

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 616 Session of  
2003

INTRODUCED BY DeLUCA, CAWLEY, CRUZ, DALEY, DeWEESE, DIVEN,  
FRANKEL, GABIG, GRUCELA, HORSEY, LaGROTTA, LAUGHLIN, PRESTON,  
WALKO, WASHINGTON, WATERS, J. WILLIAMS, YOUNGBLOOD, GEIST,  
KOTIK, THOMAS AND MELIO, MARCH 3, 2003

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, MARCH 3, 2003

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

12 Section 1. Short title.

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

15 Section 2. Definitions.

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

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

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

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

30 "Fund." The Home Improvement Guaranty Fund established in

1 section 14.

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

15 (1) The construction of a new home.

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

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

24 (4) The sale of appliances, such as stoves,  
25 refrigerators, freezers, room air conditioners and others  
26 which are designed for and are easily removable from the  
27 premises without material alteration exceeding \$200.

28 (5) Any work performed without compensation by the owner  
29 on the owner's private residence or residential rental  
30 property.

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

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

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

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

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

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

1 "Special order material." Any material purchased by a  
2 contractor exclusively for the performance of a specific home  
3 improvement contract and which has no value in the performance  
4 of another home improvement contract.

5 Section 3. Registration of contractors and salespersons.

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

16 (b) Salespersons.--

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

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

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

28 (d) Effects of unregistered status.--No unregistered  
29 contractor or salesperson shall have standing to sue, countersue  
30 or raise a defense of nonpayment in any dispute arising from a

1 home improvement. No unregistered contractor or salesperson may  
2 file a mechanic's lien with respect to a home improvement.

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

7 Section 4. Procedures for registration.

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

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

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

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

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

1 subdivision of such other state.

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

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

11 (7) A statement whether:

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

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

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

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

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

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

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

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

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

17 (c) Contractual relationships.--In addition to the  
18 information required in subsection (a), a contractor shall be  
19 required to notify the bureau of any employment or other  
20 contractual relationship between the contractor and any  
21 salesperson. A contractor shall be required to submit such  
22 information within 30 days of entering into an employment or  
23 other contractual relationship with a salesperson. Information  
24 under this subsection shall be updated by the contractor, on a  
25 form provided by the bureau, on an as-needed basis throughout  
26 the period of registration.

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



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

13 Section 5. Application fees.

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

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

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

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

26 (c) Multiple registrations.--A home improvement contractor  
27 or salesperson applying as a business entity shall be required  
28 to pay the application fee in this section and the fund fee set  
29 forth in section 14 only as a business entity, regardless of the  
30 number of individuals who provide registration information

1 pursuant to this act.

2 Section 6. Certificate of registration and renewal.

3 (a) Duty of bureau.--Upon receipt of a completed application  
4 and fee, the bureau shall issue and deliver to the applicant a  
5 certificate to engage in the business for which the application  
6 was made or refuse to issue the certificate pursuant to this act  
7 or an order of a court of competent jurisdiction within seven  
8 days.

9 (b) Nontransferability.--Certificates issued to home  
10 improvement contractors or salespersons shall not be  
11 transferable or assignable.

12 (c) Duration of certificate.--All certificates issued under  
13 this act shall expire biennially. The expiration date shall be  
14 placed upon the certificate. The fee for renewal of a  
15 certificate shall be the same as the fee charged for an original  
16 application under section 5. The information required pursuant  
17 to section 4 shall also be required for renewal of  
18 certification. The bureau shall provide a form for renewal of  
19 registration.

20 (d) Grounds for denial and revocation of registration.--The  
21 bureau shall deny registration to any contractor or salesperson  
22 against whom a civil judgment has been entered in favor of an  
23 owner that was related to a home improvement transaction if the  
24 transaction occurred after the effective date of this act and  
25 the judgment remains unsatisfied. The bureau may permit a  
26 contractor or salesperson to receive a new or renewed  
27 certificate after the contractor has entered into a written  
28 agreement whereby the contractor agrees to pay the judgment in  
29 full in the form of periodic payments over a specific period of  
30 time. If the contractor or salesperson does not pay in

1 accordance with the terms of the agreement, the bureau shall  
2 immediately revoke the contractor's or salesperson's certificate  
3 of registration.

4 (e) Refusal.--The bureau may refuse to issue a certificate  
5 of registration to any contractor or salesperson if it  
6 determines that such contractor or salesperson has engaged in a  
7 pattern of conduct contrary to the provisions of this act,  
8 regardless of whether a civil judgment relating to a home  
9 improvement contract has ever been entered against the home  
10 improvement contractor or salesperson.

11 Section 7. Certificate holder to exhibit and advertise  
12 certificate.

13 Contractors and salespersons shall exhibit their certificates  
14 upon request by any interested party. All advertisements of a  
15 home improvement contractor or salesperson shall include the  
16 registration number issued by the bureau. Any home improvement  
17 contract shall include the registration number of the home  
18 improvement contractor who is a party to the contract.

19 Section 8. Prohibited acts.

20 No person shall:

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

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

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

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

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

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

4           (7) Fail to refund the amount paid for a home  
5 improvement within ten days of either the acceptance and  
6 execution of a return receipt for certified mail containing a  
7 written request for a refund or the refusal to accept such  
8 certified mail sent to the contractor's last known address,  
9 if:

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

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

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

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

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

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

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

1           (10) Abandon or fail to perform, without justification,  
2           a home improvement contract. Justification for the  
3           abandonment or failure to perform a home improvement contract  
4           by a contractor shall include, but not be limited to,  
5           nonpayment by the owner as required under the contract or any  
6           other violation of the contract by the owner.

