

FIRST REGULAR SESSION

SENATE BILL NO. 364

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR MOSLEY.

1443S.02I

ADRIANE D. CROUSE, Secretary

AN ACT

To amend chapter 324, RSMo, by adding thereto twenty-one new sections relating to the statewide licensure of home improvement contractors and salespersons, with penalty provisions.

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

Section A. Chapter 324, RSMo, is amended by adding thereto
2 twenty-one new sections, to be known as sections 324.1200,
3 324.1202, 324.1204, 324.1206, 324.1208, 324.1210, 324.1212,
4 324.1214, 324.1216, 324.1218, 324.1220, 324.1222, 324.1226,
5 324.1228, 324.1230, 324.1232, 324.1234, 324.1236, 324.1238,
6 324.1240, and 324.1242, to read as follows:

324.1200. As used in sections 324.1200 to 324.1242,
2 **the following terms shall mean:**

3 (1) "Building", any structure containing no more than
4 four residences or dwelling units;

5 (2) "Contractor", any person or salesperson, other
6 than a bona fide employee of the owner, who owns, operates,
7 maintains, conducts, controls, or transacts a home
8 improvement business and who undertakes, offers to
9 undertake, or agrees to perform any home improvement or
10 solicits any contract therefor, whether or not such person
11 is licensed or subject to the licensing requirements of
12 sections 324.1200 to 324.1242, and whether or not such
13 person is a prime contractor or subcontractor with respect
14 to the owner;

15 (3) "Home improvement", the construction, repair,
16 replacement, remodeling, alteration, conversion,
17 rehabilitation, renovation, modernization, improvement, or
18 addition to any land or building, or that portion thereof
19 which is used or designed to be used as a residence or
20 dwelling place, including but not limited to the
21 construction, erection, replacement, or improvement of
22 driveways, swimming pools, terraces, patios, landscaping,
23 fences, porches, garages, fallout shelters, basements, and
24 other improvements to structures or upon land which is
25 adjacent to a dwelling house. Without regard to the extent
26 of affixation, "home improvement" shall also include the
27 installation of central heating or air conditioning systems,
28 central vacuum cleaning systems, storm windows, awnings, or
29 communication systems. "Home improvement" shall not include:

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

33 (b) The sale of goods or materials by a seller who
34 neither arranges to perform nor performs directly or
35 indirectly any work or labor in connection with the
36 installation of or application of the goods or materials;

37 (c) Work upon residences owned by or controlled by the
38 state or any municipal subdivision thereof; or

39 (d) Painting or decorating of a building, residence,
40 home, or apartment, when not incidental or related to home
41 improvement work as herein defined;

42 (4) "Home improvement contract", an agreement, whether
43 oral or written, or contained in one or more documents,
44 between a contractor and an owner or tenant, regardless of
45 the number of residences or dwelling units contained in the
46 building in which the tenant resides, provided said work is

47 to be performed in, to or upon the residence or dwelling
48 unit of such tenant, for the performance of home
49 improvement, including all labor, services and materials to
50 be furnished and performed thereunder;

51 (5) "Home improvement establishment", any shop,
52 establishment, place or premises where the home improvement
53 business is transacted or carried on;

54 (6) "Licensee", a person licensed to engage in the
55 home improvement business;

56 (7) "Owner", any homeowner, cooperative shareholder,
57 condominium unit owner, tenant, or any other person who
58 orders, contracts for, purchases, or is entitled to the home
59 improvement services of a contractor pursuant to a home
60 improvement contract;

61 (8) "Person", an individual, firm, company,
62 salesperson, partnership or corporation, trade group, or
63 association;

64 (9) "Salesperson", any individual who negotiates or
65 offers to negotiate a home improvement contract with an
66 owner, or solicits or otherwise endeavors to procure in
67 person a home improvement contract from an owner.

324.1202. 1. The "Missouri Board of Home Improvement
2 Contractors" is hereby established and shall consist of
3 seven members. The board shall have the functions, powers,
4 and duties prescribed in sections 324.1200 to 324.1242.

5 2. Each member of the board shall at the time of his
6 or her appointment be a citizen of the United States of
7 America and a resident of this state for at least one year.

8 3. Members of the board shall be chosen by the
9 governor with the advice and consent of the senate from
10 lists submitted by the director of the division of
11 professional registration or as otherwise determined by the

governor. To be considered by the director of the division of professional registration, the list shall be submitted at least ninety days prior to the expiration of the term of the board member or as soon as feasible after a vacancy on the board occurs.

