

No. 2008-132

AN ACT

SB 100

Providing for the regulation of home improvement contracts and for the registration of certain contractors; prohibiting certain acts; and providing for penalties.

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

Section 1. Short title.

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

Section 2. Definitions.

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

“Advertisement.” A statement promoting home improvement services in a newspaper, periodical, pamphlet, circular, billboard, sign, letterhead, business card or other printed materials or in announcements to the public on radio, television or the Internet. The term shall not include the following:

(1) Sponsorship or recognition of sponsorships of civic, charitable or nonprofit events, teams or purposes.

(2) Writings or graphics on promotional clothing, pens, pencils, notepads or similar items.

“Arbitration clause.” A process in which a neutral arbitrator or panel of neutral arbitrators is engaged by the parties to settle a dispute between a contractor and an owner.

“Bureau.” The Bureau of Consumer Protection in the Office of Attorney General.

“Certificate.” A certificate of registration as a contractor, issued by the Bureau of Consumer Protection, which contains a registration number assigned by the Bureau of Consumer Protection.

“Contractor.” Any person who owns and operates a home improvement business or who undertakes, offers to undertake or agrees to perform any home improvement. The term includes a subcontractor or independent contractor who has contracted with a home improvement retailer, regardless of the retailer’s net worth, to provide home improvement services to the retailer’s customers. The term does not include any of the following:

(1) A person for whom the total cash value of all of that person’s home improvements is less than \$5,000 during the previous taxable year.

(2) A home improvement retailer having a net worth of more than \$50,000,000 or an employee of that retailer that does not perform home improvements.

“Home improvement.”

(1) The term includes all of the following done in connection with land or a portion of the land adjacent to a private residence or a building or a portion of the building which is used or designed to be used as a private residence for which the total cash price of all work agreed upon between the contractor and owner is more than \$500:

(i) Repair, replacement, remodeling, demolition, removal, renovation, installation, alteration, conversion, modernization, improvement, rehabilitation or sandblasting.

(ii) Construction, replacement, installation or improvement of driveways, swimming pools, pool houses, porches, garages, roofs, siding, insulation, solar energy systems, security systems, flooring, patios, fences, gazebos, sheds, cabanas, landscaping of a type that is not excluded under paragraph (2)(vi), painting, doors and windows and waterproofing.

(iii) Without regard to affixation, the installation of central heating, air conditioning, storm windows or awnings.

(2) The term does not include:

(i) The construction of a new home.

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

(iii) The sale of services furnished for commercial or business use or for resale, if the service takes place somewhere other than at a private residence.

(iv) The sale of appliances, including stoves, refrigerators, freezers, room air conditioners and others which are designed for and are easily removable from the premises without material alteration.

(v) Any work performed without compensation by the owner of the owner's private residence or residential rental property.

(vi) 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 the work involves any of the following at a private residence:

(A) 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.

(B) The placement of retaining walls, fountains or drainage systems.

(vii) Emergency work pursuant to section 7 of the act of December 17, 1968 (P.L.1224, No.387), known as the Unfair Trade Practices and Consumer Protection Law.

(viii) The conversion of existing commercial structures into residential or noncommercial structures.

“Home improvement contract.” An agreement between a contractor, subcontractor or salesperson and an owner for the performance of a home improvement which includes all agreements for labor, services and materials to be furnished and performed under the contract.

“Owner.”

(1) The term includes any of the following:

(i) An owner of a private residence, including any person authorized by an owner to act on the owner’s behalf to order, contract for or purchase a home improvement.

(ii) A person entitled to the performance of the work of a contractor pursuant to a home improvement contract.

(2) An owner of a private residence shall not be required to reside in the residence to be deemed an owner under this act.

(3) A person who owns three or more private residences in this Commonwealth 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 and those private residences the person uses for personal recreational purposes.

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

“Private residence.” Any of the following:

(1) A single family dwelling.

(2) A multifamily dwelling consisting of not more than two units.

(3) A single unit located within any multifamily dwelling, including condominiums and cooperative units.

