

FIRST REGULAR SESSION

SENATE BILL NO. 6

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATORS WIGGINS AND GOODE.

Pre-filed December 1, 2000, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

0078S.011

AN ACT

To amend chapter 407, RSMo, by adding thereto eleven new sections relating to consumer protection for home owners, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 407, RSMo, is amended by adding thereto eleven new sections, to be known as sections 407.1090, 407.1260, 407.1263, 407.1266, 407.1269, 407.1272, 407.1275, 407.1278, 407.1281, 407.1284 and 407.1287, to read as follows:

407.1090. 1. This section shall be known and may be cited as the "Unfair Home Improvement Loans Act".

2. For the purposes of this section, the following terms mean:

(1) "Consumer", an individual who seeks or acquires, by purchase or lease, any goods or services for personal, family or household purposes;

(2) "Goods", tangible chattel bought or leased for use primarily for personal, family or household purposes, including certificates or coupons exchangeable for such goods and including goods which, at the time of the sale or subsequently, are to be so affixed to real property as to become a part of real property whether or not severable therefrom;

(3) "Home solicitation", any transaction made at the consumer's primary residence, except those transactions initiated by the consumer. A consumer response to an advertisement is not a home solicitation;

(4) "Person", an individual, partnership, corporation, limited liability company, association or other group, however organized;

(5) "Services", work, labor and services for other than a commercial or business purpose and including services furnished in connection with the sale or repair of goods;

(6) "Transaction", an agreement between a consumer and any other person, whether or not the agreement is a contract enforceable by action, and includes the making of, and the performance pursuant to, such agreement.

3. The following unfair method of competition and unfair or deceptive acts or practices, undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer, are unlawful where the home solicitation of a consumer during which a loan is made encumbering the primary residence of such consumer for the purposes of paying for home improvements when the transaction violates federal consumer credit protection laws and federal Trade Commission regulations that prohibit:

(1) The extension of mortgage credit secured by the consumer's dwelling without regard for the consumer's repayment ability;

(2) Payment under a home improvement contract from amounts extended as credit under a mortgage, except:

(a) In the form of an instrument that is payable to the consumer or jointly to the consumer and the contractor; or

(b) At the election of the consumer, by a third party escrow agent in the form of a written agreement signed by the consumer, creditor, and contractor before the date of payment; and

(3) The sale or assignment of certain mortgages without the provision of a notice stating that the mortgage is subject to special rules pursuant to the federal Truth in Lending Act.

4. A third party shall not be liable pursuant to this section, unless:

(1) There was an agency relationship between the party who engaged in the home solicitation and the third party; or

(2) The third party had actual knowledge of, or participated in the unfair or deceptive transaction. A third party who is a holder in due course under a home solicitation transaction shall not be liable pursuant to this section.

5. Any person who violates the provisions of this section is guilty of a class A misdemeanor. In addition to any fines, penalties or sentences imposed by law, any person who is convicted of, or pleads guilty or nolo contendere to a violation of this section shall be required to make restitution.

407.1260. As used in sections 407.1260 to 407.1287, these terms shall mean:

(1) "Building standards", the structural, mechanical, electrical and quality standards of the home building industry for the geographic area in which the dwelling is situated;

(2) "Dwelling", a new building, not previously occupied, constructed for the purpose of habitation;

(3) "Home improvement", the repairing, remodeling, altering, converting or modernizing of, or adding to a residential dwelling;

(4) "Home improvement contractor", a person who is engaged in the business of home improvement either full-time or part-time, and who holds out to the public as having knowledge and skill peculiar to the business of home improvement;

(5) "Initial vendee", a person who first contracts to purchase a dwelling from a vendor for the purpose of habitation and for resale in the ordinary course of trade;

(6) "Major construction defect", actual damage to the load-bearing portion of the dwelling or the home improvement, including damage to subsidence, expansion or lateral movement of the soil, which affects the load-bearing function and which vitally affects or is imminently likely to vitally affect use of the dwelling or the home improvement for residential purposes. Major construction defect does not include damage due to movement of the soil caused by flood, earthquake or other natural disaster;

(7) "Owner", any person who owns a residential dwelling on which home improvement work is performed, and includes any subsequent owner of the residential dwelling;

(8) "Vendee", any purchaser of a dwelling and includes the initial vendee and any subsequent purchasers;

(9) "Vendor", any person, firm or corporation which constructs dwellings for the purpose of sale, including the construction of dwellings on land owned by vendees;

(10) "Warranty date", the date from and after which the statutory warranties provided in sections 407.1263 to 407.1266 shall be effective, and the earliest of:

(a) The date of the initial vendee's first occupancy of the dwelling; or

(b) The date on which the initial vendee takes legal or equitable title in the dwelling.