4. The term of office of each board member appointed shall be five years. Vacancies shall be filled by the governor for the remainder of the unexpired term. The initial appointments to the board shall be three members for terms of one year, two members for terms of three years, and two members for terms of five years. No person shall serve consecutively for more than two terms or eleven years, whichever is less; except that a member may hold office until his or her successor is appointed and qualified. Any member who has served two complete consecutive terms shall be ineligible to be reappointed until one year has lapsed. No member whose term has been terminated for any reason, other than the term's expiration, shall be eligible for reappointment until the lapse of one year. An appointment to fill an unexpired term shall not be considered a complete term.

5. The governor may remove any member of the board for misconduct, incompetency, or neglect of official duties after giving the member written notice of the charges and an opportunity to be heard.

6. The board shall have the power:

(1) To appoint an adequate number of assistants, inspectors, and other employees as may be necessary to carry out the provisions of sections 324.1200 to 324.1242, to prescribe their duties, and to fix their compensation within the amount appropriated therefor;

43 (2) To examine the qualifications and fitness of
44 applicants for licenses under sections 324.1200 to 324.1242;

45 (3) To keep record of all licenses issued, suspended,
46 or revoked;

47 (4) To require reasonable information of an applicant
48 or licensee, and may require the production of books of
49 accounts, financial statements, contracts, or other records
50 which relate to the home improvement activity,
51 qualification, or compliance with sections 324.1200 to
52 324.1242 by the licensee; and

53 (5) Upon finding reasonable cause that any licensee or
54 any other person has violated any of the provisions of
55 sections 324.1200 to 324.1242 or any other law relating to a
56 home improvement business, to investigate such violations as
57 the board deems necessary. The board may examine such
58 licensee or any other persons and may compel the production
59 of all relevant books, records, accounts, documents, or
60 other records.

61 7. The board shall instruct and conduct public
62 education on the consumer protection provisions of sections
63 324.1200 to 324.1242 and the necessary licenses and permits
64 that home improvement contractors must obtain to perform
65 certain types of home improvement work, including but not
66 limited to plumbing work, electrical work, and the raising,
67 lifting, elevating, or moving of a home or building. Such
68 instruction and public education shall be provided to home
69 improvement contractors, homeowners, and members of the
70 public at least semiannually.

71 8. The board may make such rules and regulations as
72 may be necessary with respect to the form and content of
73 applications for licenses, the reception thereof, the
74 investigation and examination of applicants and their

75 qualifications, and the other matters incidental or
76 appropriate to its powers and duties, and to amend or repeal
77 any such rules and regulations. Any rule or portion of a
78 rule, as that term is defined in section 536.010, that is
79 created under the authority delegated in this section shall
80 become effective only if it complies with and is subject to
81 all of the provisions of chapter 536 and, if applicable,
82 section 536.028. This section and chapter 536 are
83 nonseverable and if any of the powers vested with the
84 general assembly pursuant to chapter 536 to review, to delay
85 the effective date, or to disapprove and annul a rule are
86 subsequently held unconstitutional, then the grant of
87 rulemaking authority and any rule proposed or adopted after
88 August 28, 2021, shall be invalid and void.

324.1204. 1. No person shall solicit, canvass, sell,
2 perform, or obtain a home improvement contract as a
3 contractor or salesperson from an owner without a license
4 therefor.

5 2. A home improvement contractor license shall not be
6 construed to authorize the licensee to perform any
7 particular type of work or engage in any kind of business
8 which is reserved to qualified licensees under separate
9 provisions of state or local law, nor shall any license or
10 authority other than that which is issued or permitted
11 pursuant to sections 324.1200 to 324.1242 authorize engaging
12 in the home improvement business.

13 3. No contractor's license shall be required in the
14 following instances:

15 (1) An individual who performs labor or services for a
16 contractor for wages or salary;

17 (2) A plumber, electrician, architect, professional
18 engineer, or any other such person who is required by state

19 or local law to attain standards of competency or experience
20 as a prerequisite to engaging in such craft or profession,
21 or any person required to be licensed pursuant to law to
22 engage in the business of installing, servicing, or
23 maintaining security or fire alarm systems, and who is
24 acting exclusively within the scope of the craft,
25 profession, or business for which he or she is currently
26 licensed pursuant to such other law;

27 (3) Any retail clerk, clerical, administrative, or
28 other employee of a licensed contractor, as to a transaction
29 on the premises of the contractor;

30 (4) Sections 324.1200 to 324.1242 shall not apply to
31 or affect the validity of a home improvement contract made
32 prior to the effective date of this act;

33 (5) Any home improvement, where the aggregate contract
34 price for all labor, materials, and other goods or services
35 is less than five hundred dollars. This exemption does not
36 apply where the work is only part of a larger or major
37 operation, whether undertaken by the same or a different
38 contractor, or in which a division of the operation is made
39 in contracts of amounts less than five hundred dollars for
40 the purpose of evasion of this provision or otherwise.

