

2013 DRAFTING REQUEST

Senate Substitute Amendment (SSA-SB79)

Received: 4/22/2013 Received By: mkunkel
Wanted: As time permits Same as LRB: s0040
For: Luther Olsen (608) 266-0751 By/Representing: Amy Harriman
May Contact: Drafter: mkunkel
Subject: Trade Regulation - other Addl. Drafters:
Extra Copies: MPG

Submit via email: YES
Requester's email: Sen.Olsen@legis.wisconsin.gov
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Contracting with residential contractors

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mkunkel 4/23/2013	jdyer 4/23/2013	jmurphy 4/23/2013	_____			
/1	mkunkel 4/26/2013			_____	sbasford 4/23/2013	sbasford 4/23/2013	
/2		jdyer 4/26/2013	jmurphy 4/26/2013	_____	mbarman 4/26/2013	mbarman 4/26/2013	

FE Sent For:

<END>

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/?	mkunkel 4/23/2013	jdyer 4/23/2013	jmurphy 4/23/2013	_____			
/1		<i>2/4/26 jld</i>	<i>jm 4/26</i>	<i>jm + PH 4/26</i>	sbasford 4/23/2013	sbasford 4/23/2013	

FE Sent For:

<END>

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/?	mkunkel	1 4/23 jld					

jm 4/23 gm-jb 4/23

FE Sent For:

<END>

- 1301 is Carpenter to -0882

Kunkel, Mark

From: Kahler, Pam
Sent: Monday, February 18, 2013 11:08 AM
To: Kunkel, Mark
Subject: FW: Response Re: Your Question regarding LRB 1301/1 contractor legislation
Attachments: ATT1266245.txt; ATT1266246.htm

redraft of
2011 AS 654

Based on
2011 Missouri SB No. 101
- Mo. St. 407.725.6

Mark,

I don't know if you've gotten back to Amy on this. Some thoughts from me:

From the insurance angle, I'm not aware of any prohibition on contractors negotiating or assisting an insured with negotiations with an insurer. So, in that sense, they may be legally allowed to. But the insurance provisions regulate insurers, not contractors.

Don Schultz said that insurers have a fiduciary duty to their insureds. That's the first time I've ever heard their relationship characterized in that way. They have a contractual relationship, so I don't think that would be considered a fiduciary duty. I suppose an insurer could include in the insurance contract that only the insured may negotiate claims with the insurer, but I think that would raise some red flags, since an insured doesn't necessarily have the expertise to negotiate knowledgeably about the subject matter of the claim.

He also mentions that negotiating on behalf of an insured may constitute the unauthorized practice of law. Seems like a fair point, but that's a different issue, about which I know nothing. But from that perspective, you could argue, then, that the provision about which they are concerned is unnecessary because the unauthorized practice of law is already prohibited.

Pam

From: Harriman, Amy
Sent: Thursday, February 14, 2013 5:01 PM
To: Kunkel, Mark; Kahler, Pam
Subject: FW: Response Re: Your Question regarding LRB 1301/1 contractor legislation

Mark:

Below you will see some of the concerns individuals have on the prohibition provision of LRB 1301/1. We are wondering if contractors are currently legally allowed to negotiate with an insurer on behalf of the insured.

Thanks,

Amy Harriman

36 26

Senator Luther Olsen
14th Senate District
608-266-0751
amy.harriman@legis.wisconsin.gov

From: Schultz, Donald E
Sent: Wednesday, February 13, 2013 4:36 PM

Subject: Response Re: Your Question regarding LRB 1301/1 contractor legislation

Importance: High

Monica,

I did make contact with Don Albdinger of our property area on this issue. He indicated that there are times a proposal may have add ons.

As I see the contention, if the contractor wants to act as a negotiator for the homeowner, a quasi "public adjuster" if you will, paragraph 7 would preclude that. However, if he is talking about "add ons" to an original bid or proposal, this happens all the time and I do not see this paragraph changing that ability.

The language complained of:

No residential contractor may represent or offer or advertise to represent a consumer or negotiate or offer or advertise to negotiate on behalf of a consumer with respect to any insurance claim related to the repair or replacement of a roof system or to the exterior repair, replacement, construction, or reconstruction of residential real estate.

An insurers contract is with its insured. It owes a fiduciary duty to that insured that is expressed in Wis. Admin. Code Ins. 6.11 and case law. One means insurers guarantee they act accordingly is to be open to insured's claims of damage beyond what was normally thought. The above language helps maintain that fiduciary relationship between the insurer and the insured by precluding a residential contractor from trying to take the place of the insured. You are correct that a contractor can and should advise the insured of the need for any additional repairs (add-ons) but the fiduciary relationship relies on the communication between an insured and the insurer. The elderly homeowner can have their own adjustment done if they wish now and this bill does not stop that; it does however stop a contractor from interceding into the fiduciary relationship and that is how it should be. I cannot say this gives rise to the unauthorized practice of law per se but it could depending on how and what developed. Such actions most certainly interfere with the fiduciary relationship.

I hope this helps. Let me know if you need more information. As an aside, whoever wrote the complaint describes an insurance company I am not familiar with.

Don Schultz

Managing Attorney

Great Lakes Legal

(608)249-2111

Ext. 44102

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----- Original message -----

From: "Thorson, Randy" < >

Cc: "Harriman, Amy" <Amy.Harriman@legis.wisconsin.gov>, "Sen.Olsen" <Sen.Olsen@legis.wisconsin.gov>

Subject: Question regarding LRB 1301/1 contractor legislation

The following was presented to Representative Krug and he was hoping you could have someone address the concerns raised by this individual.

Thank you for your attention to this matter.

I have read and reviewed this proposed legislation, and as a a family-owned contractor in Wisconsin for over 53 years, I agree with most of the provisions, including requiring the homeowner to pay 100% of their deductible. However, there is one item that is EXTREMELY concerning to me in terms of protecting homeowners.

Section 1.7 prohibits contractors from negotiating with the insurance company on behalf of the homeowner. This part of the bill is clearly written to protect insurance companies, rather than homeowners. I have been involved with more than 3,000 storm-related roof replacement insurance claims. Of those, I can tell you that most of the initial replacement offers from insurance companies would not even provide a building-code complaint roof. It is only after a contractor points out that certain underlayments, accessories and vents are required by code, will the insurance company cover them. The majority of homeowners are not aware of the specific requirements of their local building codes, and honestly many "local" contractors who replace roofs after a storm, are not very familiar with them, either. Just as you wouldn't tell a patient they couldn't bring an informed advocate to their doctor's appointment, you shouldn't tell a homeowner they can't have a contractor represent them in negotiating their home repair. Think of elderly homeowners who are unable to even get up on their own roof to examine the damage. They are supposed to take the insurance adjustor's word that there is little or no damage? They can't have a contractor, someone who has training and licensing, on their team? That doesn't seem fair.

Most "storm chaser" contractors are honest, reputable companies who have the resources and experience to do a high-volume of exterior repairs in a short period of time. Many "local" contractors are used to replacing one roof a week. If a community is hit with a storm and needs 500-1,000 roofs repaired, that will overwhelm "local" contractors and they will resort to business practices they aren't used to, including overextending their credit to buy materials and not being able to complete jobs they are contracted for (and have taken deposits on).

Ironically, most insurance companies hire out-of-state adjusters to settle their losses on these storms, but there is no legislation regulating that practice. These out-of-state adjusters are also paid bonuses to underpay their homeowners on the claims. These adjusters are not required to have training or licensing (both of which I am required to have as a state contractor.) Why is that practice not addressed in this legislation that is intended to protect homeowners?

So, yes, let's tighten the regulation on the "storm chasing" industry, but let's do it in a way that is fair to homeowners, not just insurance companies.

Please let us know what you think, and what we can do, if anything to address these concerns.

