

SPONSOR: Rep. Morrison & Sen. Huxtable & Sen. Hansen
Reps. K. Johnson, Snyder-Hall, Bush, Griffith, Hilovsky, Romer, Gorman, K. Williams, Lambert, Harris; Sens. Hoffner, Seigfried, Wilson, Buckson, Cruce, Lockman, Walsh

HOUSE OF REPRESENTATIVES
153rd GENERAL ASSEMBLY

HOUSE BILL NO. 89
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLES 19 AND 29 RELATING TO HOME IMPROVEMENT DISPUTE RESOLUTION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 25, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Subchapter VI. Home Improvement Dispute Resolution

§ 2561. Definitions.

For the purposes of this subchapter:

(1) "Buyer" means an individual who purchases home improvement services or merchandise from a home improvement contractor.

(2) "Contractor" means any person, firm, partnership, joint venture, limited liability company, or other company, or an officer, representative, agent, or employee of a person, firm, partnership, joint venture, limited liability company, or other company, engaged in the trade or commerce of home improvement.

(3) "Department" means the Department of Justice.

(4) "Director" means the Director of Consumer Protection and includes any designee of the Director.

(5) "Division" means the Division of Consumer Protection as established in Subchapter II of this chapter.

(6) "Home" means a house, dwelling, condominium, townhouse, apartment, or such other residential building or dwelling in which an individual resides.

(7) "Home improvement" means as defined in § 916 of Title 11.

(8) "Home improvement contract" means as defined in § 916 of Title 11.

(9) "Merchandise" means as defined in § 2511 of Title 6.

(10) "Wilful violation" means as defined in § 2522(b) of Title 6.

§ 2562. Home Improvement Dispute Resolution process.

(a) The Division shall establish a Home Improvement Dispute Resolution Process to assist buyers with disputes involving home improvement contracts and shall post a copy of the Home Improvement Dispute Resolution Process on its website.

(b) To be eligible for the Home Improvement Dispute Resolution Process, a buyer must do all of the following:

(1) Send the contractor a written request to resolve the dispute. The written request must meet all of the following criteria:

a. The request is on a form approved by the Director.

b. The request is signed under penalty of perjury.

c. The request is sent to the contractor in 1 of the following ways:

1. By email or other electronic means if evidence of receipt of the written request is established, such as through acknowledgement or response by the contractor.

2. If the home improvement contract contains a mailing address for the contractor, mailed to the contractor's address by certified mail.

3. If the home improvement contract does not contain a mailing address for the contractor, sent to the contractor using other contact information for the contractor contained within the contract.

4. If the contract does not contain contact information for the contractor, sent to the contractor by any reasonable means.

d. The request includes a statement that the contractor has 20 days from the date the request was mailed or sent via other means to respond to the request in writing.

(2) Complete an application for assistance on a form approved by the Division. The application must be signed under penalty of perjury and include all of the following:

a. A copy of the written request to resolve the dispute described in paragraph (b)(1) of this section.

b. One of the following:

1. A copy of the contractor's response to the written request to resolve the dispute.

2. A statement, signed under penalty of perjury, confirming that the consumer did not receive a response to the written notice within 20 days of the date the written request to resolve the dispute was mailed or sent by other means.

c. A copy of the home improvement contract between the buyer and contractor.

d. Any other information requested by the Division on the application form.

(c) Upon receiving a completed application, the Division must send written notice to the contractor that the Division is initiating the Home Improvement Dispute Resolution Process. The notice must be sent to the contractor by any method permitted under paragraph (b)(1) of this section and must include all of the following:

(1) A copy of the buyer's application for assistance.

(2) A statement that participation in the Home Improvement Dispute Resolution Process is mandatory and that a failure to participate in good faith is a violation of the Consumer Fraud Act.

(3) A statement that the contractor has 20 days from the date that the notice was sent to respond to the Division with the contractor's position on the dispute.

(4) An explanation of the Division's dispute resolution procedures.

(d) If the Division receives a response from the contractor, the Division must utilize the Home Improvement Dispute Resolution Process to attempt to resolve the dispute.

(e) The contractor must participate in the Home Improvement Dispute Resolution Process in good faith.

§ 2563. Good faith.

(a) The good faith requirement set forth in § 2562(e) of this subchapter must be determined based on all relevant facts and circumstances.

(b) A finder of fact may look to indicia of good faith in making such determination, which may include the following:

a. Providing timely responses to correspondence from the Division.

b. Providing written responses to the facts alleged in the complaint.

c. Making reasonable settlement offers.

d. Efforts to address the complaint through mitigation or repair work.

e. Additional indicia of good faith identified by the Director through regulations promulgated under § 2521 of this title.

(c) Whether a contractor agreed to a settlement proposal is not relevant and may not be considered by a fact finder in determining a contractor's good faith under this subchapter.

