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

Analysis by the Legislative Reference Bureau

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 four 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 fifth 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 1st 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
performed any emergency services which 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.

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

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

100.65 Residential contractors. (1) In this section:

(a) “Consumer” means a means an owner or possessor of residential real estate.

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

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

(d) “Residential contractor” means a person who enters into a written or oral contract with a consumer to repair or replace a roof system or to perform any other exterior repair, replacement, construction, or reconstruction of residential real estate.
(e) “Residential real estate” means residential property containing 4 dwelling units or less.

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

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

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

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

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

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

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

    I CANCEL THIS CONTRACT

    Date ....
    Customer’s signature ....

    (4) A consumer who 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 may cancel that contract prior
to the end of the 5th business day after 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
property insurance policy. The consumer shall give the residential contractor
written notice of cancellation by personal delivery of the notice or by 1st class mail
to the residential contractor’s address stated in the contract. If the notice is given
by mail, the notice shall be postmarked before midnight of the 5th business day after
the insured receives written notice from the insurer of the denial of the claim. The
notice shall be sufficient if the consumer uses of the notice of cancellation form in sub.
(3) (b) or provides other written notice that indicates the consumer’s intent not to be
bound by the contract.
(5) Within 10 days after a residential contractor receives a cancellation notice under sub. (4), the residential contractor shall return to the consumer any payments made, any deposits made, and any note or other evidence of indebtedness related to the contract. However, if the residential contractor has performed any emergency services, acknowledged by the consumer in writing to be necessary to prevent damage to the residential real estate, the residential contractor shall be entitled to the reasonable value of those services.

(6) Any provision in 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 that requires the payment of any fee for anything except emergency services under sub. (5) is not enforceable against the consumer who has cancelled the contract under sub. (4).

(7) 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.

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

SECTION 2. Effective date.

(1) This act takes effect on the first day of the 3rd month beginning after publication.