“Special order material.” Any material, product or equipment that is not a stock item and must be specially ordered from the factory or distributor and which is produced or processed for the contractor for a specific home improvement contract. Special order materials are not returnable by the contractor for a refund or credit and have no usefulness for other home improvement contracts because they are specially ordered for a specific home improvement contract.

“Specifications.” The plans, detailed drawings, lists of materials, stated allowances or other methods customarily used in the home improvement industry as a whole to describe with particularity the work, workmanship, materials and quality of materials for each home improvement.

Section 3. Registration of contractors.

(a) General rule.—No person shall hold himself out as a contractor, nor shall a person perform any home improvement without first registering with the bureau, as provided for in this act.

(b) Public access to registration information.—The bureau shall maintain a toll-free telephone number from which a caller can obtain information as to whether a contractor is registered with the bureau pursuant to this act, as well as information that may be obtained on the bureau’s Internet website.

(c) Confidentiality of personal information.—The bureau shall create a policy for the disclosure of personal information to the public. The bureau may not disclose to the public a contractor's Social Security number, driver's license number or any confidential information prohibited by law from being disclosed, provided that a contractor's home address and home telephone number shall be disclosed only if it is also used as the contractor's business address and business telephone number.

(d) Nongrant or renewal of license.—The Department of Banking shall not grant or renew a license to any person registered, or required to be registered, as a home improvement contractor pursuant to any of the following:

(1) The former act of December 12, 1980 (P.L.1179, No.219), known as the Secondary Mortgage Loan Act.

(2) The act of December 22, 1989 (P.L.687, No.90), known as the Mortgage Bankers and Brokers and Consumer Equity Protection Act.

Section 4. Procedures for registration as a contractor.

(a) Application.—

(1) A person shall apply to the bureau in writing or electronically via a secure Internet connection, if permitted by the bureau, on a form provided by the bureau. The application shall include the following information:

(i) For an individual applicant, all of the following:

(A) Name.

(B) Date of birth.

(C) Home address and home telephone number.

(D) Driver's license number or a copy of an identification card issued by the state in which the individual resides.

(E) Business name, address and telephone number.

(F) Federal employer identification number, if applicable.

(G) Social Security number.

(H) All prior business names and addresses of home improvement businesses operated by the individual.

(ii) For a general partnership applicant, all of the following:

(A) Name of each partner.

(B) Date of birth of each partner.

(C) Home address and home telephone number of each partner.

(D) Driver's license number or a copy of an identification card issued by the state in which the partner resides, of each partner.

(E) Partnership name, address and telephone number.

(F) Federal employer identification number, if applicable.

(G) Social Security number of each partner.

(H) All prior business names and addresses of home improvement businesses operated by the applicant and each partner.

(iii) For a corporation, limited liability company or limited partnership, all of the following:

(A) Name of each officer, manager and general partner.

(B) Date of birth of each officer, manager and general partner.

(C) Home address and home telephone number of each officer, manager and general partner.

(D) Driver's license number or a copy of an identification card issued by the state in which the individual resides, of each officer, manager and general partner.

(E) Entity's name, address and telephone number.

(F) Federal employer identification number, if applicable.

(G) Social Security number of each officer, manager and general partner.

(H) Name of each director or each individual holding greater than a 5% equity interest in the entity.

(I) All prior business names and addresses of home improvement businesses operated by each officer, manager and general partner.

(iv) For an out-of-State corporation, limited liability or limited partnership, the name and address of the entity's resident agent or registered office provider within this Commonwealth and any registration number or license number issued to the entity by its home state or political subdivision of such other state, if applicable.

(v) For a joint venture applicant, the name, address and telephone number of the joint venture, as well as the name, address and telephone number of each party to the joint venture. When the parties to a joint venture include business entities, the information required from such entities pursuant to paragraph (2) and subsection (b) shall also be provided.

(vi) A complete description of the nature of the contracting business of the applicant.

(vii) A statement whether:

(A) The individual or individuals making application, even if doing so as part of a business entity application, has ever been convicted of a criminal offense related to a home improvement transaction, fraud, theft, a crime of deception or a crime involving fraudulent business practices, as well as a statement whether the applicant has ever filed a petition in bankruptcy or, within the last ten years, received a final civil judgment entered against the applicant or businesses in which the applicant held an interest that was related to a home improvement transaction.