Thanks again,

Randy

Kunkel, Mark

From: Kunkel, Mark
Sent: Friday, March 01, 2013 11:00 AM
To: Kite, Robin
Subject: FW: Amendment Question for LRB1301/1

Robin:

I drafted a bill for Sen. Olsen (not yet introduced) that imposes new requirements in DATCP's chapter on contracts for roofing work. Building contractors have approached Amy in Sen. Olsen's office about creating an exemption for persons who have to comply with continuing education under s. 101.654. However, s. 101.654 applies only to people who have to obtain building permits, which I understand is a local government issue. Is that correct? Also, persons who are otherwise licensed by DSPS are exempt from the continuing education required under s. 101.654, but may be subject to other continuing education requirements.

In any event, Amy is wondering just how many people the exemption would affect. Since you do building permit issues (according to Mary), you may have some idea. I told Amy that she should probably contact DSPS about this, and I think she is going to do that.

In any event, can we discuss this when you get back in the office on Monday?

Thanks,

--Mark

From: Harriman, Amy
Sent: Thursday, February 28, 2013 4:03 PM
To: Kunkel, Mark
Subject: Amendment Question for LRB1301/1

Hey Mark-

An idea was brought forth in regards to exempting Contractors who have the 2 year credential certification found in DSPS 101.654. Our question is, if that was to occur- wouldn't that kill the bill in essence?

Let me know what you are thinking.

Thanks,

Amy Harriman

Senator Luther Olsen
14th Senate District
608-266-0751
amy.harriman@legis.wisconsin.gov

Kunkel, Mark

From: Harriman, Amy
Sent: Tuesday, April 23, 2013 9:58 AM
To: Kunkel, Mark
Subject: RE: Sub-Amendment

As soon as you can. It sounds like Leadership wants this done ASAP.

Thanks,

Amy Harriman

Senator Luther Olsen
14th Senate District
608-266-0751
amy.harriman@legis.wisconsin.gov

From: Kunkel, Mark
Sent: Monday, April 22, 2013 3:52 PM
To: Harriman, Amy
Subject: RE: Sub-Amendment

I think the issues are resolved. I will work on this today and tomorrow and get something to you soon, probably by Wed. or Thurs. Is that okay, or do you need it sooner?

FYI: Attached is a doc. with a table that includes the discussion of each item in the emails below. (I made it to help me sort through the items.) Regarding item 7, I see that I never responded. That change looks okay.

--Mark

From: Harriman, Amy
Sent: Monday, April 22, 2013 2:13 PM
To: Kunkel, Mark
Subject: RE: Sub-Amendment

Just wanted to double check- all of the issues were resolved right?

Thanks,

Amy Harriman

Senator Luther Olsen
14th Senate District
608-266-0751
amy.harriman@legis.wisconsin.gov

From: Kunkel, Mark
Sent: Monday, April 22, 2013 1:11 PM
To: Harriman, Amy
Subject: RE: Sub-Amendment

Okay, will do.

From: Harriman, Amy
Sent: Monday, April 22, 2013 12:21 PM
To: Kunkel, Mark
Subject: RE: Sub-Amendment

Could we please create a penalty that does not have double damages, does not have a provision to pay attorney fees, and does not have criminal penalties. We would like the penalties to be no less than 500 but not more than 1000. Please let me know if you have any thoughts or run into problems.

Thanks,

Amy Harriman

Senator Luther Olsen
14th Senate District
608-266-0751
amy.harriman@legis.wisconsin.gov

From: Kunkel, Mark
Sent: Friday, April 05, 2013 11:33 AM
To: Harriman, Amy
Subject: RE: Sub-Amendment

Amy:

Regarding item 6, the short answer is yes: I can create penalties and enforcement that apply to violations of the sub. amendment, and that would apply instead of the penalties and enforcement under s. 100.20 under current law.

Here is the long answer: DATCP has promulgated the rules set forth at ATCP 110 under its authority to issue general orders under s. 100.20 that prohibit unfair trade practices. Under s. 100.20 (5), a person who suffers pecuniary loss because of a violation of such an order can sue and recover double damages. As a result, if a person suffers loss based on a violation of ATCP 110, that person can sue the violator for double damages.

2013 SB 79 includes language at page 5, line 18 that provides that a violation of the bill is an unfair trade practice under s. 100.20. Although it could have drafted more clearly, the intent is that the penalties and enforcement (including double damages) under s. 100.20 would apply to a violation of the bill.

I can eliminate the applicability of double damages by eliminating the language at page 5, line 18. Instead of relying on the same penalties and enforcement that apply to unfair trade practices under s. 100.20, I can create enforcement and penalties that only apply to violations of the sub. amendment.

Of course, I'll need to know what penalties and enforcement to create. If you are okay with DATCP, I can allow DATCP to sue to enforce the sub. amendment. Also, in response to such an action brought by DATCP, I could allow a court to order that a violator pay damages to a person who suffers loss, but *not* allow for double damages. There is similar language in s. 100.20 (6), which I could use as a model. Do you also want allow a person who suffers loss to sue the violator? Such a private cause of action would be in addition to enforcement by DATCP. I could create something similar to s. 100.20 (5), but leave out the double damages.

Finally, there is the issue of civil forfeitures and criminal penalties. Under current law, a violator of a DATCP order under s. 100.20 is subject to a civil forfeiture of between \$100 and \$10,000. See s. 100.26 (6). The same forfeiture amounts apply if DATCP obtains an injunction in court to restrain a person's violation, and the person violates the injunction. Do you want the same civil forfeiture amounts to apply to violations of the sub. amendment? What about criminal penalties? Should those apply as well? Under current law, if a person violates a DATCP order under s. 100.20, the person can be fined between \$25 and \$5,000, imprisoned for up to a year, or both. See s. 100.26 (3). For comparison purposes, if person violates other provisions of ch. 100, the person can be fined no more than \$200, imprisoned for no more than 6 months, or both. See s. 100.26 (1). Do you want those criminal penalties to apply to the sub. amendment? (Note that the bill imposed the \$200 fine/6 month imprisonment penalties.)

--Mark

From: Harriman, Amy
Sent: Friday, April 05, 2013 10:45 AM
To: Kunkel, Mark
Subject: RE: Sub-Amendment

Item 3- That was a wonderful explanation, I appreciate it very much. Because it would be redundant, let's drop this item.

Item 5- Lets drop this one too.

Item 6- I also agree that DSPS is not the proper enforcement authority, other stakeholders are concerned about the double damages part of ATCP 110. Is there a way to create a specific penalty only for this bill that is enforced by DATCP? Or to make sure that the double damages don't kick in?

Let me know what you are thinking.

Thanks,

Amy Harriman

Senator Luther Olsen
14th Senate District
608-266-0751
amy.harriman@legis.wisconsin.gov

From: Kunkel, Mark
Sent: Wednesday, April 03, 2013 4:31 PM
To: Harriman, Amy
Cc: Kahler, Pam; Kite, Robin
Subject: RE: Sub-Amendment

Amy:

Regarding item 3 below, current law generally requires insurers to pay insurance claims within 30 days after receiving proof of a covered loss. See s. 628.46. In addition, as you note below, OCI has promulgated rules on unfair claim settlement practices. Those rules generally require, among other things, that insurers "conclude a claims investigation with all reasonable dispatch" and "affirm or deny coverage of claims within a reasonable time after proof of loss has been completed." See s. Ins 6.11 (3) (a) 2. and 7., Wis. Adm. Code. Therefore, it appears that current law already requires insurance companies to resolve weather-related roofing claims in a timely manner, and it would be redundant

to require insurers to comply with current law. However, if you want to impose a more specific deadline that pertains to such claims, please let me know.

