

Senate Study Bill 1026 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON ZAUN)

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 h. "Unconscionable home improvement contract" means a home

1 improvement contract in which an unreasonable difference exists
2 between the fair market value of services, materials, and work
3 performed or to be performed and the home improvement contract
4 price.

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

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

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

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

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

23 (1) Failing to substantially complete the home improvement
24 for which the moneys were provided within the following time
25 periods, provided that this subparagraph does not preclude the
26 contractor and consumer from agreeing to change the original,
27 substantial completion date to accommodate situations unknown
28 to either the contractor or consumer at the time of entering
29 into the original contract:

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

32 (b) Within ninety days of the date of the signed written
33 home improvement contract, if no completion date is specified
34 in the contract.

35 (c) Within ninety days of receipt of moneys paid by the

1 consumer to the contractor, if the contract is oral.

2 (2) Failing to pay for the services, labor, materials, or
3 equipment provided incident to such home improvement.

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

6 e. Provides a false individual name or a false business
7 name, address, or telephone number to a consumer.

8 f. Enters into an unconscionable home improvement contract
9 with a consumer.

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

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

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

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

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

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

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

1 receives moneys for the purpose of paying for services, labor,
2 materials, or equipment and fails to apply such moneys for
3 such purpose by failing to substantially complete the home
4 improvement for which the moneys were provided within specified
5 time periods, failing to pay for the services, labor, materials
6 or equipment provided incident to such home improvement, or
7 diverting the moneys to a use other than for which the moneys
8 were received; provides a false individual name or a false
9 business name, address, or telephone number to a consumer; or
10 enters into an unconscionable home improvement contract with
11 a consumer.

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

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

31 A class "D" felony is punishable by confinement for no more
32 than five years and a fine of at least \$750 but not more than
33 \$7,500. An aggravated misdemeanor is punishable by confinement
34 for no more than two years and a fine of at least \$625 but not
35 more than \$6,250.