



**SENATE SUBSTITUTE AMENDMENT 1,
TO SENATE BILL 79**

April 26, 2013 – Offered by Senator OLSEN.

- 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)