Regarding item 5, you are correct in noting that your bill does not have the 30-day deadline mentioned in the Illinois notice. (In item 5, you have a typo and refer to the 30-day deadline as a 13-day deadline.) Your bill does have the 5-day deadline (which you want to change to 3 days), as well as the 10-day deadline for refunds. As for the 30-day deadline, it does not appear to require processing claims within 30 days. However, like you, I'm not quite sure what it does. The Illinois notice says that, if an insurer notifies a consumer that there is no coverage, the consumer can cancel the roofing contract no later than 5 days after receiving the insurer's notice, or 30 days after the consumer provided proof of loss, whichever occurs first. The confusing aspect is that the deadlines apply only if an insurer notifies a consumer that there is no coverage. It's possible that the notice is poorly drafted, and was intended to impose a 30-day deadline in the event that a consumer doesn't hear back from the insurer within 30 days after providing proof of loss. In any event, I can include a new deadline if you tell me how you want it to operate. I would start from scratch, based on what you want to do, rather than duplicate the confusing Illinois language.

Regarding item 6, I discussed the issue with Robin Kite (one of our drafters who deals with DSPS), and we don't think DSPS is the appropriate agency to enforce the bill. DSPS establishes building standards to ensure that buildings and places of employment are safe. DSPD also regulates the conduct of contractors to ensure compliance with those standards. Your bill deals with business practices of contractors, as well as protection of consumers, which are areas that DSPS does not regulate under current law. If you don't want DATCP to enforce the bill, you could move the bill's provisions to chapter 134, which contains miscellaneous trade regulations that are enforced by local district attorneys, instead of DATCP. You would also have to decide what penalty (if any) would be appropriate for violations of the bill.

--Mark

From: Harriman, Amy
Sent: Tuesday, April 02, 2013 3:57 PM
To: Kunkel, Mark
Subject: RE: Sub-Amendment

Hey Mark-

Sorry about the delay. Trying to get folks to help get answers so your questions took MUCH longer than I thought. Here's the info:

3- Need to bring some certainty in when adjusters will be done processing the claim

Could it be something like, an insurance adjuster must process roofing claims that are weather related in a timely manner or does it need to be something like an actual amount of time? I thought OCI has something in their unfair claims section that adjusters must do it in a timely manner? Can we tie it to that?

4- Add language that notifies contractors that the project is an insurance related project

Let's skip this part for the time being. We just don't have a good solution.

5- Section 7- Add the Illinois language of the amendment

I did not give you the IL language. I apologize for that. Below is the language from a similar bill passed in the Illinois Legislature.

"NOTICE OF CANCELLATION

If you are notified by your insurer that all or any part of the claim or contract is not a covered loss

under the insurance policy, you may cancel the contract by mailing or delivering a signed and dated copy of this cancellation notice or any other written notice to (name of contractor) at (address of contractor's place of business) at any time prior to midnight on the earlier of the fifth business day after you have received such notice from your insurer or the thirtieth business day after your insurer has received properly executed proof(s) of loss from you. If you cancel, any payments made by you under the contract, other than payments for goods or services related to a catastrophe which you agreed in writing to be necessary to prevent damage to your property, will be returned to you within 10 business days following receipt by the contractor of your cancellation notice.

Folks would like to add part of the IL language to the Notice section. It is my understanding that the only part that we don't have that they do is the part about the 13th business day after the insurer received properly executed proof. Truthfully, I don't understand what that does in the IL language. If that makes sense in our situation, can we add that? Does that say insurance agents must process claims in 13 days? If that is the case, then please don't add.

6- Section 8- Change the enforcement authority from the DATCP to another.

Can we do DSPS? Would that be creating a new penalty within their authority?

7- Line 16, in regards to date of cancellation.

Currently reads: You may cancel this contract at any time before midnight on the fifth business.

Can we change it to 3rd business day?

Let me know your questions or thoughts.

Thanks,

Amy Harriman

Senator Luther Olsen

14th Senate District

608-266-0751

amy.harriman@legis.wisconsin.gov

From: Kunkel, Mark

Sent: Tuesday, March 26, 2013 11:37 AM

To: Harriman, Amy

Cc: Kahler, Pam

Subject: RE: Sub-Amendment

See my questions below.

From: Harriman, Amy

Sent: Tuesday, March 26, 2013 10:31 AM

To: Kunkel, Mark
Subject: Sub-Amendment

Senator Olsen would like a sub-amendment draft to include the following:

- 1-Section 1, e-change from 4 dwelling units or less or 1-2 family home
- 2- Section 2, a, line 16- change from fifth business day to third business day
- 3- Need to bring some certainty in when adjusters will be done processing the claim

QUESTION: Can you expand a bit on what you want with the above? The substitute amendment will allow a consumer to cancel a contract before midnight of the 3rd business day after the consumer receives written notice from an insurer that there is no insurance coverage. Do you want to impose deadlines on an insurer's determination about coverage? If so, when would the deadline begin to run and when would it end? If not, is there something else that you want to do?

- 4- Add language that notifies contractors that the project is an insurance related project

QUESTION: Can you expand a bit on the above? Does the consumer have to put the contractor on notice, prior to entering into the contract, that the consumer intends to seek insurance coverage? Does the notice have to be in writing? What should happen if the consumer fails to provide notice? Would the consumer be unable to cancel the contract in the event that there is no insurance coverage?

- 5- Section 7- Add the Illinois language of the amendment that has been circulated to all of you already.

QUESTION: I'm not sure which language is the Illinois language. Do you mean the language that was included in 13a0166/1, which dealt with permissible activities by contractors?

- 6- Section 8- Change the enforcement authority from the DATCP to another.

QUESTION: Which other agency should enforce? Commissioner of Insurance? As an alternative, if you don't want any state agency to have enforcement power, you could leave enforcement up to local district attorneys, but moving the requirements to ch. 134 (which contains miscellaneous trade regulations).

I thought I had sent this a week or so back, but can't seem to find it in my sent box. Is it possible to put a rush on this sub?

Thanks,

Amy Harriman

Senator Luther Olsen
14th Senate District
608-266-0751
amy.harriman@legis.wisconsin.gov

Instructions for sub. amendment

1-Section 1, e-change from 4 dwelling units or less or 1-2 family home ✓
2- Section 2, a, line 16- change from fifth business day to third business day ✓
3- Need to bring some certainty in when adjusters will be done processing the claim MY QUESTION: Can you expand a bit on what you want with the above? The substitute amendment will allow a consumer to cancel a contract before midnight of the 3rd business day after the consumer receives written notice from an insurer that there is no insurance coverage. Do you want to impose deadlines on an insurer's determination about coverage? If so, when would the deadline begin to run and when would it end? If not, is there something else that you want to do? RESPONSE: Could it be something like, an insurance adjuster must process roofing claims that are weather related in a timely manner or does it need to be something like an actual amount of time? I thought OCI has something in their unfair claims section that adjusters must do it in a timely manner? Can we tie it to that? MY FOLLOW-UP QUESTION: Regarding item 3 below, current law generally requires insurers to pay insurance claims within 30 days after receiving proof of a covered loss. See s. 628.46. In addition, as you note below, OCI has promulgated rules on unfair claim settlement practices. Those rules generally require, among other things, that insurers "conclude a claims investigation with all reasonable dispatch" and "affirm or deny coverage of claims within a reasonable time after proof of loss has been completed." See s. Ins 6.11 (3) (a) 2. and 7., Wis. Adm. Code. Therefore, it appears that current law already requires insurance companies to resolve weather-related roofing claims in a timely manner, and it would be redundant to require insurers to comply with current law. However, if you want to impose a more specific deadline that pertains to such claims, please let me know. RESPONSE: Item 3 That was a wonderful explanation, I appreciate it very much. Because it would be redundant, let's drop this item. ✓
4- Add language that notifies contractors that the project is an insurance related project MY QUESTION: Can you expand a bit on the above? Does the consumer have to put the contractor on notice, prior to entering into the contract, that the consumer intends to seek insurance coverage? Does the notice have to be in writing? What should happen if the consumer fails to provide notice? Would the consumer be unable to cancel the contract in the event that there is no insurance coverage? RESPONSE: Let's skip this part for the time being. We just don't have a good solution. ✓
5- Section 7- Add the Illinois language of the amendment that has been circulated to all of you already. MY QUESTION: I'm not sure which language is the Illinois language. Do you mean the language that was included in 13a0166/1, which dealt with permissible activities by contractors? RESPONSE: I did not give you the IL language. I apologize for that. Below is the language from a similar bill passed in the Illinios Legislature. <p style="text-align: center;"><u>"NOTICE OF CANCELLATION</u></p> <p><u>If you are notified by your insurer that all or any part of the claim or contract is not a covered loss</u></p>

under the insurance policy, you may cancel the contract by mailing or delivering a signed and dated copy of this cancellation notice or any other written notice to (name of contractor) at (address of contractor's place of business) at any time prior to midnight on the earlier of the fifth business day after you have received such notice from your insurer or the thirtieth business day after your insurer has received properly executed proof(s) of loss from you. If you cancel, any payments made by you under the contract, other than payments for goods or services related to a catastrophe which you agreed in writing to be necessary to prevent damage to your property, will be returned to you within 10 business days following receipt by the contractor of your cancellation notice.

