the~~
15 ~~Department of Revenue pursuant to this subsection shall be~~
16 ~~deposited in the fund by that department. The bureau and the~~
17 ~~Department of Revenue shall jointly establish procedures to~~
18 ~~carry out the requirements of this subsection.~~

19 (D) WITHHOLDING OF TAX REFUND.--IF A PERSON IS DELINQUENT <—
20 FOR AT LEAST ONE YEAR IN MAKING PAYMENTS TO THE BUREAU FOR THE
21 PURPOSES OF REIMBURSING THE FUND, THE DEPARTMENT OF REVENUE
22 SHALL CREDIT THE AMOUNT OF ANY REFUNDABLE OVERPAYMENT OF TAX
23 IMPOSED BY ARTICLE III OF THE ACT OF MARCH 4, 1971 (P.L.6,
24 NO.2), KNOWN AS THE TAX REFORM CODE OF 1971, AGAINST THE
25 DELINQUENCY IN RESPECT TO THIS ACT ON THE PART OF THE PERSON WHO
26 MADE THE OVERPAYMENT.

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

1 Section 18. Notice of suspension or revocation.

2 The Administrative Office of Pennsylvania Courts shall report
3 to ~~the department and~~ the bureau any suspension or revocation of <—
4 a certificate of registration ordered by a court.

5 Section 19. Effective date.

6 This act shall take effect in 180 days.