(B) The applicant's certificate or a similar certificate or license issued by any other state or political subdivision thereof has ever been revoked or suspended pursuant to an order issued by a court of competent jurisdiction and, if so, the current status of the certificate or similar certificate or license. The statement required by this clause shall include the same information with respect to any other business in which the person making application has or has ever had an interest.

(viii) Whether within the last ten years the applicant has ever been suspended or debarred from participating in any Federal, State, local or not-for-profit program through which public funding or other assistance is provided to owners for home improvements.

(ix) Proof of liability insurance covering personal injury in an amount not less than \$50,000 and insurance covering property damage caused by the work of a home improvement contractor in an amount not less than \$50,000.

(2) Information requested in paragraph (1)(i) through (v) shall be for a ten-year period, prior to the time of registration. The applicant shall provide information prior to the last ten years, or as further clarification of the information provided, if the bureau requests such information.

(b) Reporting of multiple registrations or licensures.—Any registered contractor in this Commonwealth who is registered or licensed as a home improvement contractor in any other state, or political subdivision thereof, shall report this information to the bureau on the initial registration and biennial registration application. Any disciplinary action taken in such other jurisdiction shall be reported to the bureau on the initial registration application or, if such action occurred subsequent to submission of an initial application, on the biennial registration application or within 90 days of final disposition, whichever is sooner. Multiple registrations or licensures shall be noted by the bureau on the contractor's registration, and such state, or political subdivision thereof, shall be notified by the bureau of any disciplinary actions taken against such contractor in this Commonwealth.

Section 5. Application fees.

Each application for a certificate for a home improvement contractor or renewal of that certificate shall be accompanied by a fee of \$50. After completion of the application and payment of the fee, the bureau shall issue the home improvement contractor a registration certificate identifying the name of the individual contractor, name and address of the business and a registration number. Renewals shall be on a biennial basis.

Section 6. Proof of registration.

A contractor shall include its registration number in all advertisements distributed within this Commonwealth and on all contracts, estimates and proposals with owners in this Commonwealth. This section shall apply to all advertisements, contracts, estimates and proposals created by a contractor after the effective date of this act.

Section 7. Home improvement contracts.

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

(1) Is in writing and legible and contains the home improvement contractor registration number of the performing contractor.

(2) Is signed by all of the following:

(i) The owner, his agent or other contracted party.

(ii) The contractor or a salesperson on behalf of a contractor.

(3) Contains the entire agreement between the owner and the contractor, including attached copies of all required notices.

(4) Contains the date of the transaction.

(5) Contains the name, address and telephone number of the contractor. For the purposes of this paragraph, a post office box number alone shall not be considered an address.

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

(7) Includes a description of the work to be performed, the materials to be used and a set of specifications that cannot be changed without a written change order signed by the owner and the contractor.

(8) Includes the total sales price due under the contract.

(9) Includes the amount of any down payment plus any amount advanced for the purchase of special order materials. The amount of the down payment and the cost of the special order materials must be listed separately.

(10) Includes the names, addresses and telephone numbers of all subcontractors on the project known at the date of signing the contract. For the purposes of this paragraph, a post office box number alone shall not be considered an address.

(11) Except as provided in section 12, agrees to maintain liability insurance covering personal injury in an amount not less than \$50,000 and insurance covering property damage caused by the work of a home improvement contractor in an amount not less than \$50,000 and identifies the current amount of insurance coverage maintained at the time of signing the contract.

(12) Includes the toll-free telephone number under section 3(b).

(13) Includes a notice of the right of rescission under subsection (b).

(b) Right of rescission.—An individual signing a home improvement contract, except as provided in the emergency provisions of section 7 of the act of December 17, 1968 (P.L.1224, No.387), known as the Unfair Trade Practices and Consumer Protection Law, shall be permitted to rescind the contract without penalty regardless of where the contract was signed, within three business days of the date of signing.

(c) Copy to be provided.—A contractor or salesperson shall provide and deliver to the owner, without charge, a completed copy of the home improvement contract at the time the contract is executed which shall contain all required notices.

