

1999 ASSEMBLY BILL 120

February 11, 1999 - Introduced by Representatives SKINDRUD, ALBERS, BRANDEMUEHL, FREESE, GOETSCH, HAHN, HANDRICK, HASENOHRL, HOVEN, KEDZIE, F. LASEE, LASSA, J. LEHMAN, MONTGOMERY, MUSSER, OTT, OWENS, PORTER, TURNER, URBAN and WILLIAMS, cosponsored by Senators DARLING and ROESSLER. Referred to Committee on Housing.

1 AN ACT *to create* 134.78 of the statutes; **relating to:** home repair fraud and
2 providing penalties.

Analysis by the Legislative Reference Bureau

Current rules promulgated by the department of agriculture, trade and consumer protection (DATCP) regulate the sale of home improvement materials and services. These rules prohibit various trade practices relating to home improvement, including misrepresenting the quality of materials to be used in the home improvement, substituting building materials without the consent of the homeowner, misrepresenting the financial terms under the home improvement contract and entering into a contract with a homeowner without intending to provide the services and materials required under the contract. If a contractor violates these rules, he or she may be subject to an order issued by DATCP or by a court enjoining the contractor from the unlawful conduct. If the contractor violates a court order or DATCP order enjoining him or her from unlawful conduct, he or she is subject to a forfeiture of not less than \$100 nor more than \$10,000, except that if the contractor's violation of the order is intentional he or she must be fined not less than \$25 nor more than \$5,000 and may also be imprisoned for not more than one year. In addition, if a contractor violates a DATCP rule, a court order or an order issued by DATCP that relates to home improvement trade practices and the violation is against an elderly or disabled person, the contractor may be required to pay a supplemental forfeiture of not more than \$10,000. Finally, the contractor may be subject to a lawsuit brought by a person who suffers monetary losses due to the contractor's conduct. If the person who suffered monetary losses prevails in such a lawsuit, the contractor must pay the person twice the amount of the person's loss, plus attorney fees.

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This bill prohibits a person who performs home repair for compensation (a contractor) from engaging in certain activities, including activities not specifically covered under current DATCP rules. Under the bill, a contractor may not do any of the following: 1) knowingly misrepresent a material fact about the terms of a home repair contract or about the condition of any structure or part of a structure that is covered by the contract or that is being considered for home repair; 2) fail to correct false information on which the person seeking the home repair is relying, if the contractor knows or has reason to know that the information is false; 3) promise performance that the contractor does not intend to perform or that the contractor knows will not be performed; or 4) use deception with the intent to induce a person to enter into a contract for home repair. A contractor who is guilty of violating any of these prohibitions may be subject to a fine or imprisonment or both. The amount of the maximum possible penalties depend on the value of the contract for home repair and, in cases in which the amount of the contract for home repair is for \$1,000 or less, on whether the contractor has previously been convicted of violating a prohibition created by the bill. The specific penalties are as follows:

<u>Amount of contract</u>	<u>Maximum fine</u>	<u>Maximum imprisonment</u>
Not more than \$1,000	\$10,000	nine months (or two years if the contractor has a prior conviction)
More than \$1,000 but not more than \$2,500	\$10,000	five years
More than \$2,500	\$10,000	ten years

The bill also prohibits a contractor from entering into a contract for home repair that is unconscionable if the amount of the contract is \$4,000 or more. Under the bill, a contract for home repair is unconscionable if there is an unreasonable difference between the value of the services and material provided under a contract for home repair and the amount of compensation to be paid to the contractor under the contract. A person who violates this prohibition may be fined not more than \$10,000 or imprisoned for not more than five years or both if the contract amount is at least \$4,000 but not more than \$10,000. If the contract amount exceeds \$10,000, the person may be fined not more than \$10,000 or imprisoned for not more than ten years or both.

In addition, the bill prohibits a contractor from knowingly damaging property of a person in order to induce the person to enter into a contract for home repair or from misrepresenting himself or herself, or one of his or her employees or agents, as an employee or agent of any unit of government or of a public utility with the intent to induce a person to enter into a contract for home repair. A contractor who violates either of these prohibitions may be fined not more than \$10,000 or imprisoned for not more than five years or both.

Finally, the bill provides a penalty for a contractor who, as part of a common scheme or plan with other contractors, violates the prohibitions created in the bill while entering into two or more contracts for home repair with the same person that

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total more than \$1,000. Such a contractor may be fined not more than \$10,000 or imprisoned for not more than ten years or both.

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

1 **SECTION 1.** 134.78 of the statutes is created to read:

2 **134.78 Home repair fraud. (1) DEFINITIONS.** In this section:

3 (a) “Amount of the contract” means the total amount of compensation for the
4 services and material provided under a contract for home repair.

5 (b) “Compensation” means direct or indirect payment, including the
6 expectation of payment whether or not actually received.

7 (c) “Contractor” means a person who performs home repair for compensation.
8 “Contractor” does not include a person who sells materials for a home repair and who
9 does not directly or through a subsidiary perform any services in connection with the
10 home repair.

11 (d) “Home repair” means the repair, replacement, alteration, conversion,
12 modernization, improvement or installation of, or the addition to, any part of a
13 residence or any structure related to a residence. “Home repair” includes the repair,
14 replacement, alteration, conversion, modernization, improvement or installation of
15 driveways, swimming pools or fences. “Home repair” does not include any of the
16 following:

17 1. The sale, installation, cleaning or repair of carpeting.