Folks would like to add part of the IL language to the Notice section. It is my understanding that the only part that we don't have that they do is the part about the 13th business day after the insurer received properly executed proof. Truthfully, I don't understand what that does in the IL language. If that makes sense in our situation, can we add that? Does that say insurance agents must process claims in 13 days? If that is the case, then please don't add.

MY FOLLOW-UP QUESTION: Regarding item 5, you are correct in noting that your bill does not have the 30-day deadline mentioned in the Illinois notice. (In item 5, you have a typo and refer to the 30-day deadline as a 13-day deadline.) Your bill does have the 5-day deadline (which you want to change to 3 days), as well as the 10-day deadline for refunds. As for the 30-day deadline, it does not appear to require processing claims within 30 days. However, like you, I'm not quite sure what it does. The Illinois notice says that, if an insurer notifies a consumer that there is no coverage, the consumer can cancel the roofing contract no later than 5 days after receiving the insurer's notice, or 30 days after the consumer provided proof of loss, whichever occurs first. The confusing aspect is that the deadlines apply only if an insurer notifies a consumer that there is no coverage. It's possible that the notice is poorly drafted, and was intended to impose a 30-day deadline in the event that a consumer doesn't hear back from the insurer within 30 days after providing proof of loss. In any event, I can include a new deadline if you tell me how you want it to operate. I would start from scratch, based on what you want to do, rather than duplicate the confusing Illinois language.

RESPONSE: Item 5- Lets drop this one too. ✓

6- Section 8- Change the enforcement authority from the DATCP to another.

MY QUESTION: Which other agency should enforce? Commissioner of Insurance? As an alternative, if you don't want any state agency to have enforcement power, you could leave enforcement up to local district attorneys, but moving the requirements to ch. 134 (which contains miscellaneous trade regulations).

RESPONSE: Can we do DSPS? Would that be creating a new penalty within their authority?

MY FOLLOW-UP QUESTION: Regarding item 6, I discussed the issue with Robin Kite (one of our drafters who deals with DSPS), and we don't think DSPS is the appropriate agency to enforce the bill. DSPS establishes building standards to ensure that buildings and places of employment are safe. DSPD also regulates the conduct of contractors to ensure compliance with those standards. Your bill deals with business practices of contractors, as well as protection of consumers, which are areas that DSPS does not regulate under current law. If you don't want DATCP to enforce the bill,

you could move the bill's provisions to chapter 134, which contains miscellaneous trade regulations that are enforced by local district attorneys, instead of DATCP. You would also have to decide what penalty (if any) would be appropriate for violations of the bill.

RESPONSE: Item 6- I also agree that DSPS is not the proper enforcement authority, other stakeholders are concerned about the double damages part of ATCP 110. Is there a way to create a specific penalty only for this bill that is enforced by DATCP? Or to make sure that the double damages don't kick in?

MY FOLLOW-UP QUESTION: Regarding item 6, the short answer is yes: I can create penalties and enforcement that apply to violations of the sub. amendment, and that would apply instead of the penalties and enforcement under s. 100.20 under current law.

Here is the long answer: DATCP has promulgated the rules set forth at ATCP 110 under its authority to issue general orders under s. 100.20 that prohibit unfair trade practices. Under s. 100.20 (5), a person who suffers pecuniary loss because of a violation of such an order can sue and recover double damages. As a result, if a person suffers loss based on a violation of ATCP 110, that person can sue the violator for double damages.

2013 SB 79 includes language at page 5, line 18 that provides that a violation of the bill is an unfair trade practice under s. 100.20. Although it could have drafted more clearly, the intent is that the penalties and enforcement (including double damages) under s. 100.20 would apply to a violation of the bill.

I can eliminate the applicability of double damages by eliminating the language at page 5, line 18. Instead of relying on the same penalties and enforcement that apply to unfair trade practices under s. 100.20, I can create enforcement and penalties that only apply to violations of the sub. amendment.

Of course, I'll need to know what penalties and enforcement to create. If you are okay with DATCP, I can allow DATCP to sue to enforce the sub. amendment. Also, in response to such an action brought by DATCP, I could allow a court to order that a violator pay damages to a person who suffers loss, but not allow for double damages. There is similar language in s. 100.20 (6), which I could use as a model. Do you also want allow a person who suffers loss to sue the violator? Such a private cause of action would be in addition to enforcement by DATCP. I could create something similar to s. 100.20 (5), but leave out the double damages.

Finally, there is the issue of civil forfeitures and criminal penalties. Under current law, a violator of a DATCP order under s. 100.20 is subject to a civil forfeiture of between \$100 and \$10,000. See s. 100.26 (6). The same forfeiture amounts apply if DATCP obtains an injunction in court to restrain a person's violation, and the person violates the injunction. Do you want the same civil forfeiture amounts to apply to violations of the sub. amendment? What about criminal penalties? Should those apply as well? Under current law, if a person violates a DATCP order under s. 100.20, the person can be fined between \$25 and \$5,000, imprisoned for up to a year, or both. See s. 100.26 (3). For comparison purposes, if person violates other provisions of ch. 100, the person can be fined no more than \$200, imprisoned for no more than 6 months, or both. See s. 100.26 (1). Do you want those criminal penalties to apply to the sub. amendment? (Note that the bill imposed the \$200 fine/6 month imprisonment penalties.)

RESPONSE: Could we please create a penalty that does not have double damages, does not have a provision to pay attorney fees, and does not have criminal penalties. We would like the penalties to be no less than 500 but not more than 1000. Please let me know if you have any thoughts or run into problems.

7- Line 16, in regards to date of cancellation. Currently reads: You may cancel this contract at any time before midnight on the fifth business. Can we change it to 3rd business day?



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-130141

MDK:jtd

O-NOTE
SSA to

keep

50037/1

Today

2013 SENATE BILL 79

March 13, 2013 - Introduced by Senators OLSEN, L. TAYLOR, SCHULTZ, ERPENBACH, HARS DORF, LASSA and VINEHOUT, cosponsored by Representatives KRUG, STONE, THIESFELDT, KAHL, PETERSEN, HEBL, JAGLER, A. OTT, CZAJA, OHNSTAD, RIPP, LEMAHIEU, SPIROS, DANOU, STEINEKE, VRUWINK, BROOKS, JORGENSEN, NYGREN, SWEARINGEN and ENDSLEY. Referred to Energy, Consumer Protection, and Government Reform.

a one-family or two-family dwelling

Gen

1

AN ACT to create 100.65 of the statutes; relating to: contracting with residential

2

contractors. and providing a penalty

Analysis by the Legislative Reference Bureau

substitute amendment

substitute amendment

This bill prohibits a contractor from promising to pay or rebate all or any portion of a property insurance deductible as an incentive for entering into certain contracts with a "consumer," which the bill defines as an owner or possessor of residential property containing ~~one or more~~ dwelling units or less. The contracts that are subject to the bill are written or oral contracts for doing any of the following activities: 1) repairing or replacing a roof system; or 2) performing any other exterior repair, replacement, construction, or reconstruction of the residential property.

