

HOUSE BILL 2625

By Dunn

AN ACT to amend Tennessee Code Annotated, Title 39;
Title 47 and Title 62, relative to home
improvement services contractors and providers.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 39, Chapter 14, Part 1, is amended by adding the following new section thereto:

§ 39-14-153.

(a) For purposes of this section, unless the context otherwise requires:

(1) "Contract for home improvement services" means a contractual agreement, written or oral, between a person performing home improvement services and a residential owner, and includes all labor, services and materials to be furnished and performed under such agreement;

(2) "Home improvement services" means the repair, replacement, remodeling, alteration, conversion, modernization, improvement, or addition to any residential property, and includes but is not limited to, the repair, replacement, remodeling, alteration, conversion, modernization, improvement, or addition to driveways, swimming pools, porches, garages, landscaping, fences, fall-out shelters, and roofing;

(3) "Home improvement services provider" means any person or entity, whether or not licensed pursuant to title 62, chapter 6, who undertakes to, attempts to, or submits a price or bid or offers to construct, supervise, superintend, oversee, schedule, direct, or in any manner

assume charge of home improvement services for a fee. "Home improvement services provider" specifically includes but is not limited to a "residential contractor" as defined in § 62-6-102 when such contractor is performing home improvement services and a "home improvement contractor" as defined in § 62-6-501;

(4) "Justification" includes, but is not limited to, nonpayment by the residential owner as required under a contract for home improvement services or any other violation of such contract for home improvement services by the residential owner;

(5) "Possession" means actual care, custody, control, or management of residential property, but shall not include occupancy of residential property through a lease or rental agreement;

(6) "Residential owner" means a person who has legal possession of residential real property, including any person authorized by such residential owner to act on the residential owner's behalf; and

(7) "Residential property" means the building structure where a person abides, lodges, resides or establishes a living accommodation, or where a residential owner intends to abide, lodge, reside or establish a living accommodation following the completion of home improvement services made pursuant to a contract for home improvement services, and includes the land on or adjacent to such building structure.

(b) It is an offense for a home improvement services provider with intent to defraud to:

(1) Fail to refund amounts paid under a home improvement contract within ten (10) days of either the acceptance of a written request

for a refund either hand delivered or mailed certified mail return receipt attached or the refusal to accept the certified mail sent to the last known address of the home improvement services provider by the residential owner if all of the following apply:

(i) No substantial portion of the contracted work has been performed at the time of the request;

(ii) More than forty five (45) days have elapsed since the starting date specified in the written contract; and

(iii) A copy of the written request for a refund was sent by the residential owner to the consumer protection division of the office of the attorney general.

(2) Deviate from or disregard plans or specifications in any material respect that are contained in a contract for home improvement services. Such deviation includes, but is not limited to:

(i) The amount billed for the home improvement services is substantially greater than the amount quoted in the contract;

(ii) The materials used in the project are of a substandard quality but the residential owner was charged for higher quality materials; or

(iii)

(a) The residential owner did not provide written consent for the home improvement services provider to deviate from or disregard plans or specifications in the contract; and

(b) Such deviation or disregard caused substantial damage to the residential owner's property.

(c)

(1) A violation of subsection (b) is punishable as theft pursuant to § 39-14-105. "Value" for a violation of subsection (b), shall be determined by the monetary amount of the contract for home improvement services that is paid, minus the value of any work performed, plus the cost to repair any damage to the residential owner's property.

(2) If a person is convicted of a violation of subsection (b), the court may order the person to make restitution to any residential owner that has suffered injury resulting from the crime. Vehicles used to commit this offense are subject to seizure and forfeiture under the same procedures used for forfeitures set out in title 39, chapter 11, part 7.

(3) All fines collected as a result of a violation of subsection (b) shall be allocated as follows:

(A) First to remaining unpaid court costs assessed in the case;

(B) Then to restitution ordered by the court pursuant to subdivision (2) of this subsection (c); and

(C) Any remaining money shall be transmitted to the state board of licensing contractors for purposes of carrying out the provisions of § 62-6-139.

(4) In addition such a violation shall be construed to constitute an unfair or deceptive act or practice affecting the conduct of trade or commerce under the Tennessee Consumer Protection Act of 1977,

compiled in title 47, chapter 18, and as such, the private right of action remedy under that act shall be available to any person who suffers an ascertainable loss of money or property, real, personal, or mixed, or any other article, commodity, or thing of value wherever situated as a result of such violation.

(d) Upon a conviction for a violation of this section, the court shall notify the state board of licensing contractors of the home improvement services provider's conviction. If the home improvement services provider is licensed by the board, the board shall revoke the home improvement services provider's license pursuant to § 62-6-118.