18 2. The repair, replacement, installation or connection of any home appliance
19 by an employe or agent of the person who sold the home appliance.

20 3. Landscaping.

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1 (e) “Home repair consumer” means a person who is considering entering into,
2 or who does enter into, a contract for home repair under the terms of which the person
3 is obligated to pay for the home repair.

4 (f) “Residence” means a structure or part of a structure that is used, or intended
5 to be used, as a home by one person or by 2 or more persons who maintain a common
6 household to the exclusion of all others.

7 **(2) PROHIBITIONS; CONTRACTS.** No contractor who enters into, or offers to enter
8 into, any written or oral contract with a home repair consumer may do any of the
9 following:

10 (a) Knowingly misrepresent a material fact about the terms of the contract or
11 about the condition of any structure or part of a structure that is covered by the
12 contract or that is being considered for home repair.

13 (b) Fail to correct false information on which the home repair consumer is
14 relying, if the contractor knows or has reason to know that the information is false.

15 (c) Promise performance that the contractor does not intend to perform or that
16 the contractor knows will not be performed.

17 (d) Use deception with the intent to induce a home repair consumer to enter
18 into a contract for home repair.

19 (e) Enter into a contract for home repair that is unconscionable, if the amount
20 of the contract is \$4,000 or more. For purposes of this paragraph, a contract is
21 unconscionable if there is an unreasonable difference between the value of the
22 services and material provided under a contract for home repair and the amount of
23 the contract.

24 **(3) PROHIBITIONS; OTHER.** No contractor may do any of the following:

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1 (a) Knowingly damage property of a home repair consumer in order to induce
2 the home repair consumer to enter into a contract for home repair.

3 (b) Misrepresent himself or herself, or one of his or her employes or agents, as
4 an employe or agent of any unit of government or of a public utility with the intent
5 to induce a home repair consumer to enter into a contract for home repair.

6 **(4) REBUTTABLE PRESUMPTIONS.** (a) For purposes of sub. (2) (c), a rebuttable
7 presumption arises that the contractor promised performance that the contractor did
8 not intend to perform or knew would not be performed if all of the following apply:

9 1. After the contract is entered into, the contractor performs no services under
10 the contract or performs only services that have little or no value.

11 2. The contractor does not return any compensation paid to him or her under
12 the contract by the home repair consumer.

13 3. The contractor does any of the following:

14 a. Fails to respond to a written demand for commencement or completion of
15 home repair by the home repair consumer or the home repair consumer's agent
16 within 10 days after the demand is mailed or presented to the contractor.

17 b. Fails to notify the home repair consumer in writing of a change of business
18 name or address.

19 c. Makes false representations to the home repair consumer to excuse the
20 contractor's failure or refusal to perform under the terms of the contract.

21 d. Uses deception to obtain the home repair consumer's consent to modification
22 of the terms of the contract.

23 e. Fails to employ or contract qualified persons to perform the home repair.

24 f. Fails to order or purchase the basic material required for the performance
25 of the home repair.

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1 g. Fails to comply with any applicable law, including building codes, that
2 regulates home repair.

3 (b) For purposes of determining whether a contract for home repair is
4 unconscionable under sub. (2) (e), a rebuttable presumption arises that a contract for
5 home repair is unconscionable if the amount of the contract exceeds an amount that
6 equals 4 times the total fair market value for the services and material provided or
7 to be provided under the contract.

8 **(5) PENALTIES.** (a) Whoever violates sub. (2) (a), (b), (c) or (d) is subject to the
9 following penalties:

10 1. If the amount of the contract does not exceed \$1,000 and the person has not
11 been convicted of a previous violation of this section, the person may be fined not
12 more than \$10,000 or imprisoned for not more than 9 months or both.

13 2. If the amount of the contract does not exceed \$1,000 and the person has been
14 convicted of one or more previous violations of this section, the person may be fined
15 not more than \$10,000 or imprisoned for not more than 2 years or both.

16 3. If the amount of the contract exceeds \$1,000 but not \$2,500, the person may
17 be fined not more than \$10,000 or imprisoned for not more than 5 years or both.

18 4. If the amount of the contract exceeds \$2,500, the person may be fined not
19 more than \$10,000 or imprisoned for not more than 10 years or both.

20 (b) Whoever violates sub. (2) (e) is subject to the following penalties:

21 1. If the amount of the contract does not exceed \$10,000, the person may be
22 fined not more than \$10,000 or imprisoned for not more than 5 years or both.

23 2. If the amount of the contract exceeds \$10,000, the person may be fined not
24 more than \$10,000 or imprisoned for not more than 10 years or both.

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1 (c) Whoever violates sub. (3) may be fined not more than \$10,000 or imprisoned
2 for not more than 5 years or both.

3 (d) Notwithstanding pars. (a), (b) and (c), whoever violates sub. (2) or (3) may
4 be fined not more than \$10,000 or imprisoned for not more than 10 years or both if
5 all of the following apply:

6 1. In furtherance of or as part of a common scheme or plan that the person
7 engages in with others, the person enters into 2 or more contracts with one home
8 repair consumer.

9 2. The total of the amount of the contracts entered into under subd. 1. exceeds
10 \$1,000.

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(END)