The bill also allows such a consumer to cancel a written contract with a contractor for the above activities if all or part of the activities is to be paid under a property insurance policy and the insured receives written notice from the insurer that all or any part of the claim or contract is not a covered loss under the policy. The bill permits a consumer to make such a cancellation prior to the end of the ~~five~~ ^{third} business day after the insured receives the written notice from the insurer. Also, the consumer must give the contractor a written notice of cancellation by personal delivery or first class mail. The bill provides that the written notice of cancellation is sufficient if the consumer uses a form specified in the bill or provides other written notice indicating the consumer's intent not to be bound by the contract. Within ten days after a contractor receives the written notice of cancellation, the bill requires the contractor to return to the consumer any payment, deposit, and note or other evidence of indebtedness related to the contract. However, if the contractor has

substitute amendment

SENATE BILL 79

INSEAT 2A ✓

performed any emergency services that the consumer has acknowledged in writing to be necessary to prevent damage to the residential property, the bill provides that the contractor is entitled to the reasonable value of those services. ✓

The bill also does the following:

1. Requires a contractor to furnish a written statement to a consumer prior to entering into a contract for the above activities that describes the bill's provisions allowing a consumer to cancel the contract. ✓

2. Prohibits a contractor from representing or negotiating on behalf of a consumer, as defined in the bill, with respect to any insurance claim related to the above activities.

3. Specifies that a violation of the bill is an unfair trade practice that is subject to the enforcement authority of the Department of Agriculture, Trade and Consumer Protection (DATCP) under current law. ✓

~~4. Subjects a person who violates the bill to a fine of not more than \$200, imprisonment in the county jail for not more than six months, or both, which are penalties that apply to certain other violations of current law enforced by DATCP.~~

substitute amendment ✓
substitute amendments ✓

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 100.65 of the statutes is created to read:

2 **100.65 Residential contractors.** (1) In this section:

3 (a) "Consumer" means an owner or possessor of residential real estate.

4 (b) "Dwelling unit" means a structure or that part of a structure that is used
5 or intended to be used for human habitation.

6 (c) "Promise to pay or rebate" includes granting any allowance or offering any
7 discount against fees to be charged or paying a consumer any form of compensation,
8 gift, prize, bonus, coupon, credit, referral fee, or any other item of monetary value.

9 (d) "Residential contractor" means a person who enters into a written or oral
10 contract with a consumer to repair or replace a roof system or to perform any other
11 exterior repair, replacement, construction, or reconstruction of residential real
12 estate.

SENATE BILL 79

1

(e) "Residential real estate" means residential property containing ~~dwelling~~

2

~~units or less.~~ a one-family or 2-family dwelling

3

(f) "Roof system" includes roof coverings, roof sheathing, roof weatherproofing,

4

and insulation.

5

(2) No residential contractor may, including in any advertisement, promise to

6

pay or rebate all or any portion of a property insurance deductible as an incentive to

7

a consumer entering into a written or oral contract with the residential contractor

8

to repair or replace a roof system or to perform any other exterior repair,

9

replacement, construction, or reconstruction of residential real estate.

10

(3) Before entering into a written contract with a consumer to repair or replace

11

a roof system or to perform any other exterior repair, replacement, construction, or

12

reconstruction of residential real estate, a residential contractor shall do all of the

13

following:

14

(a) Furnish the consumer with a statement in boldface type of a minimum size

15

of 10 point in substantially the following form:

16

You may cancel this contract at any time before midnight on the ~~the~~ ^{third} business

17

day after you have received written notice from your insurer that all or any part of

18

the claim or contract is not a covered loss under the property insurance policy. See

19

the attached notice of cancellation form for an explanation of this right.

20

(b) Furnish the consumer a completed form in duplicate that is attached to the

21

contract, is easily detachable, and contains, in boldface type of a minimum size of 10

22

point, the following statement:

23

NOTICE OF CANCELLATION

24

If you are notified by your insurer that all or any part of the claim or contract

25

is not a covered loss under the property insurance policy, you may cancel the contract

SENATE BILL 79

SECTION 1

1 by personal delivery or by mailing by 1st class mail a signed and dated copy of this
 2 cancellation notice or other written notice to (name of contractor) at (contractor's
 3 business address) at any time before midnight on the ~~the~~^{third} business day after you
 4 have received the notice from your insurer. If you cancel the contract, any payments
 5 made by you under the contract, except for certain emergency work already
 6 performed by the contractor, will be returned to you within 10 business days
 7 following receipt by the contractor of your cancellation notice.

8 I CANCEL THIS CONTRACT

9 Date

10 Customer's signature

11 (4) A consumer who enters into a written contract with a residential contractor
 12 to repair or replace a roof system or to perform any other exterior repair,
 13 replacement, construction, or reconstruction of residential real estate all or part of
 14 which is to be paid under a property insurance policy may cancel that contract prior
 15 to the end of the ~~the~~^{3rd} business day after the insured receives written notice from the
 16 insurer that all or any part of the claim or contract is not a covered loss under the
 17 property insurance policy. The consumer shall give the residential contractor
 18 written notice of cancellation by personal delivery of the notice or by 1st class mail
 19 to the residential contractor's address stated in the contract. If the notice is given
 20 by mail, the notice shall be postmarked before midnight of the ~~the~~^{3rd} business day after
 21 the insured receives written notice from the insurer of the denial of the claim. The
 22 notice shall be sufficient if the consumer uses of the notice of cancellation form in sub.
 23 (3) (b) or provides other written notice that indicates the consumer's intent not to be
 24 bound by the contract.

SENATE BILL 79

1 (5) Within 10 days after a residential contractor receives a cancellation notice
 2 under sub. (4), the residential contractor shall return to the consumer any payments
 3 made, any deposits made, and any note or other evidence of indebtedness related to
 4 the contract. However, if the residential contractor has performed any emergency
 5 services, acknowledged by the consumer in writing to be necessary to prevent
 6 damage to the residential real estate, the residential contractor shall be entitled to
 7 the reasonable value of those services.

8 (6) Any provision in a written contract with a residential contractor to repair
 9 or replace a roof system or to perform any other exterior repair, replacement,
 10 construction, or reconstruction of residential real estate that requires the payment
 11 of any fee for anything except emergency services under sub. (5) is not enforceable
 12 against the consumer who has cancelled the contract under sub. (4).

13 (7) No residential contractor may represent or offer or advertise to represent
 14 a consumer or negotiate or offer or advertise to negotiate on behalf of a consumer with
 15 respect to any insurance claim related to the repair or replacement of a roof system
 16 or to the exterior repair, replacement, construction, or reconstruction of residential
 17 real estate.

18 (8) It is an unfair trade practice under s. 100.20 for a residential contractor to
 19 violate any provision of this section.

SECTION 2. Initial applicability.

20 (1) This act first applies to contracts that are entered into on the effective date
 21 of this subsection.
 22

SECTION 3. Effective date.

23

INSERT 5-17 ✓

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0037/lins
MDK:.....

1

INSERT 2A:

3. Requires the[✓] Department of Agriculture, Trade and Consumer Protection to enforce the substitute amendment's requirements and subjects a person who violates the requirements to a forfeiture of not less than[✓] \$500 nor more than \$1,000[✓] for each violation.

2

INSERT 5-17:

3

(8)^A Any person who violates this section[✓] shall forfeit not less than \$500 nor more than \$1,000[✓] for each violation.

