

FIRST REGULAR SESSION

SENATE BILL NO. 123

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR BRAY.

Pre-filed December 1, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

0441S.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 407.728, 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:

407.728. 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;

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

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

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

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

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

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

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

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

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

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

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

57 to make restitution.

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

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

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

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

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

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

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

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

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

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

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

36 (a) The date of the initial vendee's first occupancy of the

37 dwelling; or

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

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

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

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

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

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

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

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

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

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

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

9 (2) During the ten-year period from and after the warranty date,

10 the home improvement shall be free from major construction defects.

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

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

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

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

8 (2) Loss or damage caused by defects in design, installation, or
9 materials which the vendee or the owner supplied, installed or directed
10 to be installed;

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

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

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

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

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

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

- 25 **(9) Landscaping or insect loss or damage;**
26 **(10) Loss or damage from failure to maintain the dwelling or the**
27 **home improvement in good repair;**
28 **(11) Loss or damage which the vendee or the owner, whenever**
29 **feasible, has not taken timely action to minimize;**
30 **(12) Loss or damage which occurs after the dwelling or the home**
31 **improvement is no longer used primarily as a residence;**
32 **(13) Accidental loss or damage usually described as acts of God,**
33 **including, but not limited to: fire, explosion, smoke, water escape,**
34 **windstorm, hail or lightning, falling trees, aircraft and vehicles, flood,**
35 **and earthquake, except when the loss or damage is caused by failure to**
36 **comply with building standards;**
37 **(14) Loss or damage from soil movement which is compensated**
38 **by legislation or covered by insurance;**
39 **(15) Loss or damage due to soil conditions where construction is**
40 **done upon lands owned by the vendee or the owner and obtained by the**
41 **vendee or owner from a source independent of the vendor or the home**
42 **improvement contractor; and**
43 **(16) In the case of home improvement work, loss or damage due**
44 **to defects in the existing structure and systems not caused by the home**
45 **improvement.**

407.1272. 1. Except as provided in subsections 2 and 3 of this
2 section, the provisions of sections 407.1263 to 407.1266 cannot be
3 waived or modified by contract or otherwise. Any agreement which
4 purports to waive or modify the provisions of sections 407.1263 to
5 407.1269, except as provided in subsections 2 and 3 of this section, shall
6 be void.

7 2. At any time after a contract for the sale of a dwelling is
8 entered into by and between a vendor and a vendee or a contract for
9 home improvement work is entered into by and between a home
10 improvement contractor and an owner, any of the statutory warranties
11 provided for in sections 407.1263 to 407.1266 may be excluded or
12 modified only by a written instrument, printed in bold-face type of a
13 minimum size of ten points, which is signed by the vendee or the owner
14 and which sets forth in detail the warranty involved, the consent of the
15 vendee or the owner, and the terms of the new agreement contained in
16 the writing. No exclusion or modification shall be effective unless the

17 vendor or the home improvement contractor provides substitute
18 express warranties offering substantially the same protections to the
19 vendee or the owner as the statutory warranties set forth in sections
20 407.1263 and 407.1266. Any vendor or home improvement contractor
21 who attempts to exclude or modify the statutory warranties provided
22 by sections 407.1263 or 407.1266 shall be subject to a monetary penalty
23 of one thousand dollars.

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

407.1275. 1. Upon breach of any warranty imposed by section
2 407.1263, the vendee shall have a cause of action against the vendor for
3 damages arising out of the breach, or for specific performance. The
4 vendee shall be entitled to:

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

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

407.1278. Upon breach of any warranty imposed by section
2 407.1266, the owner shall have a cause of action against the home

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

407.1281. The statutory warranties provided for in sections
2 407.1263 and 407.1266 shall be in addition to all other warranties
3 imposed by law or by agreement. The remedies provided in sections
4 407.1275 and 407.1278 shall not be construed as limiting the remedies
5 in any action not predicated upon a breach of the statutory warranties
6 imposed by sections 407.1263 or 407.1266.

407.1284. Notwithstanding any other provision of sections
2 407.1260 to 407.1287:

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

8 (2) The home improvement warranties required by section
9 407.1266 shall not include products or materials installed that are
10 already covered by implied or written warranty; and

11 (3) The home improvement warranties required by section
12 407.1266 are intended to be implied warranties imposing an affirmative
13 obligation upon home improvement contractors, and do not require
14 that written warranty instruments be created and conveyed to the
15 owner.

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