324.1206. 1. There is hereby created the "Home
2 Improvement Contractor Fund". The fund shall consist of
3 money collected under sections 324.1200 to 324.1242. The
4 state treasurer shall be custodian of the fund and may
5 approve disbursements from the fund in accordance with the
6 provisions of sections 30.170 and 30.180. Upon
7 appropriation, money in the fund shall be used solely for
8 the administration of sections 324.1200 to 324.1242. The
9 provisions of section 33.080 to the contrary
10 notwithstanding, money in this fund shall not be transferred

11 and placed to the credit of general revenue until the amount
12 in the fund at the end of the biennium exceeds two times the
13 amount of the appropriation from the board's funds for the
14 preceding fiscal year or, if the board requires by rule
15 license renewal less frequently than yearly, then three
16 times the appropriation from the board's funds for the
17 preceding fiscal year. The amount, if any, in the fund
18 which shall lapse is that amount in the fund which exceeds
19 the appropriate multiple of the appropriations from the
20 board's funds for the preceding fiscal year.

21 2. The application and renewal fee for a home
22 improvement contractor license shall be fifty dollars.

23 3. In addition to the application fee, each person
24 applying for or renewing a home improvement contractor
25 license shall either pay a separate fee of two hundred
26 dollars or file with the board a surety bond providing
27 coverage in the amount of twenty-five thousand dollars for
28 the benefit of persons contracting with the applicant for
29 all claims of property damage arising from the applicant's
30 performance under a home improvement contract.

31 4. The fee for a home improvement salesperson's
32 license shall be twenty-five dollars.

324.1208. 1. No license issued pursuant to sections
2 324.1200 to 324.1242 shall be assignable or transferable.

3 2. Such license shall at all times be posted in a
4 conspicuous place in the place of business of the licensee.

5 3. Within ten days of a change in ownership,
6 management, address, or trade name of a home improvement
7 business, licensees shall notify the board of each such
8 change.

9 4. A duplicate license may be issued for one lost or
10 mutilated and shall bear the word "duplicate" stamped across
11 its face.

 324.1210. 1. An application for a license or renewal
2 thereof shall be made on a form and in a manner prescribed
3 by the board.

4 2. A separate license shall be required for each place
5 of business.

6 3. The application shall be filed only by the actual
7 owner of a business, shall be in writing, signed and under
8 oath, and shall contain the office address of the business
9 and the name and residence addresses of the owner or
10 partners. If the applicant is a corporation, trade group,
11 or association, the application shall also include the names
12 and resident addresses of the directors and principal
13 officers.

14 4. The board may require applications to contain any
15 other information, including the names and resident
16 addresses of any employees of an applicant.

17 5. Each applicant shall be over eighteen years of age
18 and of good character.

19 6. Applicants shall be fingerprinted for the purpose
20 of securing criminal history records and shall be
21 responsible for any fees associated with doing so.
22 Fingerprints shall be taken of the individual owner if the
23 applicant is a sole proprietorship; the general partners if
24 the applicant is a partnership; and the officers,
25 principals, directors, and stockholders owning more than ten
26 percent of the outstanding stock of the corporation if the
27 applicant is a corporation.

28 7. Each application for a license to solicit, canvass,
29 sell, perform, or obtain a home improvement contract as a

30 contractor from an owner, or for renewal thereof, filed on
31 or after the effective date of this act shall contain
32 sufficient information, as prescribed by the board, to
33 verify the applicant's compliance with applicable lien laws.

324.1212. 1. The board may refuse to issue any
2 license required pursuant to sections 324.1200 to 324.1242,
3 or to renew or reinstate any such license, for any one or
4 any combination of the reasons stated in subsection 2 of
5 this section. The board shall notify the applicant in
6 writing of the reasons for the refusal and shall advise the
7 applicant of the person's right to file a complaint with the
8 administrative hearing commission as provided in chapter 621.