§ 2564. Confidentiality.

(a) All communications with the Division by the buyer or the contractor as part of the Home Improvement Dispute Resolution Process constitute conduct or statements made during compromise negotiations about the claim.

(b) Communications with the Division by the buyer or the contractor as part of the Home Improvement Dispute Resolution Process may be admitted as evidence in subsequent civil litigation for limited purposes in the discretion of the court and subject to the following:

(1) These communications may not be admitted as evidence for purposes of proving or disproving the validity or amount of a disputed claim or to impeach by a prior inconsistent statement or a contradiction.

(2) These communications may be admitted in the discretion of the court for the purpose of establishing whether a contractor participated in the Home Improvement Dispute Resolution Process in good faith.

(c) No statement or other information compelled under the Home Improvement Dispute Resolution Process, or any information directly or indirectly derived from such statement or other information compelled, may be used against the contractor in any criminal case, except as follows:

(1) The statement or information is introduced as evidence in a prosecution for perjury or giving a false statement.

(2) The statement or information is introduced as a prior inconsistent statement of a testifying defendant that may be used for the limited purpose of impeaching the defendant's credibility subsequent to the State's case-in-chief, if it has been disclosed to the defense in discovery.

§ 2565. Notice to Department of Labor.

(a) The Division must notify the Department of Labor if a contractor does any of the following:

(1) Fails to respond to a written notice from the Division sent pursuant to § 2562(c) of this title.

(2) Fails to participate in good faith in the Home Improvement Dispute Resolution process.

(b) The Division must send a copy of any notice sent under subsection (a) of this section to the contractor.

§ 2566. Violation of Consumer Fraud Act.

(a) It shall be deemed an unlawful practice under § 2513 of Title 6 and a violation of Subchapter II of Chapter 25 of Title 6 for a contractor to fail to respond to a written notice from the Division sent pursuant to § 2562(c) of this title or otherwise fail to participate in good faith in the Home Improvement Dispute Resolution process.

(b) A violation under subsection (a) of this section is presumed to be wilful. A contractor may rebut this presumption by proving there was good cause for the contractor's violation.

§ 2567. Cause of action; damages; enhanced recoveries.

(a) A person who suffers damage or injury as a result of a violation of Subchapter II of Chapter 25 of Title 6 in a matter related to a home improvement contract, including a violation under § 2566 of this title, has a cause of action to recover actual damages, court costs, and reasonable attorney fees.

(b) If a private cause of action is brought by or on behalf of a victim under subsection (a) of this section, the victim is entitled to recover 3 times the amount of the victim's compensatory damages if all of the following criteria are met:

(1) The buyer completed the steps under § 2562(b) to be eligible for the Home Improvement Dispute Resolution process.

(2) At least 10 business days prior to the filing of the action, the buyer made a written offer of settlement to the contractor.

(3) The contractor rejected the offer of settlement. A contractor's failure to respond to the offer of settlement within 10 business days is deemed to be a rejection of the offer.

(4) The court holds that the buyer is entitled to damages that exceed the amount in the buyer's written offer of settlement.

(5) A wilful violation is established.

(c) The treble damages under subsection (b) of this section may be awarded in addition to any other damages to which the victim is entitled under any other law.

Section 2. Amend Chapter 36, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3605. Registration requirements.

(b) A contractor must apply for a registration certificate by submitting a complete application on the form provided by the Department, which must include all of the following information regarding the contractor, if applicable:

(4) The name of the person, the date and nature of the violation, conviction, or judgment, and all additional information requested by the Department if the contractor or a person holding a financial interest in the contractor's business has ever done any of the following:

a. Held a financial interest in a licensed entity that was cited by the Department for a violation of a labor law.

b. Been convicted of home improvement fraud under § 916 of Title 11 or new home construction fraud under § 917 of Title 11.

c. Been found to have engaged in an unlawful practice under § 2513 of Title 6.

d. Failed to participate in good faith in the Home Improvement Dispute Resolution process under Subchapter VI of Chapter 25 of Title 29.

(e) Information under subsection (a), (b), or (d) of this section is not public information under Chapter 100 of Title 29. Such information must be provided to the Department of Justice upon request.

§ 3607. Denial, suspension, or revocation of certificate of registration.

(a) The Department may deny, suspend, or revoke a certificate of registration if the contractor or an officer, partner, director, stockholder, or agent of the contractor does any of the following under this chapter:

(7) Violates a criminal or civil law or regulation related to the ability of the contractor to comply with the labor laws of this ~~State.~~State or violates a criminal or civil law or regulation related to consumer protection.

(8) Fails to participate in good faith in the Home Improvement Dispute Resolution process under Subchapter VI of Chapter 25 of Title 29.

Section 3. This Act is effective immediately, and is to be implemented 6 months from the date of the Act's enactment.