

7339

2015-2016 Regular Sessions

I N A S S E M B L Y

May 6, 2015

Introduced by M. of A. BRINDISI -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to home improvement contract provisions

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

1 Section 1. Subdivision 3 of section 770 of the general business law is
2 amended by adding three new paragraphs (f), (g) and (h) to read as
3 follows:

4 (F) AN OWNER OR FARM PROPERTY OWNER WHO PHYSICALLY PERFORMS, OR HAS
5 EMPLOYEES WHO PERFORM REPAIRING, REMODELING, ALTERING, CONVERTING, OR
6 MODERNIZING OF, OR ADDING TO, THEIR OWN DWELLING OR ANOTHER STRUCTURE
7 LOCATED ON THE PROPERTY OWNED BY THE PERSON WITHOUT THE ASSISTANCE OF A
8 HOME IMPROVEMENT CONTRACTOR.

9 (G) ANY AUTHORIZED EMPLOYEE OR REPRESENTATIVE OF THE UNITED STATES
10 GOVERNMENT, THE STATE OF NEW YORK, OR ANY POLITICAL SUBDIVISION PERFORM-
11 ING THE REPAIRING, REMODELING, ALTERING, CONVERTING, OR MODERNIZING OF,
12 OR ADDING TO, GOVERNMENT PROPERTY.

13 (H) ANY PERSON WHO FURNISHES ANY FABRICATED OR FINISHED PRODUCT, MATE-
14 RIAL, OR ARTICLE OF MERCHANDISE THAT IS NOT INCORPORATED INTO OR
15 ATTACHED TO REAL PROPERTY BY THE PERSON SO AS TO BECOME AFFIXED TO THE
16 RESIDENTIAL PROPERTY.

17 S 2. Paragraph (h) of subdivision 1 of section 771 of the general
18 business law, as amended by chapter 32 of the laws of 1989, is amended
19 to read as follows:

20 (h) A notice to the owner that, in addition to any right otherwise to
21 revoke an offer, the owner may cancel the home improvement contract
22 until midnight of the [third] FIFTH business day after the day on which
23 the owner has signed an agreement or offer to purchase relating to such
24 contract. Cancellation occurs when written notice of cancellation is
25 given to the home improvement contractor. Notice of cancellation, if

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

LBD10737-01-5

1 given by mail, shall be deemed given when deposited in a mailbox proper-
2 ly addressed and postage prepaid. Notice of cancellation shall be suffi-
3 cient if it indicates the intention of the owner not to be bound.
4 Notwithstanding the foregoing, this paragraph shall not apply to a tran-
5 saction in which the owner has initiated the contact and the home
6 improvement is needed to meet a bona fide emergency of the owner, and
7 the owner furnishes the home improvement contractor with a separate
8 dated and signed personal statement in the owner's handwriting describ-
9 ing the situation requiring immediate remedy and expressly acknowledging
10 and waiving the right to cancel the home improvement contract within
11 three business days. For the purposes of this paragraph the term "owner"
12 shall mean an owner or any representative of an owner.

13 S 3. Subdivision 1 of section 771 of the general business law is
14 amended by adding a new paragraph (i) to read as follows:

15 (I) THE NAME OF THE INSURER, TYPE OF INSURANCE COVERAGE AS REQUIRED BY
16 SECTION SEVEN HUNDRED SEVENTY-ONE-B OF THIS ARTICLE, AND THE INSURANCE
17 POLICY LIMITS OBTAINED BY THE HOME IMPROVEMENT CONTRACTOR.

18 S 4. Section 771 of the general business law is amended by adding
19 seven new subdivisions 3, 4, 5, 6, 7, 8 and 9 to read as follows:

20 3. A HOME IMPROVEMENT CONTRACTOR SHALL NOT ADVERTISE OR PROMISE TO PAY
21 OR REBATE ALL OR ANY PORTION OF ANY INSURANCE DEDUCTIBLE AS AN INDUCE-
22 MENT TO THE SALE OF GOODS OR SERVICES. AS USED IN THIS SECTION, A PROM-
23 ISE TO PAY OR REBATE INCLUDES GRANTING ANY ALLOWANCE OR OFFERING ANY
24 DISCOUNT AGAINST THE FEES TO BE CHARGED OR PAYING THE INSURED OR ANY
25 PERSON DIRECTLY OR INDIRECTLY ASSOCIATED WITH THE PROPERTY ANY FORM OF
26 COMPENSATION, GIFT, PRIZE, BONUS, COUPON, CREDIT, REFERRAL FEE, OR OTHER
27 ITEM OF MONETARY VALUE FOR ANY REASON.