4

(end ins 5-17)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0037/1dn

MDK:.....

date

Jld

Sen. Olsen:

This substitute amendment is identical to 2013 SB 79, except for the following:

1. "Residential real estate" is defined to refer to a one-family or ^{two} two-family dwelling, rather than to ^{four} dwelling units or less.
2. Cancellations must occur before the end of the ^{three} 3rd business day after receipt of a noncoverage notice, instead of the ^{five} 5th business day.
3. The only penalty for violating the substitute amendment is a civil forfeiture of not less than \$500 nor more than \$1,000. Unlike the bill, a violation is not an unfair trade practice under s. 100.20. As a result, although DATCP enforces the substitute amendment (see s. 93.07 (24), which requires DATCP to enforce ch. 100), the enforcement authority and penalties under s. 100.20 do not apply. Also, because the substitute amendment specifies a civil forfeiture as the penalty, the criminal penalty under s. 100.26 (1) does not apply.

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0037/1dn
MDK:jld:jm

April 23, 2013

Sen. Olsen:

This substitute amendment is identical to 2013 SB-79, except for the following:

1. "Residential real estate" is defined to refer to a one-family or two-family dwelling, rather than to four dwelling units or less.
2. Cancellations must occur before the end of the third business day after receipt of a noncoverage notice, instead of the fifth business day.
3. The only penalty for violating the substitute amendment is a civil forfeiture of not less than \$500 nor more than \$1,000. Unlike the bill, a violation is not an unfair trade practice under s. 100.20. As a result, although DATCP enforces the substitute amendment (see s. 93.07 (24), which requires DATCP to enforce ch. 100), the enforcement authority and penalties under s. 100.20 do not apply. Also, because the substitute amendment specifies a civil forfeiture as the penalty, the criminal penalty under s. 100.26 (1) does not apply.

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.wisconsin.gov

Kunkel, Mark

From: Harriman, Amy
Sent: Tuesday, April 23, 2013 3:09 PM
To: Kunkel, Mark
Subject: RE: Response Re: Your Question regarding LRB 1301/1 contractor legislation

That was my fault. I apologize. Could we include item 1 in the Sub-Amendment?

Just to clarify item 1 is:

Nothing in subsection 7 shall be construed to prohibit a residential contractor from:

(1) providing an insured an estimate for repair, replacement, construction, or reconstruction of the insured's property and any such estimate may be submitted to the insured's insurance company; (2) conferring with an insurance company's representative about damage to an insured's property; or (3) discussing repair or replacement options with an insurance company's representative or the insured about options for the repair or replacement of the damage.

Thanks,

Amy Harriman

Senator Luther Olsen

14th Senate District
608-266-0751
amy.harriman@legis.wisconsin.gov

From: Kunkel, Mark
Sent: Tuesday, April 23, 2013 3:01 PM
To: Harriman, Amy
Subject: RE: Response Re: Your Question regarding LRB 1301/1 contractor legislation

Amy:

Item 1 in your 2-26-13 email was drafted as a separate amendment to the bill (see LRBa0166/1). Item 2 in the 2-26-13 email was also drafted as a separate amendment to the bill (see LRBa0167/1). However, the substitute amendment (LRBs0037/1) is based on 7 different items that were included in your 3-26-13 email (different items 1 to 6) and in your 4-2-13 email (item 7).

Therefore, the substitute amendment does not include item 1 or 2 from your 2-26-13 email. Do you want them included in the substitute amendment?

--Mark

From: Harriman, Amy
Sent: Tuesday, April 23, 2013 2:02 PM
To: Kunkel, Mark
Subject: RE: Response Re: Your Question regarding LRB 1301/1 contractor legislation

Hey Mark-

#1 on this email wasn't included on the sub, is that because it was un-necessary?

Thanks,

Amy Harriman

Senator Luther Olsen

14th Senate District

608-266-0751

amy.harriman@legis.wisconsin.gov

From: Kunkel, Mark
Sent: Tuesday, February 26, 2013 11:27 AM
To: Harriman, Amy
Subject: RE: Response Re: Your Question regarding LRB 1301/1 contractor legislation

Okay, will do.

From: Harriman, Amy
Sent: Tuesday, February 26, 2013 11:20 AM
To: Kunkel, Mark
Subject: RE: Response Re: Your Question regarding LRB 1301/1 contractor legislation

Thank you for the explanation Mark. It was incredibly informative; Luther and I appreciate it very much.

We would like to draft amendments to this bill. They are the following:

- 1- Senator Olsen would like it to be clear that nothing in subsection 7 shall be construed to prohibit a residential contractor from:
 - (1) providing an insured an estimate for repair, replacement, construction, or reconstruction of the insured's property and any such estimate may be submitted to the insured's insurance company; (2) conferring with an insurance company's representative about damage to an insured's property; or (3) discussing repair or replacement options with an insurance company's representative or the insured about options for the repair or replacement of the damage.
- 2- Senator Olsen would also like to have an amendment that removes subsection 7, the prohibition of negotiation.

If you have any questions or concerns, please feel free to call or email me.

Thanks,

Amy Harriman

Senator Luther Olsen

14th Senate District

608-266-0751

amy.harriman@legis.wisconsin.gov

From: Kunkel, Mark
Sent: Thursday, February 21, 2013 11:23 AM
To: Harriman, Amy
Cc: Kahler, Pam
Subject: RE: Response Re: Your Question regarding LRB 1301/1 contractor legislation

Amy:

Under current Wisconsin law, a contractor appears to be allowed to negotiate insurance claims, as long as the contractor does not engage in the unauthorized practice of law.

In other states, a contractor who negotiates on behalf of an insured is considered to be acting as an "adjuster," and is prohibited from doing so unless licensed by the state's insurance commission. See a recent law review article about the enactment of a Mississippi law at 77 Miss. L.J. 761, 775-776 note 79 (citing other states) (2008). However, Wisconsin insurance statutes do not require licenses for adjusters. Under former law, adjusters were required to be licensed, but that requirement appears to have been repealed in 1985 Wisconsin Act 29. Currently, for the limited purpose of ch. 601 of the statutes, the Wisconsin statutes define "adjuster" as "any person who represents an insurer or an insured in negotiations for the settlement of a claim against the insurer arising out of the coverage provided by an insurance policy." See s. 601.02 (1). That definition appears to be a remnant of the licensing requirements under prior law.

If a contractor gives legal advice in the course of negotiations, the contractor could violate s. 757.30, which prohibits practicing law without a license, and which is subject to a criminal fine of between \$50 and \$500, as well as imprisonment for up to one year. In a 1940 decision, the Wisconsin Supreme Court considered the activities of an adjuster who was not licensed as an attorney. See *State ex rel. Junior Ass'n of Milwaukee Bar v. Rice*, 236 Wis. 38. The court held that such an adjuster could negotiate settlement and adjustment of some claims on behalf of insurance companies. However, such an adjuster could not give advice regarding liability under insurance policies, which would constitute the unauthorized practice of law. Also, the court noted that each case involving the unauthorized practice of law must be decided on its own facts.

Your bill prohibits a contractor from representing a consumer, or negotiating on behalf of a consumer, in certain insurance claims. That prohibition would apply regardless of whether the representation or negotiation involved the unauthorized practice of law. Based on the 1940 decision described above, it appears that negotiation of some claims does not involve the unauthorized practice of law. Therefore, your bill prohibits some activity that is not prohibited under current law as the unauthorized practice of law. In addition, the prohibition in your bill would be enforced by DATCP as an unfair trade practice. The prohibition against the unauthorized practice of law is a criminal statute that is enforced by local district attorneys.

I hope the above information is helpful. You may want to get OCI's input on these issues. If you need any further assistance, please let me know.

--Mark

From: Harriman, Amy
Sent: Thursday, February 14, 2013 5:01 PM
To: Kunkel, Mark; Kahler, Pam
Subject: FW: Response Re: Your Question regarding LRB 1301/1 contractor legislation

Mark:

Below you will see some of the concerns individuals have on the prohibition provision of LRB 1301/1. We are wondering if contractors are currently legally allowed to negotiate with an insurer on behalf of the insured.

