

Senate File 461 - Introduced

SENATE FILE 461
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SF 151)

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 and engages in the home improvement
8 contract with the contractor.

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

11 c. "*Contractor*" means a person who engages in home
12 improvement work under a home improvement contract or solicits
13 home improvement contracts whether or not the person interacts
14 directly with the consumer.

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

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

29 f. "*Home improvement contract*" means a written or oral
30 agreement whereby a contractor offers or agrees to provide
31 a home improvement to a consumer in exchange for payment of
32 moneys, regardless of whether any such payment is made.

33 g. "*Material fact*" means a fact that a reasonable person
34 would consider important when purchasing a home improvement.

35 2. A person, who is acting as a contractor, is guilty of

1 home improvement fraud if the person enters, or offers to
2 enter, into a home improvement contract, and intentionally does
3 any of the following:

4 *a.* Knowingly uses or employs a false pretense or false
5 promise to convey that a need exists to enter into a home
6 improvement contract.

7 *b.* Knowingly makes a false statement, or knowingly
8 creates or reinforces a consumer's false impression or belief
9 concerning the condition of a consumer's dwelling or property
10 that is the subject of the home improvement contract.

11 *c.* Knowingly provides a false personal name or false
12 business name, address, or telephone number to a consumer.

13 *d.* Knowingly represents that repairs or work have been
14 performed when repairs have not been performed.

15 *e.* Receives moneys from a consumer prior to completion of
16 a home improvement for the purpose of paying for services,
17 labor, materials, or equipment and intentionally fails to
18 substantially complete the home improvement within the time
19 agreed to by the consumer and contractor or fails to pay for
20 the services, labor, materials, and equipment incident to
21 the home improvement. The time for substantial completion
22 of the home improvement may be extended by agreement of the
23 parties, or for reasonable unforeseen circumstances beyond the
24 contractor's control. It shall be a defense to a violation of
25 this subsection if, upon failure to timely perform under the
26 agreement of the parties, the contractor returns moneys to the
27 consumer that were advanced for services and materials that
28 were not provided by that date.

29 *f.* Enters into an unconscionable home improvement contract
30 with a consumer.

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

35 (2) Fair market value shall be determined as of the date

1 the home improvement contract was entered into. However, if
2 such evidence is not readily available, the fair market value
3 prevailing within any reasonable time before or after the time
4 described, which in commercial judgment or under usage of trade
5 would serve as a reasonable substitute, may be used.

6 3. A person who commits an offense under this section is,
7 upon conviction, guilty of a class "D" felony if any of the
8 following circumstances are present:

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

12 b. At least one of the consumers who entered into the home
13 improvement contract is sixty-two years of age or older at the
14 time the violation occurred.

15 c. The defendant has previously been convicted under this
16 section.

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

20 5. This section shall not impair, limit, or reduce the
21 statutory, common law, or contractual duties, liabilities, or
22 rights of any contractor or consumer.

23

EXPLANATION

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

26 This bill relates to home improvement fraud. The bill
27 defines home improvement as any alteration, repair, addition,
28 modification, or improvement to a dwelling or the property
29 on which it is situated, including but not limited to the
30 construction, painting or coating, installation, replacement
31 or repair of driveways, sidewalks, swimming pools, unattached
32 structures, porches, kitchens, bathrooms, chimneys, fireplaces,
33 stoves, air conditioning or heating systems, hot water
34 heaters, water treatment systems, electrical wiring or systems,
35 plumbing fixtures or systems, doors, windows, roofs, gutters,

1 downspouts, and siding.

2 The bill provides that a person, who is acting as a
3 contractor, is guilty of home improvement fraud if the person
4 enters, or offers to enter, into a home improvement contract,
5 and intentionally does any of the following: knowingly uses
6 or employs a false pretense or false promise to convey that
7 there is a need to enter into a home improvement contract;
8 knowingly makes a false statement, or knowingly creates or
9 reinforces a consumer's false impression or belief concerning
10 the condition of a consumer's dwelling or property that is the
11 subject of the home improvement contract; knowingly provides
12 a false personal name or false business name, address, or
13 telephone to a consumer; knowingly represents that repairs or
14 work have been performed when repairs or work have not been
15 performed; receives moneys from a consumer prior to completion
16 of a home improvement for the purpose of paying for services,
17 labor, materials, or equipment and intentionally fails to
18 substantially complete the home improvement within the time
19 agreed to by the consumer and the contractor or fails to pay
20 for the services, labor, materials, and equipment incident to
21 the home improvement; or enters into an unconscionable home
22 improvement contract with a consumer.

23 The bill provides that a person who commits an offense under
24 the bill is, upon conviction, guilty of a class "D" felony if
25 any of the following circumstances are present: the contract
26 price or the total amount paid to the defendant by or on
27 behalf of the consumer is \$1,500 or more; at least one of the
28 consumers who entered into the home improvement contract is 62
29 years of age or older at the time the violation occurred; or
30 the defendant has previously been convicted under the bill. If
31 none of these circumstances are present, a person who commits
32 an offense under the bill is, upon conviction, guilty of an
33 aggravated misdemeanor.

34 A class "D" felony is punishable by confinement for no more
35 than five years and a fine of at least \$750 but not more than

1 \$7,500. An aggravated misdemeanor is punishable by confinement
2 for no more than two years and a fine of at least \$625 but not
3 more than \$6,250.

4 The bill provides that the bill shall not impair, limit,
5 or reduce the statutory, common law, or contractual duties,
6 liabilities, or rights of any contractor or consumer.