9 2. The board may cause a complaint to be filed with
10 the administrative hearing commission as provided by chapter
11 621 against any holder of any license required by sections
12 324.1200 to 324.1242 or any person who has failed to renew
13 or has surrendered such person's license, for any one or any
14 combination of the following causes:

15 (1) The person has been finally adjudicated and found
16 guilty, or entered a plea of guilty or nolo contendere, in a
17 criminal prosecution under the laws of any state, of the
18 United States, or of any country, for any offense directly
19 related to the duties and responsibilities of the
20 occupation, as set forth in section 324.012, regardless of
21 whether or not sentence is imposed;

22 (2) Use of fraud, deception, misrepresentation, or
23 bribery in securing any license issued pursuant to sections
24 324.1200 to 324.1242 or in obtaining permission to take any
25 examination given or required pursuant to sections 324.1200
26 to 324.1242;

27 (3) Issuance of a license based upon a material
28 mistake of fact;

29 (4) Obtaining or attempting to obtain any fee, charge,
30 tuition, or other compensation by fraud, deception, or
31 misrepresentation;

32 (5) The person or the management personnel of the
33 contractor are untrustworthy or not of good character;

34 (6) Incompetence, misconduct, gross negligence, fraud,
35 misrepresentation, or dishonesty in the performance of the
36 functions or duties of the profession regulated by sections
37 324.1200 to 324.1242;

38 (7) Violation of, or assisting or enabling any person
39 to violate, any provision of sections 324.1200 to 324.1242
40 or any rule or regulation adopted hereunder, or of any
41 lawful rule or regulation adopted pursuant to such sections;

42 (8) Impersonation of any person holding a license, or
43 allowing any person to use his or her license or related
44 credentials;

45 (9) The person is finally adjudged incapacitated or
46 disabled by a court of competent jurisdiction;

47 (10) The business transactions of the contractor are
48 marked by a practice of failure to timely perform or
49 complete its contracts, the manipulation of assets or
50 accounts, fraud, bad faith, or an unwholesome method or
51 practice of solicitation of business from owners;

52 (11) Failure to comply with any demand lawfully made
53 by the board;

54 (12) Disciplinary action against the holder of a
55 license or other right to perform the profession regulated
56 by sections 324.1200 to 324.1242 granted by another state,
57 territory, federal agency, or country upon grounds for which
58 revocation or suspension is authorized in this state;

59 (13) Assisting or enabling any person to practice or
60 offer to practice any profession licensed or regulated by

61 sections 324.1200 to 324.1242 who is not registered and
62 currently eligible to practice under sections 324.1200 to
63 324.1242; or

64 (14) Use of any advertisement or solicitation which is
65 false, misleading, or deceptive to the general public or
66 persons to whom the advertisement or solicitation is
67 primarily directed.

68 3. After the filing of such complaint, the proceedings
69 shall be conducted in accordance with the provisions of
70 chapter 621. Upon a finding by the administrative hearing
71 commission that the grounds provided in subsection 2 of this
72 section for disciplinary action are met, the board may,
73 singly or in combination, censure or place the person named
74 in the complaint on probation with such terms and conditions
75 as the board deems appropriate for a period not to exceed
76 five years, suspend the license for a period not to exceed
77 three years, revoke the license, or order any applicable
78 civil penalty pursuant to sections 324.1200 to 324.1242.

324.1214. No home improvement contractor or
2 salesperson shall:

3 (1) Deviate from or disregard the plans,
4 specifications, or terms and conditions agreed to under a
5 home improvement contract in any material respect without
6 the written consent of the owner;

7 (2) Make any substantial misrepresentation in the
8 solicitation or procurement of a home improvement contract,
9 or make any false promise of a character likely to
10 influence, persuade, or induce agreement;

11 (3) Commit any fraud in the execution of, or in the
12 material alteration of, any contract, mortgage, promissory
13 note, or other document incident to a home improvement
14 transaction;

15 (4) Act as an agent for any owner, finance company, or
16 mortgage company to arrange for or obtain an extension of
17 credit which is used to pay for an owner's obligations under
18 a home improvement contract, unless the instrument
19 evidencing such owner's indebtedness complies with the
20 conditions of Section 433.2 of Part 433 of Title 16 of the
21 Code of Federal Regulations;

22 (5) Directly or indirectly publish any advertisement
23 relating to home improvements which contains an assertion,
24 representation, or statement of fact which is false,
25 deceptive, or misleading, provided that any advertisement
26 which is subject to and complies with the existing rules,
27 regulations, or guidance of the federal trade commission
28 shall not be deemed false, deceptive, or misleading;

29 (6) Advertise or purport to offer the general public
30 any home improvement work with the intent not to accept
31 contracts for the particular work or at the price which is
32 advertised or offered to the public;

33 (7) Willfully or deliberately disregard or violate the
34 building, sanitary, fire, or health laws of the state or
35 ordinances of the county or city in which services are being
36 performed;

37 (8) Fail to notify the board of any change in control,
38 ownership, management, name, or location of the business;

39 (9) Conduct a home improvement business in any name
40 other than the one in which the contractor is licensed;

41 (10) Willfully fail to comply with any order, demand,
42 rule, regulation, or requirement made by the board;

43 (11) Promise or offer credit or any other compensation
44 or reward to an owner under a home improvement contract for
45 the procurement of a home improvement contract with others;