Thanks,

Amy Harriman

Senator Luther Olsen
14th Senate District

608-266-0751

amy.harriman@legis.wisconsin.gov

From: Schultz, Donald E

Sent: Wednesday, February 13, 2013 4:36 PM

Subject: Response Re: Your Question regarding LRB 1301/1 contractor legislation

Importance: High

Monica,

I did make contact with Don Albdinger of our property area on this issue. He indicated that there are times a proposal may have add ons.

As I see the contention, if the contractor wants to act as a negotiator for the homeowner, a quasi "public adjuster" if you will, paragraph 7 would preclude that. However, if he is talking about "add ons" to an original bid or proposal, this happens all the time and I do not see this paragraph changing that ability.

The language complained of:

No residential contractor may represent or offer or advertise to represent a consumer or negotiate or offer or advertise to negotiate on behalf of a consumer with respect to any insurance claim related to the repair or replacement of a roof system or to the exterior repair, replacement, construction, or reconstruction of residential real estate.

An insurers contract is with its insured. It owes a fiduciary duty to that insured that is expressed in Wis. Admin. Code Ins. 6.11 and case law. One means insurers guarantee they act accordingly is to be open to insured's claims of damage beyond what was normally thought. The above language helps maintain that fiduciary relationship between the insurer and the insured by precluding a residential contractor from trying to take the place of the insured. You are correct that a contractor can and should advise the insured of the need for any additional repairs (add-ons) but the fiduciary relationship relies on the communication between an insured and the insurer. The elderly homeowner can have their own adjustment done if they wish now and this bill does not stop that; it does however stop a contractor from interceding into the fiduciary relationship and that is how it should be. I cannot say this gives rise to the unauthorized practice of law per se but it could depending on how and what developed. Such actions most certainly interfere with the fiduciary relationship.

I hope this helps. Let me know if you need more information. As an aside, whoever wrote the complaint describes an insurance company I am not familiar with.

Don Schultz

Managing Attorney

Great Lakes Legal

(608) 249-2111

Ext. 44102

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----- Original message -----

From: "Thorson, Randy" < >

Cc: "Harriman, Amy" <Amy.Harriman@legis.wisconsin.gov>,"Sen.Olsen" <Sen.Olsen@legis.wisconsin.gov>

Subject: Question regarding LRB 1301/1 contractor legislation

The following was presented to Representative Krug and he was hoping you could have someone address the concerns raised by this individual.

Thank you for your attention to this matter.

I have read and reviewed this proposed legislation, and as a a family-owned contractor in Wisconsin for over 53 years, I agree with most of the provisions, including requiring the homeowner to pay 100% of their deductible. However, there is one item that is EXTREMELY concerning to me in terms of protecting homeowners.

Section 1.7 prohibits contractors from negotiating with the insurance company on behalf of the homeowner. This part of the bill is clearly written to protect insurance companies, rather than homeowners. I have been involved with more than 3,000 storm-related roof replacement insurance claims. Of those, I can tell you that most of the initial replacement offers from insurance companies would not even provide a building-code complaint roof. It is only after a contractor points out that certain underlayments, accessories and vents are required by code, will the insurance company cover them. The majority of homeowners are not aware of the specific requirements of their local building codes, and honestly many "local" contractors who replace roofs after a storm, are not very familiar with them, either. Just as you wouldn't tell a patient they couldn't bring an informed advocate to their doctor's appointment, you shouldn't tell a homeowner they can't have a contractor represent them in negotiating their home repair. Think of elderly homeowners who are unable to even get up on their own roof to examine the damage. They are supposed to take the insurance adjustor's word that there is little or no damage? They can't have a contractor, someone who has training and licensing, on their team? That doesn't seem fair.

Most "storm chaser" contractors are honest, reputable companies who have the resources and experience to do a high-volume of exterior repairs in a short period of time. Many "local" contractors are used to replacing one roof a week. If a community is hit with a storm and needs 500-1,000 roofs repaired, that will overwhelm "local" contractors and they will resort to business practices they aren't used to, including overextending their credit to buy materials and not being able to complete jobs they are contracted for (and have taken deposits on).

Ironically, most insurance companies hire out-of-state adjusters to settle their losses on these storms, but there is no legislation regulating that practice. These out-of-state adjusters are also paid bonuses to underpay their homeowners on the claims. These adjusters are not required to have training or licensing (both of which I am required to have as a state contractor.) Why is that practice not addressed in this legislation that is intended to protect homeowners?

So, yes, let's tighten the regulation on the "storm chasing" industry, but let's do it in a way that is fair to homeowners, not just insurance companies.

Please let us know what you think, and what we can do, if anything to address these concerns.

Thanks again,

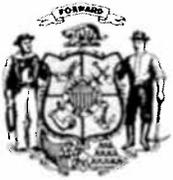
Randy

Kunkel, Mark

From: Kunkel, Mark
Sent: Thursday, April 25, 2013 5:02 PM
To: Kunkel, Mark
Subject: Olsen sub. amendment

Based on conversation this afternoon with Amy in Sen. Olsens' office, add the following to the sub amendment:

1. Language from LRBa0166/1
2. Change effective date delay from 3 to 6 months.
3. Require consumers to notify about insurance coverage issue prior to entering into contract, but do not penalize consumer who fails to provide notice.



O-note

SENATE SUBSTITUTE AMENDMENT,
TO SENATE BILL 79

Today

PM has
been
run

4 Regen

1 AN ACT to create 100.65 of the statutes; relating to: contracting with residential
2 contractors and providing a penalty.

Analysis by the Legislative Reference Bureau

This substitute amendment prohibits a contractor from promising to pay or rebate all or any portion of a property insurance deductible as an incentive for entering into certain contracts with a "consumer," which the substitute amendment defines as an owner or possessor of residential property containing a one-family or two-family dwelling. The contracts that are subject to the substitute amendment are written or oral contracts for doing any of the following activities: 1) repairing or replacing a roof system; or 2) performing any other exterior repair, replacement, construction, or reconstruction of the residential property.

The substitute amendment also allows such a consumer to cancel a written contract with a contractor for the above activities if all or part of the activities is to be paid under a property insurance policy and the insured receives written notice from the insurer that all or any part of the claim or contract is not a covered loss under the policy. The substitute amendment permits a consumer to make such a cancellation prior to the end of the third business day after the insured receives the written notice from the insurer. Also, the consumer must give the contractor a written notice of cancellation by personal delivery or first class mail. The substitute amendment provides that the written notice of cancellation is sufficient if the consumer uses a form specified in the substitute amendment or provides other

written notice indicating the consumer’s intent not to be bound by the contract. Within ten days after a contractor receives the written notice of cancellation, the substitute amendment requires the contractor to return to the consumer any payment, deposit, and note or other evidence of indebtedness related to the contract. However, if the contractor has performed any emergency services that the consumer has acknowledged in writing to be necessary to prevent damage to the residential property, the substitute amendment provides that the contractor is entitled to the reasonable value of those services.

The substitute amendment also does the following:

1. Requires a contractor to furnish a written statement to a consumer prior to entering into a contract for the above activities that describes the substitute amendment’s provisions allowing a consumer to cancel the contract.

2. Prohibits a contractor from representing or negotiating on behalf of a consumer ~~as defined in the substitute amendment,~~ with respect to any insurance claim related to the above activities.

4. Requires the Department of Agriculture, Trade and Consumer Protection to enforce the substitute amendment’s requirements and subjects a person who violates the requirements to a forfeiture of not less than \$500 nor more than \$1,000 for each violation.