In the case of a home improvement, the warranty date is the date on which the home improvement was completed.

407.1263. 1. In every sale of a completed dwelling, and in every contract for the sale of a dwelling to be completed, the vendor shall warrant to the vendee that:

(1) During the three-year period from and after the warranty date the dwelling shall be free from defects caused by faulty workmanship and defective materials due to noncompliance with building standards;

(2) During the five-year period from and after the warranty date, the dwelling shall be free from defects caused by faulty installation of plumbing, electrical, heating

and cooling systems; and

(3) During the ten-year period from and after the warranty date, the dwelling shall be free from major construction defects.

2. The statutory warranties provided in this section shall survive the passing of legal title or equitable title in that dwelling to the vendee.

3. The warranties provided under this section do not expire on the subsequent sale of a dwelling by the initial vendee, but continue to protect the subsequent vendee until the warranties provided under this section expire. The warranties provided under this section do not apply to any defect caused by the initial vendee.

4. The warranties contained in this section are in addition to, and not in lieu of, any other express or implied warranties pertaining to the dwelling, its materials or fixtures.

407.1266. 1. In a sale or in a contract for the sale of home improvement work involving changes or additions to a residential dwelling, the home improvement contractor shall warrant to the owner that:

(1) During the two-year period from and after the warranty date, the home improvement shall be free from defects caused by faulty workmanship and defective materials due to noncompliance with building standards; and

(2) During the ten-year period from and after the warranty date, the home improvement shall be free from major construction defects.

2. In a sale or in a contract for the sale of home improvement work involving the installation of plumbing, electrical, heating or cooling systems, the home improvement contractor shall warrant to the owner that, during the two-year period from and after the warranty date, the home improvement shall be free from defects caused by the faulty installation of the system or systems.

3. In a sale or in a contract for the sale of any home improvement work not covered by subsections 1 or 2 of this section, the home improvement contractor shall warrant to the owner that, during the two-year period from and after the warranty date, the home improvement shall be free from defects caused by faulty workmanship or defective materials due to noncompliance with building standards.

407.1269. The liability of the vendor or the home improvement contractor under section 407.1263 or 407.1266 is limited to the specific items set forth in those sections and does not extend to the following:

(1) Loss or damage not reported by the vendee or the owner to the vendor or the home improvement contractor in writing within six months after the vendee or the owner discovers or should have discovered the loss or damage;

(2) Loss or damage caused by defects in design, installation or materials which

the vendee or the owner supplied, installed or directed to be installed;

(3) Secondary loss or damage such as personal injury or property damage;

(4) Loss or damage from normal wear and tear;

(5) Loss or damage from normal shrinkage caused by drying of the dwelling or the home improvement within tolerances of building standards;

(6) Loss or damage from dampness and condensation due to insufficient ventilation after occupancy;

(7) Loss or damage from negligence, improper maintenance or alteration of the dwelling or the home improvement by parties other than the vendor or the home improvement contractor;

(8) Loss or damage from changes in grading of the ground around the dwelling or the home improvement by parties other than the vendor or the home improvement contractor;

(9) Landscaping or insect loss or damage;

(10) Loss or damage from failure to maintain the dwelling or the home improvement in good repair;

(11) Loss or damage which the vendee or the owner, whenever feasible, has not taken timely action to minimize;

(12) Loss or damage which occurs after the dwelling or the home improvement is no longer used primarily as a residence;

(13) Accidental loss or damage usually described as acts of God, including, but not limited to: fire, explosion, smoke, water escape, windstorm, hail or lightning, falling trees, aircraft and vehicles, flood, and earthquake, except when the loss or damage is caused by failure to comply with building standards;

(14) Loss or damage from soil movement which is compensated by legislation or covered by insurance;

(15) Loss or damage due to soil conditions where construction is done upon lands owned by the vendee or the owner and obtained by the vendee or owner from a source independent of the vendor or the home improvement contractor;

(16) In the case of home improvement work, loss or damage due to defects in the existing structure and systems not caused by the home improvement.