46 (12) Fail to perform work under a home improvement
47 contract in a skillful and competent manner;

48 (13) Procure a certificate of completion from an owner
49 prior to the actual completion of performance by the
50 contractor under a home improvement contract;

51 (14) Include any provision or clause in a home
52 improvement contract whereby the owner waives or is barred
53 from asserting any rights, claims, defenses, or remedies
54 available to an owner under sections 324.1200 to 324.1242 or
55 any rules promulgated pursuant thereto;

56 (15) Fail to comply with applicable lien laws;

57 (16) Concurrently represent more than one contractor
58 in the solicitation or negotiation of any one home
59 improvement contract from an owner. Contract forms which
60 fail to disclose a named contractor principal shall not be
61 used. No salesperson shall be authorized to select a prime
62 contractor on behalf of the owner;

63 (17) No salesperson shall accept or pay any
64 compensation of any kind for or on account of a home
65 improvement transaction, from or for any person other than
66 the contractor whom he or she represents with respect to the
67 transaction;

68 (18) Offer, deliver, pay, or credit to the owner any
69 gift, bonus, award, merchandise, trading stamps, or cash
70 loan as an inducement to enter a home improvement contract,
71 except that a contractor or salesperson may give tangible
72 items to prospective customers for advertising or sales
73 promotion purposes where the gift is not conditioned upon
74 obtaining a contract for home improvement work and the items
75 given to a prospective customer shall not exceed a total
76 cost of two dollars and fifty cents;

77 (19) In connection with any home repair or home
78 improvement, act as an agent for, or advertise, promote, or
79 arrange for, the services of a lender or its affiliate to
80 secure a home loan or a home improvement loan for or on
81 behalf of an owner; or

82 (20) Receive payment from the proceeds of a home
83 improvement loan except by an instrument payable solely to
84 the borrower or, at the election of the borrower, through a
85 third party escrow agent in accordance with terms
86 established in a written agreement signed by the borrower,
87 the lender, and the contractor prior to disbursement.

 324.1216. No acts, agreements, or statements of an
2 owner under a home improvement contract shall constitute a
3 waiver of any provisions of sections 324.1200 to 324.1242
4 intended for the benefit or protection of the owner.

 324.1218. 1. A licensee shall furnish a notice to the
2 owner that, in addition to any other right to revoke an
3 offer, the owner may cancel a home improvement contract
4 until midnight of the fifth business day after the day on
5 which the owner has signed an agreement or offer to purchase
6 relating to such contract, or until midnight of the fifth
7 business day after the day on which the owner receives the
8 notice of his or her right to cancel, whichever occurs later.

9 2. Cancellation occurs when written notice of
10 cancellation is given to the home improvement contractor.
11 Notice of cancellation, if given by mail, shall be deemed
12 given when deposited in a mailbox properly addressed and
13 postage prepaid.

14 3. Notice of cancellation shall be sufficient if it
15 indicates the intention of the owner not to be bound by such
16 home improvement contract or offer to purchase relating to
17 such contract.

18 4. Notwithstanding the provisions of subsections 1 to
19 3 of this section, this section shall not apply to a
20 transaction in which the home improvement is needed to meet
21 a bona fide emergency of the owner, the owner initiates
22 contact, and the owner furnishes the home improvement
23 contractor with a separate dated and signed personal
24 statement in the owner's handwriting describing the
25 situation requiring immediate remedy and expressly
26 acknowledging and waiving the right to cancel the home
27 improvement contract within five business days.

 324.1220. A home improvement contractor or any
2 salesperson, employee, or agent of such contractor shall
3 affirmatively disclose that an estimate in writing of the
4 materials and labor necessary for a specific home
5 improvement job is available to any consumer. Upon request,
6 such contractor shall make and furnish to the consumer such
7 estimate. A reasonable fee may be charged for the estimate,
8 which fee shall be disclosed to the consumer prior to the
9 furnishing of the estimate and shall be itemized and
10 reflected in the total estimated contract price.

 324.1222. 1. Any contractor, canvasser, or seller of
2 home improvements who knowingly makes any false or
3 fraudulent representations or statements with respect to the
4 character of any sale or to the quality, condition, or value
5 of any property, and any person who causes or authorizes any
6 such representations or statements, shall be guilty of a
7 class A misdemeanor.

 2. Any person who is induced to contract for home
9 improvements in reliance on false or fraudulent
10 representations or statements knowingly made, may sue and
11 recover from such home improvement contractor or solicitor a
12 penalty of five hundred dollars in addition to any damages

13 sustained by him or her by reason of such statements or
14 representations made by the contractor or by his or her
15 agents or employees.

