

5126--A

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 -- recommitted to the Committee on Consumer Protection in accordance with Senate Rule 6, sec. 8 -- 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:

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

19 (I) THE NAME OF THE INSURER, TYPE OF INSURANCE COVERAGE AS REQUIRED BY
20 SECTION SEVEN HUNDRED SEVENTY-ONE-B OF THIS ARTICLE, AND THE INSURANCE
21 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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1 S 3. Section 771 of the general business law is amended by adding
2 seven new subdivisions 3, 4, 5, 6, 7, 8 and 9 to read as follows:

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

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

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

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

47 7. A HOME IMPROVEMENT CONTRACTOR SHALL NOT ABANDON, OR FAIL TO
48 PERFORM, WITHOUT JUSTIFICATION, ANY HOME IMPROVEMENT CONTRACT, NOR SHALL
49 THE HOME IMPROVEMENT CONTRACTOR DEVIATE FROM OR DISREGARD PLANS OR SPEC-
50 IFICATIONS IN ANY MATERIAL RESPECT WITHOUT THE CONSENT OF THE OWNER.
51 FURTHERMORE, A HOME IMPROVEMENT CONTRACTOR SHALL ABIDE BY THE APPLICABLE
52 BUILDING CODE FOR THE JURISDICTION WHERE THE RESIDENTIAL PROPERTY IS
53 LOCATED.

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

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

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

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

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

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

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

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

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