



February 8, 2012

ENGROSSED HOUSE BILL No. 1237

DIGEST OF HB 1237 (Updated February 6, 2012 4:43 pm - DI 113)

Citations Affected: IC 24-5.

Synopsis: Home improvement contracts. Amends the statute governing home improvement contracts to specify that "home improvement" includes an "exterior home improvement". Defines "insured consumer" and "exterior home improvement". Provides that, with respect to a home improvement that is or may be covered by certain insurance policies, a home improvement supplier must: (1) if the home improvement contract includes an exterior home improvement, furnish information concerning cancellation of the contract to the insured consumer; and (2) have a presence in Indiana or a previous business relationship. Prohibits certain activities by a home improvement supplier intended to induce a person to enter into a home improvement contract or otherwise purchase goods or services from the home improvement supplier. Provides for cancellation of a home improvement contract by an insured consumer and resolution of financial obligations of and to the home improvement supplier.

Effective: July 1, 2012.

Morris, VanNatter, Mahan

(SENATE SPONSORS — ECKERTY, YODER)

January 9, 2012, read first time and referred to Committee on Judiciary.

January 25, 2012, reported — Do Pass.

January 27, 2012, read second time, amended, ordered engrossed.

January 30, 2012, engrossed.

January 31, 2012, read third time, passed. Yeas 82, nays 13.

SENATE ACTION

February 1, 2012, read first time and referred to Committee on Commerce and Economic Development.

February 7, 2012, amended, reported favorably — Do Pass.

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February 8, 2012

Second Regular Session 117th General Assembly (2012)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2011 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1237

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 24-5-11-1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 1. This chapter applies
3 only to residential property. ~~which means real property used in whole~~
4 ~~or in part as a dwelling of a consumer and includes all fixtures to,~~
5 ~~structures on; and improvements to the real property.~~

6 SECTION 2. IC 24-5-11-2.5 IS ADDED TO THE INDIANA CODE
7 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
8 1, 2012]: **Sec. 2.5. As used in this chapter, "exterior home**
9 **improvement" means any alteration, repair, replacement,**
10 **reconstruction, or other modification made to the exterior of**
11 **residential property, including the exterior of any structure on or**
12 **fixture or improvement to the property. The term also includes the**
13 **alteration, repair, replacement, reconstruction, or other**
14 **modification of a residential roof system.**

15 SECTION 3. IC 24-5-11-3 IS AMENDED TO READ AS
16 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 3. **(a)** As used in this
17 chapter, "home improvement" means any alteration, repair,

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1 **replacement, reconstruction, or other modification of residential**
 2 **property.**

3 **(b) The term includes an exterior home improvement.**

4 SECTION 4. IC 24-5-11-6.2 IS ADDED TO THE INDIANA CODE
 5 AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY**
 6 **1, 2012]: Sec. 6.2. As used in this chapter, "insured consumer"**
 7 **refers to a person:**

8 **(1) who is a policyholder or an insured under a:**

9 **(A) personal line policy of property and casualty insurance**
 10 **coverage; or**

11 **(B) commercial line farm insurance policy that insures**
 12 **residential property; and**

13 **(2) who is or may become a consumer who enters into a home**
 14 **improvement contract under this chapter.**

15 SECTION 5. IC 24-5-11-7.5 IS ADDED TO THE INDIANA CODE
 16 AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY**
 17 **1, 2012]: Sec. 7.5. (a) As used in this chapter, "residential**
 18 **property" means real property that:**

19 **(1) contains one (1) to four (4) units; and**

20 **(2) is used in whole or in part as a dwelling of a consumer.**

21 **(b) The term includes all fixtures to, structures on, and**
 22 **improvements to the real property.**

23 SECTION 6. IC 24-5-11-7.7 IS ADDED TO THE INDIANA CODE
 24 AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY**
 25 **1, 2012]: Sec. 7.7. As used in this chapter, "roof system" includes**
 26 **roof coverings, roof sheathing, roof weatherproofing, and**
 27 **insulation.**

28 SECTION 7. IC 24-5-11-10 IS AMENDED TO READ AS
 29 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 10. (a) The home
 30 improvement supplier shall provide a completed home improvement
 31 contract to the consumer before it is signed by the consumer. Except as
 32 provided in subsection (c), the contract must contain at a minimum the
 33 following:

34 **(1) The name of the consumer and the address of the residential**
 35 **property that is the subject of the home improvement.**

36 **(2) The name and address of the home improvement supplier and**
 37 **each of the telephone numbers and names of any agent to whom**
 38 **consumer problems and inquiries can be directed.**

39 **(3) The date the home improvement contract was submitted to the**
 40 **consumer and any time limitation on the consumer's acceptance**
 41 **of the home improvement contract.**

42 **(4) A reasonably detailed description of the proposed home**

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- 1 improvements.
- 2 (5) If the description required by subdivision (4) does not include
- 3 the specifications for the home improvement, a statement that the
- 4 specifications will be provided to the consumer before
- 5 commencing any work and that the home improvement contract
- 6 is subject to the consumer's separate written and dated approval
- 7 of the specifications.
- 8 (6) The approximate starting and completion dates of the home
- 9 improvements.
- 10 (7) A statement of any contingencies that would materially
- 11 change the approximate completion date.
- 12 (8) The home improvement contract price.
- 13 (9) Signature lines for the home improvement supplier or the
- 14 supplier's agent and for each consumer who is to be a party to the
- 15 home improvement contract with a legible printed or a typed
- 16 version of that person's name placed directly after or below the
- 17 signature.
- 18 (b) The home improvement contract must be in a form that each
- 19 consumer who is a party to it can reasonably read and understand.
- 20 (c) If a home improvement contract is entered into as a result of
- 21 damage, loss, or expense that is **or may be** covered, in whole or in part,
- 22 by the proceeds of an insurance policy, or damage, loss, or expense for
- 23 which a third party is liable, the following conditions and requirements
- 24 apply to the contract:
 - 25 (1) For the purpose of subsection (a)(4) through (a)(7), the
 - 26 description, completion dates, and statement of contingencies
 - 27 must be prepared for the proposed home improvements to the
 - 28 extent that the damage, loss, or expense is reasonably known by
 - 29 the home improvement supplier.
 - 30 (2) For the purpose of subsection (a)(4), the requirement that a
 - 31 reasonably detailed description be included in the contract may be
 - 32 satisfied with a statement that the subject real estate will be
 - 33 repaired or restored to the same condition in which the real estate
 - 34 existed before the damage, loss, or expense occurred, or to a
 - 35 comparable condition.
 - 36 (3) For the purpose of subsection (a)(6), the starting and
 - 37 completion dates may be expressed in terms of the number of
 - 38 days elapsed from the date when sufficient approval of the
 - 39 insurance carrier terms allowing for adequate repair or restoration
 - 40 is obtained.
 - 41 (4) For the purpose of subsection (a)(8), the **consumer or insured**
 - 42 consumer may agree to a contract price expressed in terms of the

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1 **consumer's or insured** consumer's liability for payment after the
 2 application of insurance proceeds or payments from a liable third
 3 party.

4 (5) The **consumer or insured** consumer may elect, in writing, to
 5 authorize the commencement of work on the home before the
 6 **consumer or insured** consumer receives complete specifications.
 7 However, a **consumer or an insured** consumer who elects to
 8 authorize the commencement of work under this subdivision is
 9 obligated for the home improvements specified and agreed to by
 10 the insurance carrier.

11 (6) **This subdivision applies to a home improvement contract**
 12 **entered into after June 30, 2012, that includes one (1) or more**
 13 **exterior home improvements. Before entering into a home**
 14 **improvement contract with an insured consumer to which this**
 15 **subsection applies, the home improvement supplier must**
 16 **inform the insured consumer of the insured consumer's rights**
 17 **under section 10.5(b) of this chapter by doing the following:**

18 (A) **Furnishing to the insured consumer the following**
 19 **statement: "You may cancel this contract at any time**
 20 **before midnight on the third business day after you have**
 21 **received written notification from your insurance company**
 22 **that all or any part of the claim or contract is not a covered**
 23 **loss under the insurance policy. See attached notice of**
 24 **cancellation form for an explanation of this right."**