324.1226. 1. Any person who owns, conducts, or
2 operates a home improvement business without a license or
3 who knowingly violates any of the provisions of sections
4 324.1200 to 324.1242 or any rules promulgated thereunder,
5 with the exception of violations of subsection 324.1222,
6 shall be guilty of a class B misdemeanor, and each such
7 violation shall be deemed a separate offense. Any person
8 found guilty pursuant to this subsection shall be subject to
9 such other penalties as may be otherwise provided by law.

10 2. In addition to the penalties provided in subsection
11 1 of this section, any person who violates any of the
12 provisions of sections 324.1200 to 324.1242 shall be liable
13 for a penalty of not more than one thousand dollars for each
14 such violation.

15 3. The attorney general may bring an action in the
16 name of the state to restrain or prevent any violation of
17 sections 324.1200 to 324.1242.

18 4. Where any such violation is found to be willful, or
19 where such violation has posed a threat to the health or
20 safety of the owner, the board may order the contractor to
21 pay to the owner an amount which shall not exceed three
22 times the actual amount of any damages sustained by the
23 owner as a result of such violations.

324.1228. 1. Every home improvement contract subject
2 to the provisions of sections 324.1200 to 324.1242 shall be
3 evidenced by a writing and shall be signed by all the
4 parties to the contract. The writing shall contain the
5 following:

6 (1) The name, address, telephone number, and license
7 number of the contractor;

8 (2) The approximate or estimated dates when the work
9 will begin and be substantially completed, including a
10 statement of any contingencies that would materially change
11 the approximate or estimated completion date. The contract
12 shall also specify whether or not the contractor and the
13 owner have determined a definite completion date to be of
14 the essence;

15 (3) A description of the work to be performed, the
16 materials to be provided to the owner, including make, model
17 number, and any other identifying information, and the
18 agreed-upon consideration for the work and materials;

19 (4) A notice to the owner purchasing the home
20 improvement that the contractor, a subcontractor who
21 performs on the contract, or a material man who provides
22 home improvement goods or services may have a claim against
23 the owner which may be enforced against the property in
24 accordance with the applicable lien laws if such person is
25 not paid. Such home improvement contract shall also contain
26 the following notice to the owner in clear and conspicuous
27 bold face type:

28 "Any contractor, subcontractor, or material man
29 who provides home improvement goods or services
30 pursuant to your home improvement contract and
31 who is not paid may have a valid legal claim
32 against your property known as a mechanic's
33 lien. Any mechanic's lien filed against your
34 property may be discharged. Payment of the
35 agreed-upon price under the home improvement
36 contract prior to filing of a mechanic's lien
37 may invalidate such lien. The owner may contact

38 an attorney to determine his rights to discharge
39 a mechanic's lien."

40 (5) A notice to the owner purchasing the home
41 improvement that, except as otherwise provided in
42 subdivisions (6) and (7) of this subsection, the home
43 improvement contractor is legally required to deposit all
44 payments received prior to completion with an escrow agent
45 and that, in lieu of such deposit, the home improvement
46 contractor may post a bond, contract of indemnity, or
47 irrevocable letter of credit with the owner guaranteeing the
48 return or proper application of such payments to the
49 purposes of the contract;

50 (6) If the contract provides for one or more progress
51 payments to be paid to the home improvement contractor by
52 the owner before substantial completion of the work, a
53 schedule of such progress payments showing the amount of
54 each payment, as a sum in dollars and cents, and
55 specifically identifying the state of completion of the work
56 or services to be performed, including any materials to be
57 supplied before each such progress payment is due. The
58 amount of any such progress payments shall bear a reasonable
59 relationship to the amount of work to be performed,
60 materials to be purchased, or expenses for which the
61 contractor would be obligated at the time of payment.
62 Notwithstanding the provision of subdivision (5) of this
63 subsection to the contrary, progress payments need not be
64 deposited with an escrow agent or otherwise guaranteed, and
65 the contract may provide for progress payments to be made
66 from payments deposited with an escrow agent prior to
67 completion;

68 (7) If the contract provides that the home improvement
69 contractor will be paid on a specified hourly or time basis

70 for work that has been performed or charges for materials
71 that have been supplied prior to the time that payment is
72 due, such payments for such work or materials shall not be
73 deemed to be progress payments for the purposes of
74 subdivision (6) of this subsection and shall not be required
75 to be deposited in accordance with the provisions of
76 subdivision (5) of this subsection;