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

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

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

17               (i) to accept a home improvement contract;

18               (ii) to perform the home improvement; or

19               (iii) to charge for the home improvement at the  
20          price advertised or offered.

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

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

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

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

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

6           (19) Receive a deposit of more than one-third of the  
7 home improvement contract price unless the total price of the  
8 contract is less than \$500. For the purpose of calculating a  
9 deposit, the total contract price shall not include the cost  
10 of any special order material purchased or to be purchased by  
11 the contractor for the home improvement contract.

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

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

17           (22) Be suspended or debarred from a Federal, State or  
18 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 initial  
21 registration and biennial registration application.

22           (24) Fail to report the revocation or suspension of a  
23 registration in another state or political subdivision  
24 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 payment cannot be satisfactorily  
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 whose sentence would be enhanced  
27 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 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 bureau may adopt rules and regulations necessary to carry  
20 out and enforce the provisions of this act.

21 Section 12. Exemptions.

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

24 (1) The Commonwealth, municipalities and political  
25 subdivisions within the Commonwealth or any department or  
26 agency of the Commonwealth or such municipalities.

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

29 (3) Any school, public or private, offering as part of a  
30 vocational education program, courses and training in any

1 aspect of home improvement.

2 Section 13. Home improvement contracts.

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

5 (1) Is in writing and legible.

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

8 (3) Contains the entire agreement between the owner and  
9 the contractor.

10 (4) Contains the date of the transaction.

11 (5) Contains the name, address and certificate number of  
12 the contractor.

13 (6) Contains the approximate starting date and  
14 completion date.

15 (7) Is entered into by a registered contractor or a  
16 registered salesperson.

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

19 (i) each contractor and salesperson must be  
20 registered by the bureau; and

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

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

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

1 Section 14. Home Improvement Guaranty Fund.

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

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

13 (c) Minimum balance.--

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

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

28 (d) Investment.--The moneys of the fund shall be invested by  
29 the State Treasurer and the interest arising from the  
30 investments shall be credited to the fund.

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

5 Section 15. Claims against fund.

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

23 (b) Acts of subcontractors, salespersons and employees.--For  
24 purposes of recovery from the fund, the act or omission of a  
25 registered contractor or registered salesperson includes the act  
26 or omission of a subcontractor, salesperson or employee of the  
27 registered contractor or registered salesperson whether or not  
28 any express agency relationship exists so long as the  
29 subcontractor, salesperson or employee was acting within the  
30 scope of the home improvement contract.

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

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

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

7 (d) Limitation on recovery.--

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

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

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

19 (iii) An amount for any attorney fees, consequential  
20 damages, court costs, interest, personal injury damages  
21 or punitive damages.

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

28 (e) Excluded claimants.--

29 (1) A claim against the fund based on the act or  
30 omission of a particular contractor or salesperson shall not

1 be made by:

2 (i) a spouse or other immediate relative of the  
3 contractor or salesperson, or of a party which holds a  
4 financial stake in the business of the contractor or  
5 salesperson;

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

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

12 (2) An owner may make a claim against the fund only if  
13 the owner:

14 (i) resides in the residence as to which the claim  
15 is made; or

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

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

27 (g) Offer of proof.--In order to recover from the fund the  
28 claimant must offer proof to the bureau that the claimant has  
29 caused to be issued a writ of execution upon a judgment obtained  
30 against the contractor or salesperson, and the officer executing

1 the same has made a return showing that no bank accounts or real  
2 property of the contractor liable to be levied upon in  
3 satisfaction of the judgment could be found, or that the amount  
4 realized on the sale of them or of such of them as were found,  
5 under the execution, was insufficient to satisfy the judgment or  
6 stating the amount realized and the balance remaining due on the  
7 judgment after application thereon of the amount realized. A  
8 true and attested copy of the executing officer's return must be  
9 attached to an application for fund reimbursement.

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

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

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

29 (k) Revocation caused by payment of claim.--If the bureau  
30 makes a payment of an amount as a result of a claim against a



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

15 Section 16. Procedure for submitting claims.

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

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

24 (b) Copy of claim to contractor.--On receipt of a claim  
25 pursuant to this section, the bureau shall send a copy of the  
26 claim to the contractor alleged to be responsible for the actual  
27 loss. The contractor shall file a response or objection to the  
28 claim within 30 days of receipt of the notice of such claim.  
29 Failure to respond to the claim shall constitute a waiver of any  
30 defense or objection to the claim.

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

#### Section 17. Reimbursement of fund.

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

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

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

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

(i) The amount paid from the fund.

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

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

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

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

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

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

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

4           (d) Withholding of tax refund.--If an individual is  
5 delinquent for at least one year in making payments to the  
6 bureau for the purpose of reimbursing the fund, the Department  
7 of Revenue shall credit the amount of any refundable overpayment  
8 of tax imposed by Article III of the act of March 4, 1971  
9 (P.L.6, No.2), known as the Tax Reform Code of 1971, against the  
10 delinquency in respect to this act on the part of the person who  
11 made the overpayment.

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

16 Section 18. Notice of suspension or revocation.

17          The Administrative Office of Pennsylvania Courts shall report  
18 to the bureau any suspension or revocation of a certificate of  
19 registration ordered by a court.

20 Section 19. Effective date.

21          This act shall take effect in 180 days.