25 (B) **Furnishing to the insured consumer a form, in**
 26 **duplicate, that is captioned "NOTICE OF**
 27 **CANCELLATION" and is attached to the contract but**
 28 **easily detachable, and that contains the following**
 29 **statement in at least 10 point, boldface type:**

30 **"NOTICE OF CANCELLATION**

31 **If you are notified by your insurance company that all or**
 32 **any part of the claim or contract is not a covered loss**
 33 **under the insurance policy, you may cancel the contract by**
 34 **mailing or delivering a signed and dated copy of this**
 35 **cancellation notice or any other written notice to (name of**
 36 **home improvement supplier) at (address of home**
 37 **improvement supplier's place of business) at any time**
 38 **before midnight on the third business day after you have**
 39 **received such notice from your insurance company.**

40 **If you cancel the contract, any payments made by you**
 41 **under the contract will be returned to you within ten (10)**
 42 **business days following receipt by (name of home**

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improvement supplier) of your cancellation notice, minus any amounts you may owe for work already done by (name of home improvement supplier).

I HEREBY CANCEL THIS TRANSACTION

_____ (date)

_____ (insured consumer's signature)".

(7) This subdivision applies to a home improvement contract that is entered into as a result of damage, loss, or expense that is or may be covered, in whole or in part, by the proceeds of a personal line property and casualty insurance policy or a commercial line farm insurance policy that insures residential property. However, this subdivision does not apply to a consumer and a home improvement supplier that have a prior business relationship. After June 30, 2012, a home improvement supplier may not enter into a home improvement contract to which this subdivision applies unless one (1) or more of the following apply:

(A) The home improvement supplier resides, is domiciled, or is authorized to do business in Indiana.

(B) The home improvement supplier maintains in Indiana one (1) or more fixed physical locations from which the home improvement supplier engages in or solicits home improvement contracts.

(C) The home improvement supplier has appointed a resident agent in Indiana for service of legal process.

(d) A modification to a home improvement contract is not enforceable against a consumer unless the modification is stated in a writing that is signed by the consumer.

SECTION 8. IC 24-5-11-10.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 10.5. (a) A home improvement supplier shall not advertise, offer, or promise to pay or rebate any part of an insurance deductible to induce a person to enter into a home improvement contract or otherwise purchase goods or services from the home improvement supplier. Acts prohibited by this subsection include the following:**

(1) Advertising, offering, or promising to grant an allowance or a discount against the home improvement contract price or against other fees or charges.

(2) Advertising, offering, or promising to pay to an insured

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1 consumer, or to any other person, any form of compensation,
 2 including a gift, prize, bonus, coupon, credit, referral fee, or
 3 other item of monetary value for any reason, including the
 4 display of a sign or advertisement on residential property.

5 (b) This subsection applies to a home improvement contract
 6 entered into after June 30, 2012, that includes one (1) or more
 7 exterior home improvements. An insured consumer who enters
 8 into a home improvement contract for which the home
 9 improvement contract price, or charges for other goods and
 10 services under the contract, will or may be paid from the proceeds
 11 of a claim under a personal line of property and casualty
 12 insurance, may cancel the contract before midnight on the third
 13 business day after the insured consumer has received written
 14 notice from the insurance company that any part of the claim or
 15 contract is not a covered loss under the insurance policy. An
 16 insured consumer who seeks to cancel a home improvement
 17 contract under this subsection must provide to the home
 18 improvement supplier, at the address specified in the form
 19 provided under section 10(c)(6)(B) of this chapter, written notice
 20 of the insured consumer's intent not to be bound by the contract.
 21 If the notice of cancellation is sent by mail, the notice is effective
 22 upon deposit of the notice into the United States mail, with postage
 23 prepaid and the notice properly addressed to the home
 24 improvement supplier. Subject to subsection (c), not later than ten
 25 (10) days after a home improvement contract is cancelled under
 26 this subsection, the home improvement supplier shall tender to the
 27 insured consumer:

- 28 (1) any payment or deposit made by the insured consumer;
 29 and
 30 (2) any note or other evidence of indebtedness of the insured
 31 consumer.