77 (8) A notice to the owner that, in addition to any
78 right otherwise to revoke an offer, the owner may cancel the
79 home improvement contract until midnight of the fifth
80 business day after the day on which the owner has signed an
81 agreement or offer to purchase relating to such contract.
82 Cancellation occurs when written notice of cancellation is
83 given to the home improvement contractor. Notice of
84 cancellation, if given by mail, shall be deemed given when
85 deposited in a mailbox properly addressed and postage
86 prepaid. Notice of cancellation shall be sufficient if it
87 indicates the intention of the owner not to be bound.
88 Notwithstanding the foregoing, this subdivision shall not
89 apply to a transaction in which the owner has initiated the
90 contact and the home improvement is needed to meet a bona
91 fide emergency of the owner, and the owner furnishes the
92 home improvement contractor with a separate dated and signed
93 personal statement in the owner's handwriting describing the
94 situation requiring immediate remedy and expressly
95 acknowledging and waiving the right to cancel the home
96 improvement contract within five business days. For the
97 purposes of this subdivision, the term "owner" shall mean an
98 owner or any representative of an owner.

99 2. The writing shall be legible, in plain English, and
100 shall be in such form to describe clearly any other document
101 which is to be incorporated into the contract. Before any

102 work is done, the owner shall be furnished a copy of the
103 written agreement, signed by the contractor. The writing
104 may also contain any other matters agreed to by the parties
105 to the contract.

324.1230. No home improvement contractor shall engage
2 in any activity, transaction, or course of business or pay
3 or receive any fee, payment, money, or other thing of value
4 in connection with the financing of a home improvement
5 contract without fully disclosing to the owner such
6 activity, transaction, or course of business and any fees,
7 payment, or other thing of value paid or to be paid in
8 connection therewith, and without having obtained an
9 agreement in writing from all parties to the transaction to
10 such activity and the payment therefor.

324.1232. 1. Every roofing contractor shall enter
2 into a written contract with an owner pursuant to the
3 provisions of section 324.1228 before engaging in the
4 business of roofing or gutter, downspout, or siding services
5 for such owner. In addition, the contract entered into
6 under this section shall contain the name of the insurer,
7 type of insurance coverage as required under subsection 9 of
8 this section, and the insurance policy limits obtained by
9 the roofing contractor.

10 2. A roofing contractor shall not advertise or promise
11 to pay or rebate all or any portion of any insurance
12 deductible as an inducement to the sale of goods or
13 services. As used in this section, a promise to pay or
14 rebate includes granting any allowance or offering any
15 discount against the fees to be charged or paying the
16 insured or any person directly or indirectly associated with
17 the property any form of compensation, gift, prize, bonus,

18 coupon, credit, referral fee, or other item of monetary
19 value for any reason.

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

42 4. Within ten days after a contract referred to in
43 this section has been cancelled, the roofing contractor
44 shall tender to the owner any payments, partial payments, or
45 deposits made and any note or other evidence of
46 indebtedness. If, however, the roofing contractor has
47 performed any emergency services, acknowledged by the owner
48 in writing to be necessary to prevent damage to the
49 premises, the roofing contractor shall be entitled to the

50 reasonable value of such services. Any provision in a
51 contract referred to in this section that requires the
52 payment of any fee for anything except emergency services
53 shall not be enforceable against the owner who has cancelled
54 a contract pursuant to this section.

55 5. A roofing contractor shall not require an owner to
56 provide a deposit for the work and materials except with an
57 escrow agent, title insurance company, or bank. A roofing
58 contractor shall not mandate that a particular form of
59 payment be made in order to commence performance of the home
60 improvement. A roofing contractor may invoice for payment
61 of the materials portion of the project upon delivery of the
62 materials to the owner of the property. The material cost
63 shall be disclosed to the property owner in writing in
64 advance of payment. A roofing contractor may invoice the
65 remainder of the project upon successful completion of all
66 contracted work.

67 6. A roofing contractor shall not abandon, or fail to
68 perform, without justification, any roofing contract, nor
69 shall the roofing contractor deviate from or disregard plans
70 or specifications in any material respect without the
71 consent of the owner. A roofing contractor shall abide by
72 the applicable building code for the jurisdiction where the
73 residential property is located.

74 7. A roofing contractor shall not fail to pay for
75 materials or services rendered in connection with a roofing
76 contract where the contractor has received sufficient funds
77 as payment for the particular contract for which the
78 services or material were rendered or purchased.

79 8. A roofing contractor shall not perform the
80 reporting, adjusting, or negotiating of a claim on behalf of
81 the owner and shall not receive compensation for the

82 referral to any entity that reports, adjusts, or negotiates
83 a claim on behalf of an owner. Nothing in this section shall
84 prevent a roofing contractor from communicating with an
85 insurance company representative and sharing his or her
86 technical knowledge when the insurer initiates the
87 communication.