407.1272. 1. Except as provided in subsections 2 and 3 of this section, the provisions of sections 407.1263 to 407.1266 cannot be waived or modified by contract or otherwise. Any agreement which purports to waive or modify the provisions of sections 407.1263 to 407.1269, except as provided in subsections 2 and 3 of this section, shall be void.

2. At any time after a contract for the sale of a dwelling is entered into by and

between a vendor and a vendee or a contract for home improvement work is entered into by and between a home improvement contractor and an owner, any of the statutory warranties provided for in sections 407.1263 to 407.1266 may be excluded or modified only by a written instrument, printed in bold face type of a minimum size of ten points, which is signed by the vendee or the owner and which sets forth in detail the warranty involved, the consent of the vendee or the owner, and the terms of the new agreement contained in the writing. No exclusion or modification shall be effective unless the vendor or the home improvement contractor provides substitute express warranties offering substantially the same protections to the vendee or the owner as the statutory warranties set forth in sections 407.1263 and 407.1266. Any vendor or home improvement contractor who attempts to exclude or modify the statutory warranties provided by sections 407.1263 or 407.1266 shall be subject to a monetary penalty of one thousand dollars.

3. If a major construction defect is discovered prior to the sale of a dwelling, the statutory warranty set forth in section 407.1263 may be waived for the defect identified in the waiver instrument, after full oral disclosure of the specific defect, by an instrument which sets forth in detail: the specific defect; the difference between the value of the dwelling without the defect and the value of the dwelling with the defect, as determined and attested to by an independent appraiser, contractor, insurance adjuster, engineer or any other similarly knowledgeable person selected by the vendee; the price reduction; the date the construction was completed; the legal description of the dwelling; the consent of the vendee to the waiver; and the signatures of the vendee, the vendor, and two witnesses. A single waiver agreed to pursuant to this subdivision may not apply to more than one major construction defect in a dwelling. The waiver shall not be effective unless filed for recording with the county recorder or registrar of titles who shall file the waiver for record.

407.1275. 1. Upon breach of any warranty imposed by section 407.1263, the vendee shall have a cause of action against the vendor for damages arising out of the breach, or for specific performance. The vendee shall be entitled to:

- (1) The amount necessary to remedy the defect or breach; or
- (2) The difference between the value of the dwelling without the defect and the value of the dwelling with the defect.

2. In addition to actual damages, in any action brought under sections 407.1260 to 407.1287, the court shall assess against the vendor the reasonable costs of bringing the action, including reasonable attorney's fees. The court may also assess punitive damages if there is evidence that the breach of such warranty was willful or deceitful.

407.1278. Upon breach of any warranty imposed by section 407.1266, the owner

shall have a cause of action against the home improvement contractor for damages arising out of the breach, or for specific performance. Damages shall be limited to the amount necessary to remedy the defect or breach. However, in addition to actual damages, the court shall assess against the home improvement contractor the reasonable costs of bringing the action; including reasonable attorney's fees. The court may also assess punitive damages if there is evidence that the breach of such warranty was willful or deceitful.

407.1281. The statutory warranties provided for in sections 407.1263 and 407.1266 shall be in addition to all other warranties imposed by law or by agreement. The remedies provided in sections 407.1275 and 407.1278 shall not be construed as limiting the remedies in any action not predicated upon a breach of the statutory warranties imposed by sections 407.1263 or 407.1266.

407.1284. Notwithstanding any other provision of sections 407.1260 to 407.1287:

(1) The terms of the home improvement warranties required by section 407.1266 commence upon completion of the home improvement and the term shall not be required to be renewed or extended if the home improvement contractor performs additional improvements required by warranty;

(2) The home improvement warranties required by section 407.1266 shall not include products or materials installed that are already covered by implied or written warranty; and

(3) The home improvement warranties required by section 407.1266 are intended to be implied warranties imposing an affirmative obligation upon home improvement contractors, and do not require that written warranty instruments be created and conveyed to the owner.

407.1287. Any action arising under sections 407.1260 to 407.1287 shall be commenced within two years after the defect was discovered or should have been discovered or within two years after the expiration of the statutory warranty, whichever occurs first.