32 (c) If:

- 33 (1) an insured consumer cancels a home improvement
 34 contract under subsection (b); and
 35 (2) the home improvement supplier has performed emergency
 36 or temporary services that the insured consumer
 37 acknowledged in writing before their performance to be
 38 necessary to prevent damage to the residential property;
 39 the home improvement supplier is entitled to the reasonable value
 40 of the emergency or temporary services performed.

41 (d) A home improvement supplier shall not:

- 42 (1) represent or negotiate on behalf of an insured consumer;

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- 1 **(2) offer to represent or negotiate on behalf of an insured**
- 2 **consumer; or**
- 3 **(3) advertise that the home improvement supplier will**
- 4 **represent or negotiate on behalf of an insured consumer;**
- 5 **in connection with an insurance claim concerning any home**
- 6 **improvement involving residential property.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Insurance, to which was referred House Bill 1237, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

LEHMAN, Chair

Committee Vote: yeas 10, nays 0.

 HOUSE MOTION

Mr. Speaker: I move that House Bill 1237 be amended to read as follows:

Page 1, line 17, delete "in whose name a" and insert "**who is a policyholder or an insured under a:**

(A)".

Page 1, line 17, after "line" insert "**policy**".

Page 2, line 1, delete "is issued or who is insured under the" and insert "; **or**

(B) commercial line farm insurance policy that insures residential property; and".

Page 2, delete line 2.

Page 3, line 12, reset in roman "an".

Page 3, line 12, delete "a personal line property and casualty".

Page 3, line 31, after "(a)(8), the" insert "**consumer or**".

Page 3, line 32, after "the" insert "**consumer's or**".

Page 3, line 35, after "The" insert "**consumer or**".

Page 3, line 36, after "before the" insert "**consumer or**".

Page 3, line 37, reset in roman "a".

Page 3, line 37, after "a" insert "**consumer or**".

Page 4, line 1, after "contract" insert "**with an insured consumer**".

Page 4, between lines 37 and 38, begin a new line block indented and insert:

"(7) This subdivision applies to a home improvement contract that is entered into as a result of damage, loss, or expense that is or may be covered, in whole or in part, by the proceeds of a personal line property and casualty insurance policy or a commercial line farm insurance policy that insures residential property. However, this subdivision does not apply to a consumer and a home improvement supplier that have a prior



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business relationship. After June 30, 2012, a home improvement supplier may not enter into a home improvement contract to which this subdivision applies unless one (1) or more of the following apply:

(A) The home improvement supplier resides, is domiciled, or is authorized to do business in Indiana.

(B) The home improvement supplier maintains in Indiana one (1) or more fixed physical locations from which the home improvement supplier engages in or solicits home improvement contracts.

(C) The home improvement supplier has appointed a resident agent in Indiana for service of legal process."

(Reference is to HB 1237 as printed January 25, 2012.)

LEHMAN

COMMITTEE REPORT

Madam President: The Senate Committee on Commerce and Economic Development, to which was referred House Bill No. 1237, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between lines 5 and 6, begin a new paragraph and insert:

"SECTION 2. IC 24-5-11-2.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 2.5. As used in this chapter, "exterior home improvement" means any alteration, repair, replacement, reconstruction, or other modification made to the exterior of residential property, including the exterior of any structure on or fixture or improvement to the property. The term also includes the alteration, repair, replacement, reconstruction, or other modification of a residential roof system.**"

Page 1, line 11, delete "the alteration, repair, replacement," and insert "**an exterior home improvement.**"

Page 1, delete line 12.

Page 4, line 4, delete "2012." and insert "**2012, that includes one (1) or more exterior home improvements.**"

Page 5, line 39, delete "2012." and insert "**2012, that includes one (1) or more exterior home improvements.**"

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Page 6, delete lines 22 through 29, begin a new paragraph and insert:

"(c) If:

**(1) an insured consumer cancels a home improvement contract under subsection (b); and
(2) the home improvement supplier has performed emergency or temporary services that the insured consumer acknowledged in writing before their performance to be necessary to prevent damage to the residential property; the home improvement supplier is entitled to the reasonable value of the emergency or temporary services performed."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1237 as reprinted January 28, 2012.)

YOUNG R MICHAEL, Chairperson

Committee Vote: Yeas 8, Nays 1.

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