88 9. (1) A roofing contractor shall provide to the
89 owner adequate proof of insurance, including:

90 (a) A certificate of insurance for workers'
91 compensation coverage or an affidavit, on a form prescribed
92 by the division of workers' compensation of the department
93 of labor and industrial relations, signed by the applicant,
94 attesting that the contractor is exempt; and

95 (b) Certificates of general liability and property
96 damage insurance in the amount of one hundred thousand
97 dollars per person; three hundred thousand dollars per
98 occurrence, bodily injury; and fifty thousand dollars per
99 occurrence and aggregate, property damage.

100 (2) The insurance requirements set forth in this
101 section shall apply to roofing contracts performed in all
102 counties and cities that do not require insurance for such
103 contracts.

324.1234. 1. Any owner who is induced to contract for
2 a home improvement in reliance of false or fraudulent
3 written representations or statements, may sue and recover
4 from such contractor a penalty of five hundred dollars plus
5 reasonable attorney's fees, in addition to any damages
6 sustained by the owner by reason of such statements or
7 representations. In addition, if a court finds that a suit
8 initiated by the owner was without arguable legal merit, it
9 may award reasonable attorney's fees to the contractor.

10 2. Nothing in sections 324.1200 to 324.1242 shall
11 impair, limit, or reduce the statutory, common law or
12 contractual duties or liability of any contractor.

 324.1236. 1. Every home improvement contractor who
2 violates any of the provisions of sections 324.1200 to
3 324.1242 shall be subject to a civil penalty not to exceed
4 one thousand dollars.

 2. Every home improvement contractor who fails to
5 deposit funds in an escrow account or provide a bond or
6 contract of indemnity or irrevocable letter of credit, or
7 who fails to provide a written contract substantially in
8 compliance with the requirements of sections 324.1200 to
9 324.1242, shall be subject to a civil penalty not to exceed
10 the greater of two hundred fifty dollars for each violation
11 or five percent of the aggregate contract price specified in
12 the home improvement contract; provided, however, that in no
13 event shall the total penalty exceed twenty-five hundred
14 dollars for each contract.
15

 3. If a contractor has been found to have committed
16 multiple violations of sections 324.1200 to 324.1242, the
17 court shall consider the following factors in assessing a
18 civil penalty pursuant to subsection 2 of this section: The
19 volume of business which the home improvement contractor
20 performs on an annual basis, the number of contracts in
21 violation, the actual financial loss or exposure to
22 financial loss suffered by any owner as a result of the
23 violations, and whether the home improvement contractor
24 acted in good faith or willfully with respect to such
25 violations. No home improvement contractor shall be subject
26 to the increased penalties provided by subsection 2 of this
27 section if such contractor shows by a preponderance of the
28 evidence that the violation was not intentional and resulted
29

30 from a bona fide error made notwithstanding the maintenance
31 of procedures reasonably adopted to avoid such a violation.

324.1238. 1. Upon any violation of the provisions
2 sections 324.1200 to 324.1242, an application may be made by
3 the attorney general in the name of the people of the state
4 to a court having jurisdiction to issue an injunction, and
5 upon notice to the defendant of not less than five days, to
6 enjoin and restrain the continuance of the violation. If it
7 shall appear to the satisfaction of the court that the
8 defendant has violated this section, an injunction may be
9 issued by the court, enjoining and restraining any further
10 violation, without requiring proof that any person has, in
11 fact, been injured or damaged thereby. In any such
12 proceeding, the court may make allowances for fees and
13 expenses to the attorney general and direct restitution.

14 2. In connection with an application made under this
15 section, the attorney general is authorized to take proof
16 and to make a determination of the relevant facts and to
17 issue subpoenas in accordance with the rules of civil
18 procedure.

19 3. The provisions of sections 324.1200 to 324.1242 may
20 be enforced concurrently by any lawful designee of a
21 municipality or local government, and all moneys collected
22 thereunder shall be retained by such municipality or local
23 government.

324.1240. No home improvement contractor shall be
2 exempted from complying with any local law with respect to
3 the regulation of home improvement contractors, provided,
4 however, that after the effective date of this act, no
5 political subdivision may enact a local law inconsistent
6 with the provisions of sections 324.1200 to 324.1242.

324.1242. If any clause, sentence, paragraph,
2 subdivision or part of sections 324.1200 to 324.1242 or the
3 application thereof to any person or circumstance shall be
4 adjudged by any court of competent jurisdiction to be
5 invalid or unconstitutional, such judgment shall not affect,
6 impair, or invalidate the remainder thereof, but shall be
7 confined in its operation to the clause, sentence,
8 paragraph, subdivision, or part, and in its application to
9 the person or circumstance directly involved in the
10 controversy in which such judgment shall have been rendered.

✓