

5126

2015-2016 Regular Sessions

I N S E N A T E

May 4, 2015

Introduced by Sen. AMEDORE -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

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

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

1 Section 1. Paragraphs (d) and (e) of subdivision 3 of section 770 of
2 the general business law, as amended by chapter 32 of the laws of 1989,
3 are amended, and three new paragraphs (f), (g) and (h) are added to read
4 as follows:
5 (d) the sale or installation of decorative goods or services, such as
6 draperies and carpets; [or]
7 (e) the performance of repairs, replacements, or other services pursuant to an express or implied warranty, or a maintenance agreement as defined in section three hundred ninety-five-a of this chapter[.];
8 (F) THE PERFORMANCE BY AN OWNER, FARM PROPERTY OWNER, OR THE EMPLOYEES
9 OF SUCH OWNER OR FARM PROPERTY OWNER OF THE REPAIR, REMODELING, CONVERSION,
10 ALTERATION, MODERNIZATION OR EXPANSION OF THE OWNER OR FARM PROPERTY OWNER'S DWELLING OR OTHER STRUCTURE ON THE OWNER'S OR FARM PROPERTY OWNER'S PROPERTY, WITHOUT THE ASSISTANCE OF A HOME IMPROVEMENT CONTRACTOR;
11 (G) THE PERFORMANCE OF REPAIRS, REMODELING, ALTERATIONS, CONVERSION, MODERNIZATION OR EXPANSION, BY ANY AUTHORIZED EMPLOYEE OR REPRESENTATIVE OF THE UNITED STATES GOVERNMENT, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF, OF ANY GOVERNMENT PROPERTY; OR
12 (H) THE FURNISHING OR PROVISIONS OF ANY FABRICATED OR FINISHED PRODUCT, MATERIAL OR ARTICLE OF MERCHANDISE THAT IS NOT INCORPORATED INTO OR ATTACHED TO REAL PROPERTY SO AS TO BECOME AFFIXED TO THE RESIDENTIAL PROPERTY THEREON.

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

LBD10615-01-5

1 S 2. Paragraph (h) of subdivision 1 of section 771 of the general
2 business law, as amended by chapter 32 of the laws of 1989, is amended
3 and a new paragraph (i) is added to read as follows:

4 (h) A notice to the owner that, in addition to any right otherwise to
5 revoke an offer, the owner may cancel the home improvement contract
6 until midnight of the [third] FIFTH business day after the day on which
7 the owner has signed an agreement or offer to purchase relating to such
8 contract. Cancellation occurs when written notice of cancellation is
9 given to the home improvement contractor. Notice of cancellation, if
10 given by mail, shall be deemed given when deposited in a mailbox proper-
11 ly addressed and postage prepaid. Notice of cancellation shall be suffi-
12 cient if it indicates the intention of the owner not to be bound.
13 Notwithstanding the foregoing, this paragraph shall not apply to a tran-
14 saction in which the owner has initiated the contact and the home
15 improvement is needed to meet a bona fide emergency of the owner, and
16 the owner furnishes the home improvement contractor with a separate
17 dated and signed personal statement in the owner's handwriting describ-
18 ing the situation requiring immediate remedy and expressly acknowledging
19 and waiving the right to cancel the home improvement contract within
20 three business days. For the purposes of this paragraph the term "owner"
21 shall mean an owner or any representative of an owner.

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

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

27 3. A HOME IMPROVEMENT CONTRACTOR SHALL NOT ADVERTISE, OR PROMISE TO
28 PAY OR REBATE ALL OR ANY PORTION OF ANY INSURANCE DEDUCTIBLE AS AN
29 INDUCEMENT TO THE SALE OF GOODS OR SERVICES. AS USED IN THIS SECTION, A
30 "PROMISE TO PAY OR REBATE" INCLUDES THE GRANTING OF ANY ALLOWANCE OR
31 OFFERING OF ANY DISCOUNT AGAINST THE FEES TO BE CHARGED, OR PAYING THE
32 INSURED OR ANY PERSON DIRECTLY OR INDIRECTLY ASSOCIATED WITH THE PROPER-
33 TY ANY FORM OF COMPENSATION, GIFT, PRIZE, BONUS, COUPON, CREDIT, REFER-
34 RAL FEE, OR OTHER ITEM OF MONETARY VALUE FOR ANY REASON.

