

2013 DRAFTING REQUEST

Bill

Received: 12/19/2012 Received By: mkunkel
Wanted: Soon Same as LRB: -1301
For: Scott Krug (608) 266-0215 By/Representing: Amy Harriman
May Contact: Drafter: mkunkel
Subject: Trade Regulation - other Addl. Drafters:
Extra Copies: MPG

Submit via email: YES
Requester's email: Rep.Krug@legis.wi.gov
Carbon copy (CC) to: Randy.Thorson@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Regulation of exterior 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 12/19/2012	jdye 1/10/2013	jmurphy 1/10/2013	_____			
/1				_____	lparisi 1/10/2013	srose 3/11/2013	

FE Sent For:

~~to Rose~~
none needed END>

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/1				_____	lparisi 1/10/2013		

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Jacketed (circled)
for Assembly
per MDK

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/?	mkunkel	1/10 jld					

FE Sent For:

<END>

Kunkel, Mark

From: Harriman, Amy
Sent: Wednesday, December 19, 2012 10:24 AM
To: Kunkel, Mark
Subject: AB 654

Hi Mark-

Representative Scott Krug is interested in re-drafting Assembly Bill 654, relating to contracting with residential contractors for next session. The 2011-2012 LRB is 3859/1. If you can let me know if you need anything else, please let me know.

Happy Holidays!

Amy Harriman

Office of Representative Scott Krug

72nd Assembly District
608-266-0215
amy.harriman@legis.wi.gov



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-3850/1
MDK:med,jf

D-NOTE

JK

12-19

2011 ASSEMBLY BILL 654

- 0882/1

2013 BILL

*PM
not
en*

March 2, 2012 - Introduced by Representatives KRUG, NYGREN, SPANBAUER and VUWINK, cosponsored by Senators OLSEN and TAYLOR. Referred to Committee on Consumer Protection and Personal Privacy.

✓

Gen

1

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

2

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

first

ASSEMBLY BILL 654

performed any emergency services ^{e that} ~~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:

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

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

3 (a) "Consumer" means ^e a 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. ✓

ASSEMBLY BILL 654

1 (e) "Residential real estate" means residential property containing 4 dwelling
2 units or less.

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 fifth 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

ASSEMBLY BILL 654

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 fifth 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 5[✓]th 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 5[✓]th 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.

ASSEMBLY BILL 654

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. Effective date.

21 (1) This act takes effect on the first day of the 3rd[✓] month beginning after
 22 publication.[✓]

(END)

INSEAT 5-19 ✓

d-note
↓

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0882/lins
MDK:.....

1
2
3
4

INSERT 5-19:

SECTION 1. Initial applicability.

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0882/1dn

MDK: ^:...

date

jld

Rep. Krug: ✓

This bill is a redraft of 2011 AB⁶654. Upon reviewing the 2011 bill, I discovered that it lacked an initial applicability to provision to clarify that it did not apply to contracts entered into before the bill's effective date. In this bill, I did include such a provision. *

Without such a provision, the bill could be challenged on the basis that it unconstitutionally impairs rights under contracts entered into before the bill's effective date. However, please note that courts do not automatically find that any impairment of a contract is unconstitutional. Instead, courts balance the state interest against the rights that are impaired. Because I assume that you want to avoid the impairment issue altogether, I added the initial applicability provision. If you want to remove the initial applicability provision, let me know and I will revise this bill. ✓

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**

LRB-0882/1dn
MDK:jld:jm

January 10, 2013

Rep. Krug:

This bill is a redraft of 2011 AB-654. Upon reviewing the 2011 bill, I discovered that it lacked an initial applicability to provision to clarify that it did not apply to contracts entered into before the bill's effective date. In this bill, I did include such a provision.

Without such a provision, the bill could be challenged on the basis that it unconstitutionally impairs rights under contracts entered into before the bill's effective date. However, please note that courts do not automatically find that any impairment of a contract is unconstitutional. Instead, courts balance the state interest against the rights that are impaired. Because I assume that you want to avoid the impairment issue altogether, I added the initial applicability provision. If you want to remove the initial applicability provision, let me know and I will revise this bill.

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