

House File 2316 - Introduced

HOUSE FILE 2316

BY HEARTSILL

A BILL FOR

1 An Act relating to home improvement fraud and providing
2 penalties for contractors who commit home improvement fraud.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 714.29 Home improvement fraud —
2 penalties.

3 1. As used in this section, unless the context otherwise
4 requires:

5 a. "Consumer" means an individual who owns, leases, or
6 rents the residential property that is subject to the home
7 improvement contract.

8 b. "Contract price" means the total price agreed upon in a
9 home improvement contract.

10 c. "Contractor" means a person who engages in or solicits
11 home improvement contracts whether or not the person deals
12 directly with the consumer.

13 d. "Fair market value" means the amount for the home
14 improvement which in commercial judgment or under usage of
15 trade would be reasonable for services, materials, and work of
16 similar quality and workmanship.

17 e. "Home improvement" means any alteration, repair,
18 addition, modification, or improvement to a dwelling or the
19 property on which it is situated, including but not limited
20 to the construction, painting or coating, installation,
21 replacement or repair of driveways, sidewalks, swimming pools,
22 unattached structures, porches, kitchens, bathrooms, chimneys,
23 fireplaces, stoves, air conditioning or heating systems, hot
24 water heaters, water treatment systems, electrical wiring or
25 systems, plumbing fixtures or systems, doors, windows, roofs,
26 gutters, downspouts, and siding.

27 f. "Home improvement contract" means a written or oral
28 agreement whereby a contractor offers or agrees to provide home
29 improvements in exchange for payment of moneys, regardless of
30 whether any such payments are made.

31 g. "Material fact" means a fact that a reasonable person
32 would consider important when purchasing a home improvement.

33 h. "Unconscionable home improvement contract" means a home
34 improvement contract in which an unreasonable difference exists
35 between the fair market value of services, materials, and work

1 performed or to be performed and the home improvement contract
2 price.

3 2. A person, who is acting as a contractor, is guilty of
4 home improvement fraud if the person enters, or offers to
5 enter, into a home improvement contract, and intentionally does
6 any of the following:

7 a. Uses or employs a false pretense or false promise to
8 convey that a need exists to enter into a home improvement
9 contract.

10 b. Knowingly creates or reinforces a consumer's false
11 impression or belief concerning the condition of a consumer's
12 dwelling or property that is the subject of the home
13 improvement contract.

14 c. Makes a false statement or omits a material fact as to
15 the terms of the home improvement contract or the condition of
16 a person's dwelling or property that is the subject of the home
17 improvement contract.

18 d. Receives moneys for the purpose of paying for services,
19 labor, materials, or equipment and fails to apply such moneys
20 for such purpose by doing any of the following:

21 (1) Failing to substantially complete the home improvement
22 for which the moneys were provided within the following time
23 periods:

24 (a) Within thirty days of the date specified in the contract
25 for substantially completed work, if such a date is specified.

26 (b) Within ninety days of the date of the signed written
27 home improvement contract, if no completion date is specified
28 in the contract.

29 (c) Within ninety days of receipt of moneys paid by the
30 consumer to the contractor, if the contract is oral.

31 This section does not preclude the contractor and consumer
32 from agreeing to change the original, substantial completion
33 date to accommodate situations unknown to either the contractor
34 or consumer at the time of entering into the original contract.

35 (2) Failing to pay for the services, labor, materials, or

1 equipment provided incident to such home improvement.

2 (3) Diverting the moneys to a use other than for which the
3 moneys were received.

4 e. Provides a false individual name or a false business
5 name, address, or telephone number to a consumer.

6 f. Enters into an unconscionable home improvement contract
7 with a consumer.

8 (1) For the purposes of this paragraph, if the contract
9 price is greater than four times the fair market value of the
10 services, material, or work performed or to be performed, it is
11 prima facie evidence that a contract is unconscionable.

12 (2) Fair market value shall be determined as of the date
13 the home improvement contract was entered into. However, if
14 such evidence is not readily available, the fair market value
15 prevailing within any reasonable time before or after the time
16 described, which in commercial judgment or under usage of trade
17 would serve as a reasonable substitute, may be used.

