

# STATE OF NEW YORK

3897--B

2017-2018 Regular Sessions

## IN SENATE

January 27, 2017

Introduced by Sens. CARLUCCI, KENNEDY -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- 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 roofing contract provisions

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 770 of the general business law is amended by adding a new subdivision 8 to read as follows:

8. "Roofing contractor" means a person, firm or corporation, including but not limited to, a person that is a nonresident roofing contractor, independent contractor, day laborer or subcontractor engaged in the business of roofing, gutter, downspout or siding services for a fee or who offers to engage in or solicits roofing-related services, including construction, installation, renovation, repair, maintenance, alteration or waterproofing. This definition shall not include a person engaged in the demolition of a structure or the cleanup of construction waste and debris that contains roofing material, nor a person engaged in building a new home or housing development. "Roofing contractor" shall not include:

(a) 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 roofing contractor.

(b) any authorized employee or representative of the United States government, the state of New York, or any political subdivision perform-

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

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1 ing the repairing, remodeling, altering, converting, or modernizing of,  
2 or adding to, government property.

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

5 § 771-b. Responsibilities of roofing contractors. 1. Every roofing  
6 contractor shall enter into a written contract with an owner pursuant to  
7 all of the provisions of section seven hundred seventy-one of this arti-  
8 cle before engaging in the business of roofing, gutter, downspout or  
9 siding services for such owner. In addition, the contract entered into  
10 under this section shall contain the name of the insurer, type of insur-  
11 ance coverage as required by subdivision nine of this section, and the  
12 insurance policy limits obtained by the roofing contractor.

13 2. A roofing contractor shall not advertise or promise to pay or  
14 rebate all or any portion of any insurance deductible as an inducement  
15 to the sale of goods or services. As used in this section, a promise to  
16 pay or rebate includes granting any allowance or offering any discount  
17 against the fees to be charged or paying the insured or any person  
18 directly or indirectly associated with the property any form of compen-  
19 sation, gift, prize, bonus, coupon, credit, referral fee, or other item  
20 of monetary value for any reason.

21 3. An owner who has entered into a written contract with a roofing  
22 contractor to provide goods or services to be paid under a property and  
23 casualty insurance policy may cancel the contract prior to midnight on  
24 the third business day after the insured party has received written  
25 notice from the insurer that all or any part of the claim or contract is  
26 not a covered loss under the insurance policy. Cancellation occurs when  
27 written notice of cancellation is given to the roofing contractor.  
28 Notice of cancellation, if given by registered or certified mail, shall  
29 be deemed given when deposited in a mailbox properly addressed and post-  
30 age prepaid. Notice of cancellation shall be sufficient if it indicates  
31 the intention of the owner not to be bound. Notwithstanding the forego-  
32 ing, this subdivision shall not apply to a transaction in which the  
33 owner has initiated the contact and the roofing contract is needed to  
34 meet a bona fide emergency of the owner, and the owner furnishes the  
35 roofing contractor with a separate dated and signed personal statement  
36 in the owner's handwriting describing the situation requiring immediate  
37 remedy and expressly acknowledging and waiving the right to cancel the  
38 roofing contract within three business days. For the purposes of this  
39 subdivision the term "owner" shall mean an owner or any representative  
40 of an owner.

41 4. Within ten days after a contract referred to in subdivision three  
42 of this section has been cancelled, the roofing contractor shall tender  
43 to the owner any payments, partial payments, or deposits made and any  
44 note or other evidence of indebtedness. If, however, the roofing  
45 contractor has performed any emergency services, acknowledged by the  
46 owner in writing to be necessary to prevent damage to the premises, the  
47 roofing contractor shall be entitled to the reasonable value of such  
48 services. Any provision in a contract referred to in this subdivision  
49 that requires the payment of any fee for anything except emergency  
50 services shall not be enforceable against the owner who has cancelled a  
51 contract pursuant to this section.

52 5. A roofing contractor shall not require an owner to provide a depos-  
53 it for the work and materials. A roofing contractor shall not mandate  
54 that a particular form of payment be made in order to commence perform-  
55 ance of the home improvement. A roofing contractor may invoice for  
56 payment of the materials portion of the project upon delivery of the

1 materials to the owner of the property. The material cost must be  
2 disclosed to the property owner in writing in advance of payment. A  
3 roofing contractor may invoice the remainder of the project upon  
4 successful completion of all contracted work.

5 6. A roofing contractor shall not abandon, or fail to perform, without  
6 justification, any roofing contract, nor shall the roofing contractor  
7 deviate from or disregard plans or specifications in any material  
8 respect without the consent of the owner. A roofing contractor shall  
9 abide by the applicable building code for the jurisdiction where the  
10 residential property is located.

11 7. A roofing contractor shall not fail to pay for materials or  
12 services rendered in connection with a roofing contract where the  
13 contractor has received sufficient funds as payment for the particular  
14 contract for which the services or material were rendered or purchased.

15 8. A roofing contractor shall not perform the reporting, adjusting, or  
16 negotiating a claim on behalf of the owner and shall not receive compen-  
17 sation for the referral to any entity that reports, adjusts or negoti-  
18 ates a claim on behalf of an owner. Nothing herein prevents a roofing  
19 contractor from communicating with an insurance company representative  
20 and sharing his or her technical knowledge when the insurer initiates  
21 the communication.

22 9. (a) A roofing contractor shall provide to the owner adequate proof  
23 of insurance of the types and amounts set forth in this subdivision:

24 (1) A certificate of workers' compensation covering all employees of  
25 the roofing contractor. If the roofing contractor does not have any  
26 employees, then the contractor must provide a certificate of attestation  
27 exemption (CE-200) form from the workers' compensation board; and

28 (2) Certificates of general liability and property damage insurance in  
29 the amount of one hundred thousand dollars per person, three hundred  
30 thousand dollars per occurrence, bodily injury; and fifty thousand  
31 dollars for each occurrence and aggregate, property damage.

32 (b) The insurance requirements set forth in this subdivision shall  
33 apply to roofing contracts performed in all political subdivisions that  
34 do not contain any insurance requirements for such contracts.

35 § 3. This act shall take effect on the one hundred eightieth day after  
36 it shall have become a law.