

2013 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB81)

Received: 4/23/2013 Received By: mkunkel
Wanted: As time permits Same as LRB: s0037
For: Scott Krug (608) 266-0215 By/Representing: Randy Thorson
May Contact: Drafter: mkunkel
Subject: Trade Regulation - other Addl. Drafters:
Extra Copies: MPG

Submit via email: YES
Requester's email: Rep.Krug@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>
/1	mkunkel 4/26/2013	wjackson 4/26/2013	jmurphy 4/26/2013	_____	sbasford 4/23/2013	sbasford 4/23/2013	
/2				_____	mbarman 4/26/2013	mbarman 4/26/2013	

FE Sent For:

<END>

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/1	mkunkel 4/23/2013	jdyer 4/23/2013	jfrantze 4/23/2013	_____	sbasford 4/23/2013	sbasford 4/23/2013	

FE Sent For:

1 wly 4/20

Jim 4/26 self

<END>

2013 DRAFTING REQUEST

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/1	mkunkel	1/4/23 jld		J 1/23			

FE Sent For:

<END>

Kunkel, Mark

From: Thorson, Randy
Sent: Tuesday, April 23, 2013 10:44 AM
To: Kunkel, Mark
Subject: RE: LRB-0882

Thank you and have a good day.

Randy

From: Kunkel, Mark
Sent: Tuesday, April 23, 2013 10:43 AM
To: Thorson, Randy
Subject: RE: LRB-0882

No problem -- they just contacted me as well.

From: Thorson, Randy
Sent: Tuesday, April 23, 2013 10:36 AM
To: Kunkel, Mark
Subject: RE: LRB-0882

Mark,

I just double-checked, Senator Olsen's office is fine with us having their sub drafted.

Thank you.

Randy

From: Kunkel, Mark
Sent: Tuesday, April 23, 2013 10:32 AM
To: Thorson, Randy
Subject: RE: LRB-0882

As long as you tell me that Sen. Olsen's office is okay with my drafting the same sub for you, that's enough for me.

--Mark

From: Thorson, Randy
Sent: Tuesday, April 23, 2013 10:20 AM
To: Kunkel, Mark
Subject: RE: LRB-0882

Mark,

Please draft the sub for Rep. Krug as well. If I need to have Senator Olsen's office contact you please let me know.

Thanks.

Randy Thorson
Research Assistant to
Scott Krug
State Representative
72nd Assembly District

From: Kunkel, Mark
Sent: Tuesday, January 15, 2013 9:20 AM
To: Thorson, Randy; Krug, Scott
Subject: LRB-0882

Here is the draft. I also updated our info so that you should automatically be sent any future revisions, if there are any.

Mark D. Kunkel
Senior Legislative Attorney
Legislative Reference Bureau
(608) 266-0131

<< File: 13-0882/1 >>



State of Wisconsin
2013 - 2014 LEGISLATURE



LRBs0037/1
MDK:jld/jm

↑
Stays

Today

NOTE

**SENATE SUBSTITUTE AMENDMENT,
TO SENATE BILL 79**

ASA to ✓
AB 81

5004011

✓

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.

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.

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 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.

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 (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 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.

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) Any person who violates this section shall forfeit not less than \$500 nor
19 more than \$1,000 for each violation.✓

20 **SECTION 2. Initial applicability.**

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

23 **SECTION 3. Effective date.**

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0040/1dn

MDK: A:....

date

Jld

Rep. Krug:

This is a companion to LRBs0037/1. ✓

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**

LRBs0040/1dn
MDK;jld:jf

April 23, 2013

Rep. Krug:

This is a companion to LRBs0037/1.

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



State of Wisconsin
2013 - 2014 LEGISLATURE



LRBs0037/2
MDK:jlh/jm

O-NOTE

stays

Today

SENATE SUBSTITUTE AMENDMENT,
TO SENATE BILL 79

S 0040 2

ASA to
ABSI

AMNOT
PWA

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 with respect to any insurance claim related to the above activities.

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.

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.

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

1 exterior repair, replacement, construction, or reconstruction of residential real
2 estate.

3 (e) "Residential real estate" means residential property containing a
4 one-family or 2-family dwelling.

5 (f) "Roof system" includes roof coverings, roof sheathing, roof weatherproofing,
6 and insulation.

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

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

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

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

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

25

NOTICE OF CANCELLATION

1 If you are notified by your insurer that all or any part of the claim or contract
2 is not a covered loss under the property insurance policy, you may cancel the contract
3 by personal delivery or by mailing by 1st class mail a signed and dated copy of this
4 cancellation notice or other written notice to (name of contractor) at (contractor's
5 business address) at any time before midnight on the third business day after you
6 have received the notice from your insurer. If you cancel the contract, any payments
7 made by you under the contract, except for certain emergency work already
8 performed by the contractor, will be returned to you within 10 business days
9 following receipt by the contractor of your cancellation notice.

10 I CANCEL THIS CONTRACT

11 Date

12 Customer's signature

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

20 (5) A consumer who enters into a written contract with a residential contractor
21 to repair or replace a roof system or to perform any other exterior repair,
22 replacement, construction, or reconstruction of residential real estate all or part of
23 which is to be paid under a property insurance policy may cancel that contract prior
24 to the end of the 3rd business day after the insured receives written notice from the
25 insurer that all or any part of the claim or contract is not a covered loss under the

1 property insurance policy. The consumer shall give the residential contractor
2 written notice of cancellation by personal delivery of the notice or by 1st class mail
3 to the residential contractor's address stated in the contract. If the notice is given
4 by mail, the notice shall be postmarked before midnight of the 3rd business day after
5 the insured receives written notice from the insurer of the denial of the claim. The
6 notice shall be sufficient if the consumer uses of the notice of cancellation form in sub.
7 (3) (b) or provides other written notice that indicates the consumer's intent not to be
8 bound by the contract.

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

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

21 (8) No residential contractor may represent or offer or advertise to represent
22 a consumer or negotiate or offer or advertise to negotiate on behalf of a consumer with
23 respect to any insurance claim related to the repair or replacement of a roof system
24 or to the exterior repair, replacement, construction, or reconstruction of residential

1 real estate. This subsection does not prohibit a residential contractor from doing any
2 of the following:

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

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

9 (9) Any person who violates this section shall forfeit not less than \$500 nor
10 more than \$1,000 for each violation.

11 **SECTION 2. Initial applicability.**

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

14 **SECTION 3. Effective date.**

15 (1) This act takes effect on the first day of the 6th month beginning after
16 publication.

17 (END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0040/2dn

MDK:.....
wy

Date

Rep. Krug:

This version is identical to its companion, LRBs0037/2.

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

LRBs0040/2dn
MDK:wlj:jm

April 26, 2013

Rep. Krug:

This version is identical to its companion, LRBs0037/2.

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