28 4. AN OWNER WHO HAS ENTERED INTO A WRITTEN CONTRACT WITH A HOME
29 IMPROVEMENT CONTRACTOR TO PROVIDE GOODS OR SERVICES TO BE PAID UNDER A
30 PROPERTY AND CASUALTY INSURANCE POLICY MAY CANCEL THE HOME IMPROVEMENT
31 CONTRACT PRIOR TO MIDNIGHT ON THE FIFTH BUSINESS DAY AFTER THE INSURED
32 PARTY HAS RECEIVED WRITTEN NOTICE FROM THE INSURER THAT ALL OR ANY PART
33 OF THE CLAIM OR CONTRACT IS NOT A COVERED LOSS UNDER THE INSURANCE POLI-
34 CY. CANCELLATION OCCURS WHEN WRITTEN NOTICE OF CANCELLATION IS GIVEN TO
35 THE HOME IMPROVEMENT CONTRACTOR. NOTICE OF CANCELLATION, IF GIVEN BY
36 MAIL, SHALL BE DEEMED GIVEN WHEN DEPOSITED IN A MAILBOX PROPERLY
37 ADDRESSED AND POSTAGE PREPAID. NOTICE OF CANCELLATION SHALL BE SUFFI-
38 CIENT IF IT INDICATES THE INTENTION OF THE OWNER NOT TO BE BOUND.
39 NOTWITHSTANDING THE FOREGOING, THIS SUBDIVISION SHALL NOT APPLY TO A
40 TRANSACTION IN WHICH THE OWNER HAS INITIATED THE CONTACT AND THE HOME
41 IMPROVEMENT IS NEEDED TO MEET A BONA FIDE EMERGENCY OF THE OWNER, AND
42 THE OWNER FURNISHES THE HOME IMPROVEMENT CONTRACTOR WITH A SEPARATE
43 DATED AND SIGNED PERSONAL STATEMENT IN THE OWNER'S HANDWRITING DESCRIB-
44 ING THE SITUATION REQUIRING IMMEDIATE REMEDY AND EXPRESSLY ACKNOWLEDGING
45 AND WAIVING THE RIGHT TO CANCEL THE HOME IMPROVEMENT CONTRACT WITHIN
46 THREE BUSINESS DAYS. FOR THE PURPOSES OF THIS SUBDIVISION THE TERM
47 "OWNER" SHALL MEAN AN OWNER OR ANY REPRESENTATIVE OF AN OWNER.

48 5. WITHIN TEN DAYS AFTER A CONTRACT REFERRED TO IN SUBDIVISION FOUR OF
49 THIS SECTION HAS BEEN CANCELLED, THE HOME IMPROVEMENT CONTRACTOR SHALL
50 TENDER TO THE OWNER ANY PAYMENTS, PARTIAL PAYMENTS, OR DEPOSITS MADE AND
51 ANY NOTE OR OTHER EVIDENCE OF INDEBTEDNESS. IF, HOWEVER, THE HOME
52 IMPROVEMENT CONTRACTOR HAS PERFORMED ANY EMERGENCY SERVICES, ACKNOWL-
53 EDGED BY THE OWNER IN WRITING TO BE NECESSARY TO PREVENT DAMAGE TO THE
54 PREMISES, THE HOME IMPROVEMENT CONTRACTOR SHALL BE ENTITLED TO THE
55 REASONABLE VALUE OF SUCH SERVICES. ANY PROVISION IN A CONTRACT REFERRED
56 TO IN SUBDIVISION FOUR OF THIS SECTION THAT REQUIRES THE PAYMENT OF ANY

1 FEE FOR ANYTHING EXCEPT EMERGENCY SERVICES SHALL NOT BE ENFORCEABLE
2 AGAINST THE OWNER WHO HAS CANCELLED A CONTRACT PURSUANT TO THIS SECTION.