(d) Arbitration clause.—Nothing in this act shall preclude the court from setting aside an arbitration clause on any basis permitted under Pennsylvania law. If the contract contains an arbitration clause, it shall meet the following requirements or be deemed void by the court upon motion of either party, filed prior to the commencement of arbitration:

(1) The text of the clause must be in capital letters.

(2) The text shall be printed in 12-point boldface type and the arbitration clause must appear on a separate page from the rest of the contract.

(3) The clause shall contain a separate line for each of the parties to indicate their assent to be bound thereby.

(4) The clause shall not be effective unless both parties have assented as evidenced by signature and date, which shall be the date on which the contract was executed.

(5) The clause shall state clearly whether the decision of the arbitration is binding on the parties or may be appealed to the court of common pleas.

(6) The clause shall state whether the facts of the dispute, related documents and the decision are confidential.

(e) Voidable clauses.—If a home improvement contract contains any of the following clauses, the home improvement contract shall be voidable by the owner:

(1) A hold harmless clause.

(2) A waiver of Federal, State or local health, life, safety or building code requirements.

(3) A confession of judgment clause.

(4) A waiver of any right to a jury trial in any action brought by or against the owner.

(5) (Reserved).

(6) An assignment of or order for payment of wages or other compensation for services.

(7) A provision by which the owner agrees not to assert any claim or defense arising out of the contract.

(8) A provision that the contractor shall be awarded attorney fees and costs.

(9) A clause by which the owner relieves the contractor from liability for acts committed by the contractor or the contractor's agents in the collection of any payments or in the repossession of any goods.

(10) A waiver of any rights provided under this act.

(11) A provision providing for the automatic or recurring renewal of any provisions of the agreement, unless:

(i) the contract establishes a procedure by which the owner can choose not to renew the provision or provisions, thereby avoiding any new fees or charges, by providing written notice to the contractor via first class mail postmarked no later than three business days prior to any renewal;

(ii) such procedure is clearly and conspicuously disclosed in the agreement; and

(iii) the contract includes a provision requiring the contractor to notify the owner of any automatic or recurring renewal, and the

owner's option to cancel such renewal, by mail, not earlier than 20 days and not later than ten days prior to the date of any such renewal.

(f) Home improvement retailer contracts.—A home improvement retailer having a net worth of more than \$50,000,000 or an employee of that retailer that does not perform home improvements shall comply with the provisions of this subsection. No home improvement contract issued by a home improvement retailer having a net worth of more than \$50,000,000 or an employee of that retailer shall be valid or enforceable against an owner unless the contract:

(1) Is in writing and legible and contains all of the following:

(i) The name, address and telephone number of the retailer.

(ii) The name of the person signing the contract on behalf of the retailer and the person's position with the retailer or the person's authority to sign the contract.

(iii) The signature of the owner, the owner's agent or other contracted party.

(2) Complies with subsections (a)(3), (4), (6), (7), (8) and (9), (b), (c), (d) and (e).

(g) Contractor's recovery right.—Nothing in this section shall preclude a contractor who has complied with subsection (a) from the recovery of payment for work performed based on the reasonable value of services which were requested by the owner if a court determines that it would be inequitable to deny such recovery.

Section 8. Home improvement fraud.

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

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

(2) receives any advance payment for performing home improvement services or providing home improvement materials and fails to perform or provide such services or materials when specified in the contract taking into account any force majeure or unforeseen labor strike that would extend the time frame or unless extended by agreement with the owner and fails to return the payment received for such services or materials which were not provided by that date;

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

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

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

(6) misrepresents an item as a special order material or to misrepresent the cost of the special order material;

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

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

(b) Prosecution.—Prosecutions under this section shall not bar prosecution or conviction for any other crimes.

(c) Grading.—

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

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

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

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

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

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

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

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

(5) Notwithstanding any other provision of this section, where a person commits a second or subsequent offense described in subsection (a), the offense will constitute a felony of the second degree regardless of the amount of money involved. For this paragraph to be applicable, the second or subsequent offense must have occurred after the first

conviction. Paragraph (4) shall not be applicable to persons whose sentences would be enhanced pursuant to this paragraph.

