S T A T E O F N E W Y O R K

7339--A

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 -- recommitted to the Committee on Consumer Affairs and Protection in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

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

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

(G) ANY AUTHORIZED EMPLOYEE OR REPRESENTATIVE OF THE UNITED STATES GOVERNMENT, THE STATE OF NEW YORK, OR ANY POLITICAL SUBDIVISION PERFORMING THE REPAIRING, REMODELING, ALTERING, CONVERTING, OR MODERNIZING OF, OR ADDING TO, GOVERNMENT PROPERTY.

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

S 2. Subdivision 1 of section 771 of the general business law is amended by adding a new paragraph (i) to read as follows:

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

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

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

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

4. AN OWNER WHO HAS ENTERED INTO A WRITTEN CONTRACT WITH A HOME IMPROVEMENT CONTRACTOR TO PROVIDE GOODS OR SERVICES TO BE PAID UNDER A PROPERTY AND CASUALTY INSURANCE POLICY MAY CANCEL THE HOME IMPROVEMENT CONTRACT PRIOR TO MIDNIGHT ON THE THIRD BUSINESS DAY AFTER THE INSURED PARTY HAS RECEIVED WRITTEN OR ELECTRONIC NOTICE FROM THE INSURER THAT ALL OR ANY PART OF THE CLAIM OR CONTRACT IS NOT A COVERED LOSS UNDER THE INSURANCE POLICY. CANCELLATION OCCURS WHEN WRITTEN OR ELECTRONIC NOTICE OF CANCELLATION IS GIVEN TO THE HOME IMPROVEMENT CONTRACTOR. NOTICE OF CANCELLATION, IF GIVEN BY MAIL, SHALL BE DEEMED GIVEN WHEN DEPOSITED IN A MAILBOX PROPERLY ADDRESSED AND POSTAGE PREPAID. NOTICE OF CANCELLATION SHALL BE SUFFICIENT IF IT INDICATES THE INTENTION OF THE OWNER NOT TO BE BOUND. NOTWITHSTANDING THE FOREGOING, THIS SUBDIVISION SHALL NOT APPLY TO A TRANSACTION IN WHICH THE OWNER HAS INITIATED THE CONTACT AND THE HOME IMPROVEMENT IS NEEDED TO MEET A BONA FIDE EMERGENCY OF THE OWNER, AND THE OWNER FURNISHES THE HOME IMPROVEMENT CONTRACTOR WITH A SEPARATE DATED AND SIGNED PERSONAL STATEMENT IN THE OWNER'S HANDWRITING DESCRIBING THE SITUATION REQUIRING IMMEDIATE REMEDY AND EXPRESSLY ACKNOWLEDGING AND WAIVING THE RIGHT TO CANCEL THE HOME IMPROVEMENT CONTRACT WITHIN THREE BUSINESS DAYS. FOR THE PURPOSES OF THIS SUBDIVISION THE TERM "OWNER" SHALL MEAN AN OWNER OR ANY REPRESENTATIVE OF AN OWNER.

5. WITHIN TEN DAYS AFTER A CONTRACT REFERRED TO IN SUBDIVISION FOUR OF THIS SECTION HAS BEEN CANCELLED, THE HOME IMPROVEMENT CONTRACTOR SHALL TENDER TO THE OWNER ANY PAYMENTS, PARTIAL PAYMENTS, OR DEPOSITS MADE AND ANY NOTE OR OTHER EVIDENCE OF INDEBTEDNESS. IF, HOWEVER, THE HOME IMPROVEMENT CONTRACTOR HAS PERFORMED ANY EMERGENCY SERVICES, ACKNOWLEDGED BY THE OWNER IN WRITING TO BE NECESSARY TO PREVENT DAMAGE TO THE PREMISES, THE HOME IMPROVEMENT CONTRACTOR SHALL BE ENTITLED TO THE REASONABLE VALUE OF SUCH SERVICES. ANY PROVISION IN A CONTRACT REFERRED TO IN SUBDIVISION FOUR OF THIS SECTION THAT REQUIRES THE PAYMENT OF ANY FEE FOR ANYTHING EXCEPT EMERGENCY SERVICES SHALL NOT BE ENFORCEABLE AGAINST THE OWNER WHO HAS CANCELLED A CONTRACT PURSUANT TO THIS SECTION.

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

7. A HOME IMPROVEMENT CONTRACTOR SHALL NOT ABANDON, OR FAIL TO PERFORM, WITHOUT JUSTIFICATION, ANY HOME IMPROVEMENT CONTRACT, NOR SHALL THE HOME IMPROVEMENT CONTRACTOR DEVIATE FROM OR DISREGARD PLANS OR SPECIFICATIONS IN ANY MATERIAL RESPECT WITHOUT THE CONSENT OF THE OWNER. FURTHERMORE, A HOME IMPROVEMENT CONTRACTOR SHALL ABIDE BY THE APPLICABLE BUILDING CODE FOR THE JURISDICTION WHERE THE RESIDENTIAL PROPERTY IS LOCATED.

8. A HOME IMPROVEMENT CONTRACTOR SHALL NOT FAIL TO PAY FOR MATERIALS OR SERVICES RENDERED IN CONNECTION WITH A HOME IMPROVEMENT CONTRACT WHERE THE CONTRACTOR HAS RECEIVED SUFFICIENT FUNDS AS PAYMENT FOR THE

PARTICULAR CONTRACT FOR WHICH THE SERVICES OR MATERIAL WERE RENDERED OR PURCHASED.

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

S 4. The general business law is amended by adding a new section 771-b to read as follows:

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

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

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

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

S 5. This act shall take effect on the one hundred eightieth day after it shall have become a law.