3 6. A HOME IMPROVEMENT CONTRACTOR SHALL NOT REQUIRE AN OWNER TO PROVIDE
4 A DEPOSIT OF MORE THAN ONE-HALF OF THE AGREED UPON CONSIDERATION FOR THE
5 WORK AND MATERIALS. IN ADDITION, A HOME IMPROVEMENT CONTRACTOR SHALL
6 NOT MANDATE THAT A PARTICULAR FORM OF PAYMENT BE MADE IN ORDER TO
7 COMMENCE PERFORMANCE OF THE HOME IMPROVEMENT.

8 7. A HOME IMPROVEMENT CONTRACTOR SHALL NOT ABANDON, OR FAIL TO
9 PERFORM, WITHOUT JUSTIFICATION, ANY HOME IMPROVEMENT CONTRACT, NOR SHALL
10 THE HOME IMPROVEMENT CONTRACTOR DEVIATE FROM OR DISREGARD PLANS OR SPEC-
11 IFICATIONS IN ANY MATERIAL RESPECT WITHOUT THE CONSENT OF THE OWNER.
12 FURTHERMORE, A HOME IMPROVEMENT CONTRACTOR SHALL ABIDE BY THE APPLICABLE
13 BUILDING CODE FOR THE JURISDICTION WHERE THE RESIDENTIAL PROPERTY IS
14 LOCATED.

15 8. A HOME IMPROVEMENT CONTRACTOR SHALL NOT FAIL TO PAY FOR MATERIALS
16 OR SERVICES RENDERED IN CONNECTION WITH A HOME IMPROVEMENT CONTRACT
17 WHERE THE CONTRACTOR HAS RECEIVED SUFFICIENT FUNDS AS PAYMENT FOR THE
18 PARTICULAR CONTRACT FOR WHICH THE SERVICES OR MATERIAL WERE RENDERED OR
19 PURCHASED.

20 9. A HOME IMPROVEMENT CONTRACTOR SHALL NOT PERFORM THE REPORTING,
21 ADJUSTING, OR NEGOTIATING OF A CLAIM ON BEHALF OF THE OWNER AND SHALL
22 NOT RECEIVE COMPENSATION FOR THE REFERRAL TO ANY ENTITY THAT REPORTS,
23 ADJUSTS OR NEGOTIATES A CLAIM ON BEHALF OF AN OWNER.

24 S 5. The general business law is amended by adding a new section 771-b
25 to read as follows:

26 S 771-B. INSURANCE REQUIREMENTS FOR HOME IMPROVEMENT CONTRACTORS. 1. A
27 HOME IMPROVEMENT CONTRACTOR SHALL PROVIDE TO THE OWNER ADEQUATE PROOF OF
28 INSURANCE OF THE FOLLOWING TYPES AND IN THE FOLLOWING AMOUNTS:

29 (A) A CERTIFICATE OF WORKERS' COMPENSATION COVERING ALL EMPLOYEES OF
30 THE HOME IMPROVEMENT CONTRACTOR. IF THE HOME IMPROVEMENT CONTRACTOR DOES
31 NOT HAVE ANY EMPLOYEES, THEN THE CONTRACTOR MUST PROVIDE A CERTIFICATE
32 OF ATTESTATION EXEMPTION (CE-200) FORM FROM THE WORKERS' COMPENSATION
33 BOARD.

34 (B) CERTIFICATES OF GENERAL LIABILITY AND PROPERTY DAMAGE INSURANCE IN
35 THE AMOUNT OF ONE HUNDRED THOUSAND DOLLARS PER PERSON, THREE HUNDRED
36 THOUSAND DOLLARS PER OCCURRENCE FOR BODILY INJURY; AND FIFTY THOUSAND
37 DOLLARS PER OCCURRENCE AND IN THE AGGREGATE FOR PROPERTY DAMAGE.

38 2. THE PROVISIONS OF THIS SECTION SHALL APPLY TO HOME IMPROVEMENT
39 CONTRACTS PERFORMED IN ALL POLITICAL SUBDIVISIONS THAT DO NOT CONTAIN
40 ANY INSURANCE REQUIREMENTS FOR SUCH CONTRACTS.

41 S 6. This act shall take effect on the one hundred eightieth day after
42 it shall have become a law.