

FIRST REGULAR SESSION

SENATE BILL NO. 561

92ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR DOLAN.

Read 1st time February 24, 2003, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

1505S.011

AN ACT

To amend chapter 407, RSMo, by adding thereto five new sections relating to home improvement contracts.

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

Section A. Chapter 407, RSMo, is amended by adding thereto five new sections, to be known as sections 407.1380, 407.1385, 407.1390, 407.1395, and 407.1399, to read as follows:

407.1380. 1. Sections 407.1380 to 407.1399 shall be known as the "Missouri Home Improvement Fraud Act".

2. Any violation of the provisions of sections 407.1380 to 407.1399 shall constitute an unfair business practice and shall be subject to the provisions of the Missouri merchandising practices act, including all civil remedies, criminal penalties, and enforcement authority provided in sections 407.020 to 407.145.

407.1385. As used in this act, unless the context otherwise requires:

(1) "Home improvement", the repair, replacement, remodeling, alteration, conversion, modernization, improvement, or addition to any land or building, or that portion thereof which is used or designed to be used as a residence or dwelling unit for one, two, three, or four dwelling units, and includes the construction, replacement, or improvement of driveways, swimming pools, porches, garages, interior improvements, landscaping, fences, shelters, roofing, painting and other improvements to structures or upon land which is adjacent to a dwelling house for one, two, three, or four dwelling units. Without regard to the extent of affixation, "home improvement" includes the installation of central heating or air-conditioning systems, storm windows or awnings;

(2) "Home improvement" does not include:

(a) The construction of a new home building or work done by a contractor in compliance with a guarantee of completion of a new building project;

(b) Any home improvement for which the contract price is less than five hundred dollars;

(c) The sale of goods or materials by a seller who neither arranges to perform nor performs directly or indirectly any work or labor in connection with the installation of or application of the goods or materials, including the incidental installation thereof; provided that the installation does not involve alteration to the structure of the building or its plumbing or wiring;

(d) Any replacement, installation, or connection of appliances to existing exposed plumbing lines that requires alteration of the existing lines;

(e) The replacement, installation, and connection of dishwashers, disposals, and refrigerators with icemakers to existing exposed household plumbing lines, or dryers; or

(f) The business activities of licensed architects, professional engineers, land surveyors, and landscape architects, as defined in chapter 327, RSMo;

(3) "Home improvement contract", an agreement between a contractor and an owner for the performance of home improvement, and includes all labor, services and materials to be furnished and performed thereunder;

(4) "Contractor", any person, other than a bona fide employee of the owner, who undertakes or offers to undertake or agrees to perform any home improvement for the owner;

(5) "Owner", any homeowner, tenant, or any other person who orders, contracts for, or purchases the home improvement services of a contractor, or the person entitled to the performance of the work of a contractor pursuant to a home improvement contract;

(6) "Person", includes an individual, partnership, corporation, trust, association, owner, contractor, salesperson, employee, or any other legal entity;

(7) "Abandonment", includes both a contractor's permanent termination of work on an incomplete home improvement project and a contractor's unreasonably long delay in beginning or continuing work on an incomplete home improvement project;

(8) "Justification", events entirely beyond the control of a contractor, not reasonably foreseeable, and not attributable to the contractor's own negligence or malfeasance, that prevent the contractor from performing obligations under a home improvement contract in a timely fashion. "Justification" includes an owner's failure, upon demand and after reasonable notice, to make payments owed to the contractor

under the terms of a home insolvency or the insolvency of a contractor's servant, agent, or employee, except where such insolvency was caused by sudden and catastrophic loss, an act of God, or was otherwise entirely unforeseeable at the time the contractor entered into the home improvement contract. Notwithstanding the provisions of this subparagraph, a contractor's failure to fulfill obligations under a home improvement contract is without justification where:

(a) The contractor has accepted any deposit at or before the time of execution of the home improvement contract; and

(b) The contractor has failed to promptly return such deposit, in full, to the owner;

(9) "Actual street address", the valid mailing address of the physical premises on which the contractor resides or maintains his principal place of business. A post office box or other form of maildrop is not an actual street address.

407.1390. The following acts are prohibited:

(1) Misrepresenting a material fact relating to the terms of a home improvement contract or the preexisting or existing condition of any portion of the property involved, or creating or confirming an impression of the owner which is false and which the violator does not believe to be true, or promising performance with the violator does not intend to perform or knows will not be performed;

(2) Using or employing any deception, false pretense or false promises in order to induce, encourage or solicit any owner to enter into any home improvement contract;

(3) Requiring payment for home improvement at a price which unreasonably exceeds the value of the services and materials needed for the home improvement;

(4) Damaging the property of a person with the intent to cause an owner to enter into a home improvement contract;

(5) Misrepresenting any person to be an employee or agent of any unit of the federal, state, county, or municipal government, or an employee or agent of any public utility, with the intent to cause a person to enter into any home improvement contract;

(6) Abandonment or willful failure to perform, without justification, any home improvement contract or project engaged in or undertaken by a contractor; or willful deviation from or disregard of plans or specification in any material respect without the consent of the owners;