18 3. It shall be evidence of intent, that the person, who is
19 acting as a contractor, has committed home improvement fraud if
20 any of the following are applicable:

21 a. The person has previously been convicted under this
22 section or under a similar statute of the United States or of
23 any state or of the District of Columbia within ten years of
24 the home improvement contract in question.

25 b. The person is currently subject to any administrative
26 orders, judgments, or injunctions that relate to home
27 improvements.

28 4. A person who commits an offense under this section is,
29 upon conviction, guilty of a class "D" felony if any of the
30 following circumstances are present:

31 a. The contract price or the total amount paid to the
32 defendant by or on behalf of the consumer is one thousand five
33 hundred dollars or more.

34 b. The consumer who entered into the home improvement
35 contract is sixty-two years of age or older.

1 c. The defendant has previously been convicted under this
2 section.

3 5. If none of the circumstances enumerated in subsection 4
4 are present, a person who commits an offense under this section
5 is, upon conviction, guilty of an aggravated misdemeanor.

6 EXPLANATION

7 The inclusion of this explanation does not constitute agreement with
8 the explanation's substance by the members of the general assembly.

9 This bill relates to home improvement fraud. The bill
10 defines home improvement as any alteration, repair, addition,
11 modification, or improvement to a dwelling or the property
12 on which it is situated, including but not limited to the
13 construction, painting or coating, installation, replacement
14 or repair of driveways, sidewalks, swimming pools, unattached
15 structures, porches, kitchens, bathrooms, chimneys, fireplaces,
16 stoves, air conditioning or heating systems, hot water
17 heaters, water treatment systems, electrical wiring or systems,
18 plumbing fixtures or systems, doors, windows, roofs, gutters,
19 downspouts, and siding.

20 The bill provides that a person, who is acting as a
21 contractor, is guilty of home improvement fraud if the person
22 enters, or offers to enter, into a home improvement contract,
23 and intentionally does any of the following: uses or employs a
24 false pretense or false promise to convey that there is a need
25 to enter into a home improvement contract; knowingly creates or
26 reinforces a consumer's false impression or belief concerning
27 the condition of a consumer's dwelling or property that is
28 the subject of the home improvement contract; makes a false
29 statement or omits a material fact as to the terms of the home
30 improvement contract or the condition of a person's dwelling or
31 property that is the subject of the home improvement contract;
32 receives moneys for the purpose of paying for services, labor,
33 materials, or equipment and fails to apply such moneys for
34 such purpose by failing to substantially complete the home
35 improvement for which the moneys were provided within specified

1 time periods, failing to pay for the services, labor, materials
2 or equipment provided incident to such home improvement, or
3 diverting the moneys to a use other than for which the moneys
4 were received; provides a false individual name or a false
5 business name, address, or telephone number to a consumer; or
6 enters into an unconscionable home improvement contract with
7 a consumer.

8 The bill provides that it shall be evidence of intent,
9 that the person, who is acting as a contractor, has committed
10 home improvement fraud if the person has previously been
11 convicted under this bill or under a similar statute of the
12 United States or of any state or of the District of Columbia
13 within 10 years of entering into the home improvement contract
14 in question or if the person is currently subject to any
15 administrative orders, judgments, or injunctions that relate to
16 home improvements.

17 The bill provides that a person who commits an offense under
18 the bill is, upon conviction, guilty of a class "D" felony if
19 any of the following circumstances are present: the contract
20 price or the total amount paid to the defendant by or on behalf
21 of the consumer is \$1,500 or more; the consumer who entered
22 into the home improvement contract is 62 years of age or older;
23 or the defendant has previously been convicted under the bill.
24 If none of these circumstances are present, a person who
25 commits an offense under the bill is, upon conviction, guilty
26 of an aggravated misdemeanor.

27 A class "D" felony is punishable by confinement for no more
28 than five years and a fine of at least \$750 but not more than
29 \$7,500. An aggravated misdemeanor is punishable by confinement
30 for no more than two years and a fine of at least \$625 but not
31 more than \$6,250.