✓
✓
INSERT
2A

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 **SECTION 1.** 100.65 of the statutes is created to read:
- 2 **100.65 Residential contractors.** (1) In this section:
- 3 (a) “Consumer” means an owner or possessor of residential real estate.
- 4 (b) “Dwelling unit” means a structure or that part of a structure that is used
- 5 or intended to be used for human habitation.
- 6 (c) “Promise to pay or rebate” includes granting any allowance or offering any
- 7 discount against fees to be charged or paying a consumer any form of compensation,
- 8 gift, prize, bonus, coupon, credit, referral fee, or any other item of monetary value.
- 9 (d) “Residential contractor” means a person who enters into a written or oral
- 10 contract with a consumer to repair or replace a roof system or to perform any other
- 11 exterior repair, replacement, construction, or reconstruction of residential real
- 12 estate.

1 (e) “Residential real estate” means residential property containing a
2 one-family or 2-family dwelling.

3 (f) “Roof system” includes roof coverings, roof sheathing, roof weatherproofing,
4 and insulation.

5 (2) No residential contractor may, including in any advertisement, promise to
6 pay or rebate all or any portion of a property insurance deductible as an incentive to
7 a consumer entering into a written or oral contract with the residential contractor
8 to repair or replace a roof system or to perform any other exterior repair,
9 replacement, construction, or reconstruction of residential real estate.

10 (3) Before entering into a written contract with a consumer to repair or replace
11 a roof system or to perform any other exterior repair, replacement, construction, or
12 reconstruction of residential real estate, a residential contractor shall do all of the
13 following:

14 (a) Furnish the consumer with a statement in boldface type of a minimum size
15 of 10 point in substantially the following form:

16 You may cancel this contract at any time before midnight on the third business
17 day after you have received written notice from your insurer that all or any part of
18 the claim or contract is not a covered loss under the property insurance policy. See
19 the attached notice of cancellation form for an explanation of this right.

20 (b) Furnish the consumer a completed form in duplicate that is attached to the
21 contract, is easily detachable, and contains, in boldface type of a minimum size of 10
22 point, the following statement:

23 NOTICE OF CANCELLATION

24 If you are notified by your insurer that all or any part of the claim or contract
25 is not a covered loss under the property insurance policy, you may cancel the contract

1 by personal delivery or by mailing by 1st class mail a signed and dated copy of this
2 cancellation notice or other written notice to (name of contractor) at (contractor's
3 business address) at any time before midnight on the third business day after you
4 have received the notice from your insurer. If you cancel the contract, any payments
5 made by you under the contract, except for certain emergency work already
6 performed by the contractor, will be returned to you within 10 business days
7 following receipt by the contractor of your cancellation notice.

8 I CANCEL THIS CONTRACT

9 Date

10 Customer's signature

11 ² ~~(A)~~ ^(B) A consumer who enters into a written contract with a residential contractor
12 to repair or replace a roof system or to perform any other exterior repair,
13 replacement, construction, or reconstruction of residential real estate all or part of
14 which is to be paid under a property insurance policy may cancel that contract prior
15 to the end of the 3rd business day after the insured receives written notice from the
16 insurer that all or any part of the claim or contract is not a covered loss under the
17 property insurance policy. The consumer shall give the residential contractor
18 written notice of cancellation by personal delivery of the notice or by 1st class mail
19 to the residential contractor's address stated in the contract. If the notice is given
20 by mail, the notice shall be postmarked before midnight of the 3rd business day after
21 the insured receives written notice from the insurer of the denial of the claim. The
22 notice shall be sufficient if the consumer uses of the notice of cancellation form in sub.
23 (3) (b) [✓] or provides other written notice that indicates the consumer's intent not to be
24 bound by the contract.

INSERT 4-10 ✓

1 ~~(1)~~ ²⁶ Within 10 days after a residential contractor receives a cancellation notice
 2 under sub. ~~(4)~~ ¹⁵, the residential contractor shall return to the consumer any payments
 3 made, any deposits made, and any note or other evidence of indebtedness related to
 4 the contract. However, if the residential contractor has performed any emergency
 5 services, acknowledged by the consumer in writing to be necessary to prevent
 6 damage to the residential real estate, the residential contractor shall be entitled to
 7 the reasonable value of those services.

8 ~~(6)~~ ⁷⁴ Any provision in a written contract with a residential contractor to repair
 9 or replace a roof system or to perform any other exterior repair, replacement,
 10 construction, or reconstruction of residential real estate that requires the payment
 11 of any fee for anything except emergency services under sub. ~~(5)~~ ⁶ is not enforceable
 12 against the consumer who has cancelled the contract under sub. ~~(4)~~ ⁵.

13 ~~(4)~~ ⁶ No residential contractor shall solicit, offer, or advertise to represent
 14 a consumer or negotiate on behalf of a consumer with respect to the repair, replacement,
 15 or reconstruction of residential real estate, or offer or advertise to represent
 16 a consumer or negotiate on behalf of a consumer with respect to the repair, replacement,
 17 or reconstruction of residential real estate.

17 ~~(4)~~ ^{INSEA} No residential contractor shall solicit, offer, or advertise to represent
 18 a consumer or negotiate on behalf of a consumer with respect to the repair, replacement,
 19 or reconstruction of residential real estate, or offer or advertise to represent
 20 a consumer or negotiate on behalf of a consumer with respect to the repair, replacement,
 21 or reconstruction of residential real estate, or offer or advertise to represent
 22 a consumer or negotiate on behalf of a consumer with respect to the repair, replacement,
 23 or reconstruction of residential real estate, or offer or advertise to represent
 all forfeit not less than \$500 nor

SECTION 2. Initial applicability.

(1) This act first applies to contracts that are entered into on the effective date of this subsection.

SECTION 3. Effective date.

1 (1) This act takes effect on the first day of the ~~the~~ month beginning after
2 publication.

3 (END)

✓ 6th

d-note
↓

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0037/2ins
MDK:.....

1

INSERT 2A:

§ 3. Requires a consumer to inform a contractor, before entering into a written contract for the above activities, if the activities are to be paid under a property insurance policy. However, a consumer's failure to inform does not affect the consumer's right to cancel the contract under the substitute amendment. *

be

2

INSERT 4-10:

~~§ 4~~ (4) Before a consumer enters into a written contract with a residential contractor to repair or replace a roof system or to perform any other exterior repair, replacement, construction, or reconstruction of residential real estate all or part of which is to be paid under a property insurance policy, the consumer shall inform the residential contractor that the repair, replacement, construction, or reconstruction is to be paid under a property insurance policy. Failure to comply with this subsection does not affect a consumer's rights under sub. (5).

(end ins)



State of Wisconsin
2013 - 2014 LEGISLATURE



LRBa0166/1
MDK:jld:jf

SENATE AMENDMENT ,
TO SENATE BILL (LRB-1301/1)

INSERT
5-17

1 At the locations indicated, amend the bill as follows:

2 ~~1. Page 5, line 17: delete that line and substitute~~ real estate. This subsection

3 does not prohibit a residential contractor from doing any of the following:

4 (a) Discussing damage to an insured's property with the insured or an
5 insurance company's representative.

6 (b) Providing an insured an estimate for repair, replacement, construction, or
7 reconstruction of the insured's property, submitting the estimate to the insured's
8 insurance company, and discussing options for the repair, replacement, construction,
9 or reconstruction with the insured or an insurance company's representative.

10

END
END of INSERT

NO
4

9

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0037/2dn

MDK:.....

date

jld

Sen. Olsen: ✓

This version is identical to the previous version, except for the following:

1. Proposed s. 100.65 (4), ✓ requiring a consumer to inform a contractor, is new.
2. Language from LRBa0166/1 ✓ is added to proposed s. 100.65 (8). ✓
3. The delayed effective date is changed from ~~3~~ ^{*three*} months to ~~6~~ ^{*six*} months after publication.

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0037/2dn
MDK:jld:jm

Sen. Olsen:

This version is identical to the previous version, except for the following:

1. Proposed s. 100.65 (4), requiring a consumer to inform a contractor, is new.
2. Language from LRBa0166/1 is added to proposed s. 100.65 (8).
3. The delayed effective date is changed from three months to six months after publication.

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.wisconsin.gov