(7) Any fraud in the execution of, or in the material alteration of, any contract, mortgage, promissory note or other document incident to a home improvement transaction;

(8) Preparing or accepting any mortgage, promissory note, or other evidence of indebtedness upon the obligations of a home improvement transaction with knowledge that it recites a greater monetary obligation than the agreed consideration for the home improvement work;

(9) Willful or deliberate disregard and violation of the building, sanitary and health laws of this state or any political subdivisions thereof, or of the safety, labor, or workers' compensation insurance laws of this state;

(10) The demand for or the receipt of any payments prior to the signing of a home improvement contract;

(11) Receipt at or before the time of execution of a home improvement contract of a deposit of more than one fourth of the contract price, unless the home improvement contract allows for the contractor to furnish a performance and payment bond, lien and completion bond, or bond equivalent covering full performance and completion of the home improvement contract and the bond is furnished by the contractor; provided, that the amount of the bond or bond equivalent is not less than one percent of the net sales of the contractor's home improvement business with respect to the home improvement labor to be determined on an annual basis at January first of each year;

(12) Violation of the building laws of the state or any political subdivision thereof, including but not limited to the failure to obtain necessary permits as required by any local jurisdiction;

(13) Failing to credit the owner any payment they have made to the contractor or his salesperson in connection with a home improvement transaction.

407.1395. 1. Except as provided in subsection 3 of this section, in addition to any right otherwise to revoke an offer, an owner has the right to cancel a home improvement contract until midnight of the third business day after the day on which the owner signs the home improvement contract. For the purposes of this section, the term "business day" shall mean any day except Saturday, Sunday, and legal holidays.

2. Cancellation occurs when the owner gives written notice of cancellation to the contractor at the mailing address stated in the home improvement contract. Notice of cancellation, if given by mail, is given when it is deposited in a mailbox properly addressed and postage prepaid. Notice of cancellation given by the owner need not take a particular form and is sufficient if it indicates by any form of written expression the intention of the owner not to be bound by the home improvement contract.

3. The owner may not cancel a home improvement contract if:

(1) The owner requests the contractor to begin work without delay because of

an emergency; and

(2) The contractor in good faith makes a substantial beginning of performance of the home improvement contract before the owner gives notice of cancellation.

407.1399. 1. Every home improvement contract shall:

(1) Be in legible writing and contain the complete agreement between the owner and the home improvement contractor;

(2) State the full names and actual street addresses of all parties, each party's preferred mailing address if such address is different than the party's actual street address, the jobsite address or legal description, the date when executed by the parties and contain a complete description of the work to be done and the goods to be used;

(3) Be completed in full without any blank spaces to be filled in after the contract is signed by the owner and clearly describe any other documents which are to be incorporated, and shall contain the following notice directly above the space provided for the signature of the owner:

"NOTICE TO OWNER: Do not sign this contract if blank. You are entitled to a copy of the contract at the time you sign.";

(4) Contain the approximate dates when the work will begin and be substantially completed;

(5) Contain the agreed upon consideration for the work, including a total dollar amount reflecting all applicable taxes and other fees;

(6) Specifically identify the dollar amount of any progress payment and the stage of construction at which the contractor will be entitled to collect progress payments during the course of construction under the contract;

(7) Contain specific language informing the homeowner of any and all necessary permits, and whether it shall be the obligation of the contractor or the homeowner to obtain said permits; and

(8) Contain all other matters upon which the parties lawfully agree, provided, however, that no such agreement may waive any rights conveyed to the owner under the provisions of this chapter;

(9) Contain a statement of the owner's right to cancel which includes, in ten-point boldface type or larger, the following information and statements:

NOTICE OF CANCELLATION

(.....)

Date of transaction must be filled in at time of sale by seller. If you do not want the goods or services to be provided pursuant to this agreement, you may cancel, without further obligation, this agreement by mailing a notice to the seller at the address as shown below, within three business days following the above date. You

shall return any goods, supplies, and materials to seller in substantially the same condition as when you obtained them. Seller will then cancel all contracts and negotiable instruments executed by you and return any property given by you to seller within ten days from date of transaction. The notice must be mailed to: (.....) Name and mailing address of seller must be filled in at time of sale.

2. At the time of signing a home improvement contract the owner shall be provided a legible copy of all documents signed and written and a signed receipt for and in the true amount of any cash paid to the contractor by the owner.

3. No home improvement contract shall contain:

(1) Any power of attorney to confess judgment;

(2) Any term authorizing the contractor, or any sales person, agent, or employee of the contractor, to make any changes in the agreement on behalf of the homeowner;

(3) An acceleration clause under which any part or all of the balance not yet due may be declared due and payable because the holder deems himself to be insecure. However, where the contractor deems himself to be insecure he may require as a prerequisite to continuing said work that the balance of funds due under contract, which are in possession of the owner, shall be placed in a joint escrow account requiring signature of the contractor and owner for withdrawal.

4. Contracts which fail to comply with the requirements of this section shall not be invalid solely because of noncompliance.