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

55 5. WITHIN TEN DAYS AFTER A CONTRACT REFERRED TO IN SUBDIVISION FOUR OF
56 THIS SECTION HAS BEEN CANCELLED, THE HOME IMPROVEMENT CONTRACTOR SHALL

1 TENDER TO THE OWNER ANY PAYMENTS, PARTIAL PAYMENTS, OR DEPOSITS MADE AND
2 ANY NOTE OR OTHER EVIDENCE OF INDEBTEDNESS. IF, HOWEVER, THE HOME
3 IMPROVEMENT CONTRACTOR HAS PERFORMED ANY EMERGENCY SERVICES, ACKNOWL-
4 EDGED BY THE OWNER IN WRITING TO BE NECESSARY TO PREVENT DAMAGE TO THE
5 PREMISES, THE HOME IMPROVEMENT CONTRACTOR SHALL BE ENTITLED TO THE
6 REASONABLE VALUE OF SUCH SERVICES. ANY PROVISION IN A CONTRACT REFERRED
7 TO IN SUBDIVISION FOUR OF THIS SECTION THAT REQUIRES THE PAYMENT OF ANY
8 FEE FOR ANYTHING EXCEPT EMERGENCY SERVICES SHALL NOT BE ENFORCEABLE
9 AGAINST THE OWNER WHO HAS CANCELLED A CONTRACT PURSUANT TO THIS SECTION.

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

15 7. A HOME IMPROVEMENT CONTRACTOR SHALL NOT ABANDON, OR FAIL TO
16 PERFORM, WITHOUT JUSTIFICATION, ANY HOME IMPROVEMENT CONTRACT, NOR SHALL
17 THE HOME IMPROVEMENT CONTRACTOR DEVIATE FROM OR DISREGARD PLANS OR SPEC-
18 IFICATIONS IN ANY MATERIAL RESPECT WITHOUT THE CONSENT OF THE OWNER.
19 FURTHERMORE, A HOME IMPROVEMENT CONTRACTOR SHALL ABIDE BY THE APPLICABLE
20 BUILDING CODE FOR THE JURISDICTION WHERE THE RESIDENTIAL PROPERTY IS
21 LOCATED.

22 8. A HOME IMPROVEMENT CONTRACTOR SHALL NOT FAIL TO PAY FOR MATERIALS
23 OR SERVICES RENDERED IN CONNECTION WITH A HOME IMPROVEMENT CONTRACT
24 WHERE THE CONTRACTOR HAS RECEIVED SUFFICIENT FUNDS AS PAYMENT FOR THE
25 PARTICULAR CONTRACT FOR WHICH THE SERVICES OR MATERIALS WERE RENDERED OR
26 PURCHASED.

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

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

33 S 771-B. INSURANCE REQUIREMENTS FOR HOME IMPROVEMENT CONTRACTORS. A
34 HOME IMPROVEMENT CONTRACTOR SHALL PROVIDE TO THE OWNER ADEQUATE PROOF OF
35 INSURANCE OF THE TYPES AND AMOUNTS AS FOLLOWS:

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

41 2. CERTIFICATES OF GENERAL LIABILITY AND PROPERTY DAMAGE INSURANCE IN
42 THE AMOUNT OF ONE HUNDRED THOUSAND DOLLARS PER PERSON, THREE HUNDRED
43 THOUSAND DOLLARS PER OCCURRENCE, BODILY INJURY; AND FIFTY THOUSAND
44 DOLLARS EACH OCCURRENCE AND AGGREGATE, PROPERTY DAMAGE.

45 THESE INSURANCE REQUIREMENTS SHALL APPLY TO HOME IMPROVEMENT CONTRACTS
46 PERFORMED IN ALL POLITICAL SUBDIVISIONS THAT DO NOT CONTAIN ANY INSUR-
47 ANCE REQUIREMENTS FOR SUCH CONTRACTS.

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