(6) In addition to any other penalty imposed by this act, the court may revoke or suspend the certificate. At the time of sentencing, the court shall state the reasons for such revocation or suspension. A person whose registration has been revoked or suspended may petition the court of original jurisdiction for reinstatement after a period of five years from the date of revocation or suspension, or as specified in the court's order. The Administrative Office of Pennsylvania Courts shall report to the bureau any suspension or revocation of a certificate ordered by a court.

(d) Jurisdiction.—

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

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

Section 9. Prohibited acts.

No person shall:

(1) Fail to register as required by this act.

(2) Fail to refund the 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 the certified mail sent to the contractor's last known address if all of the following apply:

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

(ii) More than 45 days have elapsed since the starting date specified in the written contract.

(3) 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.

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

the person knows or has reason to know that the document or proof is false and is made to accomplish any of the following:

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

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

(5) Abandon or fail to perform, without justification, any home improvement contract or project engaged in or undertaken by a contractor. For the purposes of this paragraph, the term "justification" shall include nonpayment by the owner as required under the contract or any other violation of the contract by the owner.

(6) Deviate from or disregard plans or specifications, in any material respect, without a written change order dated and signed by both the contractor and owner, which contains the accompanying price changes for each deviation.

(7) Prepare, arrange, accept or participate in the financing of a home improvement contract with knowledge that the home improvement contract states a greater monetary obligation than the actual price of the home improvement.

(8) Advertise or offer, by any means, to perform a home improvement if the person does not intend to do any of the following:

(i) Accept a home improvement contract.

(ii) Perform the home improvement.

(iii) Charge for the home improvement at the price advertised or offered.

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

(10) For a home improvement contract in which the total price is more than \$1,000, receive a deposit in excess of:

(i) one-third of the home improvement contract price; or

(ii) one-third of the home improvement contract price plus the cost of special order materials that have been ordered.

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

(12) Subsequent to entering into an agreement for home improvement services or materials, changes the name of the contractor's business, liability insurance information, the contractor's business address or any other identifying information in a fraudulent or deceptive manner likely to cause confusion or misunderstanding without advising the owner in writing within ten days following any such change.

Section 10. Unfair Trade Practices and Consumer Protection Law.

A violation of any of the provisions of this act shall be deemed a violation of the act of December 17, 1968 (P.L.1224, No.387), known as the Unfair Trade Practices and Consumer Protection Law. Nothing in this act shall

preclude an owner from exercising any right provided under the Unfair Trade Practices and Consumer Protection Law.

Section 11. Regulations.

The bureau may adopt rules and regulations necessary to carry out the provisions of this act.

Section 12. Preemption of local registration.

Registration under this act shall preclude any requirement of payment of a fee or registration or licensing of any home improvement contractor by any political subdivision. Political subdivisions shall be permitted to require building permits and local enforcement of the building code for that political subdivision, for which a reasonable fee may be charged. This provision does not affect a municipality's responsibilities or authority under the act of November 10, 1999 (P.L.491, No.45), known as the Pennsylvania Construction Code Act, or the requirements under section 302(e) of the act of June 2, 1915 (P.L.736, No.338), known as the Workers' Compensation Act, regarding workers' compensation. This provision does not affect existing licensing standards in effect on the effective date of this act, with respect to electricians and plumbers and other trades, where licensing is conditioned on requirements of testing or possession of certificates obtained through specific training in electricity or plumbing or other trades. This provision does not affect local regulations or standards for liability insurance adopted by a municipality prior to January 1, 2006, and which are in effect on the effective date of this section.

Section 13. Exemptions.

This act shall not apply to any of the following persons or organizations:

- (1) The Commonwealth, or any of its political subdivisions.
- (2) The Federal Government.

Section 18. Repeal.

All acts and parts of acts are repealed insofar as they are inconsistent with this act.

Section 19. Effective date.

This act shall take effect July 1, 2009.

APPROVED—The 17th day of October, A.D. 2008.

EDWARD G. RENDELL