

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. CAHILL, PHEFFER -- read once and referred to the
Committee on Judiciary

AN ACT to amend the general business law, in relation to home improve-
ment contracts

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision 7 of section 770 of the general business law,
2 as added by chapter 32 of the laws of 1989, is amended to read as
3 follows:
4 7. "Custom home" means a new single family residence OR A RESIDENCE
5 DESIGNED SOLELY FOR OCCUPANCY OF NOT MORE THAN TWO FAMILIES LIVING SEPA-
6 RATELY, to be constructed on premises owned of record by the purchaser
7 at the time of contract[,]; provided that such residence is intended for
8 residential occupancy by such purchaser [and the contract of sale is
9 entered into on or after the first day of March, nineteen hundred nine-
10 ty].
11 S 2. Subdivision 1 of section 772 of the general business law, as
12 added by chapter 421 of the laws of 1987, is amended to read as follows:
13 1. Any owner who is induced to contract for a home improvement, in
14 reliance on false or fraudulent written representations or false written
15 statements, may sue and recover from such contractor a penalty of [five
16 hundred] UP TO TWO THOUSAND dollars plus reasonable attorney's fees, in
17 addition to any damages sustained by the owner by reason of such state-
18 ments or representations. ANY OWNER WHO IS AGGRIEVED BY A SUBSTANTIAL
19 VIOLATION, AS DEFINED IN SECTION SEVEN HUNDRED SEVENTY-THREE OF THIS
20 ARTICLE, MAY SUE AND RECOVER FROM SUCH CONTRACTOR A PENALTY OF UP TO
21 FIVE THOUSAND DOLLARS PLUS REASONABLE ATTORNEY'S FEES, IN ADDITION TO
22 ANY DAMAGES SUSTAINED BY THE OWNER BY REASON OF SUCH SUBSTANTIAL
23 VIOLATION. In addition, if the court finds that the suit by the owner

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 was without arguable legal merit, it may award reasonable attorney's
2 fees to the contractor.

3 S 3. Section 773 of the general business law, as amended by chapter
4 587 of the laws of 1990, is amended to read as follows:

5 S 773. Violations. 1. (A) Technical violations. Every home improvement
6 contractor who violates any of the provisions of this article shall be
7 subject to a civil penalty not to exceed one hundred dollars IN THE CASE
8 OF A FIRST VIOLATION.

9 (B) FOR A SECOND VIOLATION WITHIN A PERIOD OF THREE YEARS, A HOME
10 IMPROVEMENT CONTRACTOR SHALL BE GUILTY OF A VIOLATION AND SHALL BE FINED
11 TWO HUNDRED FIFTY DOLLARS.

12 (C) FOR A THIRD OR SUBSEQUENT VIOLATION WITHIN A PERIOD OF THREE
13 YEARS, A HOME IMPROVEMENT CONTRACTOR SHALL BE GUILTY OF A CLASS B MISDE-
14 MEANOR AND SHALL BE SENTENCED TO A MANDATORY, DEFINITE TERM OF IMPRISON-
15 MENT OF THREE MONTHS AND MAY ALSO BE FINED AS PROVIDED IN THE PENAL LAW.

16 2. Substantial violations. (A) Every home improvement contractor who
17 fails to deposit funds in an escrow account or provide a bond or
18 contract of indemnity or irrevocable letter of credit in compliance with
19 the requirements of section seventy-one-a of the lien law, [or] who
20 fails to provide a written contract substantially in compliance with the
21 requirements of this article, OR WHO VIOLATES THE PROVISIONS OF SECTION
22 SEVEN HUNDRED SEVENTY-ONE-A OF THIS ARTICLE shall, IN THE CASE OF A
23 FIRST VIOLATION, be subject to a civil penalty not to exceed the greater
24 of two hundred fifty dollars [for each violation] or five percent of the
25 aggregate contract price specified in the home improvement contract[;
26 provided, however, that in no event shall the total penalty exceed twenty-
27 ty-five hundred dollars for each contract].

28 (B) FOR A SECOND VIOLATION WITHIN A PERIOD OF THREE YEARS, A HOME
29 IMPROVEMENT CONTRACTOR SHALL BE GUILTY OF A CLASS A MISDEMEANOR AND
30 SHALL BE SENTENCED TO A MANDATORY, DEFINITE TERM OF IMPRISONMENT OF SIX
31 MONTHS AND MAY ALSO BE FINED AS PROVIDED IN THE PENAL LAW.

32 (C) FOR A THIRD OR SUBSEQUENT VIOLATION WITHIN A PERIOD OF THREE
33 YEARS, A HOME IMPROVEMENT CONTRACTOR SHALL BE GUILTY OF A CLASS E FELONY
34 AND SHALL BE SENTENCED TO A MANDATORY, DEFINITE TERM OF IMPRISONMENT OF
35 ONE YEAR AND MAY ALSO BE FINED AS PROVIDED IN THE PENAL LAW.

36 3. Mitigating factors; defenses. In an instance where the contractor
37 has been shown to have committed [multiple violations] A FIRST VIOLATION
38 of this article or the provisions of section seventy-one-a of the lien
39 law, the court shall consider the following factors in assessing a civil
40 penalty pursuant to PARAGRAPH (A) OF SUBDIVISION ONE OR PARAGRAPH (A) OF
41 subdivision two of this section: the volume of business which the home
42 improvement contractor performs on an annual basis, [the number of
43 contracts in violation,] the actual financial loss or exposure to finan-
44 cial loss suffered by [any] THE owner as a result of the [violations]
45 VIOLATION, and whether the home improvement contractor acted in good
46 faith or willfully with respect to such violations. No home improvement
47 contractor shall be subject to the increased penalties provided by PARA-
48 GRAPH (A) OF subdivision two of this section if such contractor shows by
49 a preponderance of the evidence that the violation was not intentional
50 and resulted from a bona fide error made notwithstanding the maintenance
51 of procedures reasonably adopted to avoid such a violation.

52 S 4. Subdivision 2 of section 774 of the general business law, as
53 added by chapter 421 of the laws of 1987, is amended and a new subdivi-
54 sion 3 is added to read as follows:

55 2. The CIVIL provisions of this article may be enforced concurrently
56 by the director of a municipal consumer affairs office, or by the town

1 attorney, city corporation counsel, or other lawful designee of a muni-
2 cipality or local government, and all moneys collected thereunder shall
3 be retained by such municipality or local government.

4 3. THE ATTORNEY GENERAL IS HEREBY AUTHORIZED TO PROSECUTE ANY CRIME
5 DEFINED IN SECTION SEVEN HUNDRED SEVENTY-THREE OF THIS ARTICLE.

6 S 5. This act shall take effect on the first of November next succeed-
7 ing the date on which it shall have become a law.