(e) Prosecution under subsection (b) shall not bar prosecution under any other applicable criminal statute nor shall it bar the commencement of any applicable civil cause of actions, including but not limited to, violations of title 47, chapter 18, part 1 or title 62, chapter 6.

(f) The district attorney in conjunction with any law enforcement agency shall have the authority to investigate and to institute criminal proceedings for any violation of subsection (b) regardless of any actions taken or not taken by the board of licensing contractors.

SECTION 2. Tennessee Code Annotated, Section 47-18-103, is amended by adding the following new appropriately designated subdivisions:

() "Contract for home improvement services" means an agreement between a home improvement services provider and a residential owner for the performance of home improvement services, and includes all labor, services and materials to be furnished and performed under the agreement;

() “Home improvement services” means the repair, replacement, remodeling, alteration, conversion, modernization, improvement, or addition to any residential property, and includes but is not limited to, the repair, replacement, remodeling, alteration, conversion, modernization, improvement, or addition to driveways, swimming pools, porches, garages, landscaping, fences, fall-out shelters, and roofing;

() “Physical address” means the mailing address, including a zip code, which details the actual location of a person or entity, but does not include a post office box;

() “Home improvement services provider” means any person or entity, whether or not licensed pursuant to title 62, chapter 6, who undertakes to, attempts to, or submits a price or bid or offers to construct, supervise, superintend, oversee, schedule, direct, or in any manner assume charge of the home improvement service for a fee. “Home improvement services provider” specifically includes but is not limited to a “residential contractor” as defined in § 62-6-102 when performing home improvement services and a “home improvement contractor” as defined in 62-6-501; and

() “Possession” means actual care, custody, control, or management of residential property, but shall not include occupancy of residential property through a lease or rental agreement;

() “Residential owner” means a person who has possession of residential real property, including any person authorized by such residential owner to act on the residential owner’s behalf; and

() “Residential property” means the building structure where a person abides, lodges, resides or establishes a living accommodation or where a

residential owner intends to abide, lodge, reside or establish a living accommodation following the completion of home improvement services made pursuant to a contract for home improvement services and includes the land on or adjacent to such building structure;

SECTION 3. Tennessee Code Annotated, Section 47-18-104(b), is amended by adding the following new appropriately designated subdivisions:

() A home improvement services provider entering into a contract for home improvement services without providing to the residential owner in written form:

(i) That it is a criminal offense for the person entering into the contract for home improvement services with a residential owner to do any of the prohibited acts set out in § 39-14-153(b), by writing out the text of each prohibited act, and provide the penalty and available relief for such; or

(ii) The true and correct name, physical address and telephone number of the home improvement services provider;

SECTION 4. Tennessee Code Annotated, Title 62, Chapter 6, Part 1, is amended by adding the following language as a new section thereto:

§ 62-6-139.

(a) When the board disciplines a contractor, home improvement services provider as defined by § 39-14-153(a)(4) or home improvement contractor, the board shall post the following information on its web site:

(1) The name of the contractor, home improvement services provider or home improvement contractor, together with the specific license and license number held by such person, or if such contractor, home improvement contractor or home improvement services provider is not licensed, information stating such;

- (2) The violation or type of violation; and
- (3) The date and type of penalty imposed.

(b) The posting made pursuant to subsection (a) shall be made within thirty (30) days of the board's action and shall be retained on the web site until there is a three (3) year period from the date of the contractor, home improvement contractor or home improvement services provider's last discipline in which the contractor, home improvement contractor or home improvement services provider has not been disciplined by the board.

(c) In addition to posting such information on its web site, to the extent funds are available, the board shall conduct advertising campaigns to inform the public of the provisions of this act as well as educating the public as to the identity of home improvement services providers who have been convicted of violations of § 39-14-153 and the status of such provider's license.

SECTION 5. Tennessee Code Annotated, Section 62-6-118(a), is amended by adding the following new subdivision (2) and redesignating existing subdivisions accordingly:

(2) The board shall revoke the license of any contractor, home improvement contractor or home improvement services provider upon receiving notification from the court in accordance with § 39-14-153(d) of such person's conviction for a violation of § 39-14-153.

SECTION 6. Tennessee Code Annotated, Section 62-6-118(b), is amended by deleting the subsection in its entirety and substituting instead the following:

(b)

(1) The board may reissue a license to any person, firm or corporation whose license has been revoked; provided, that all of the members of the board vote in favor of reissuance for reasons the board may deem sufficient.

(2) Notwithstanding the provisions of subdivision (b)(1):

(i) If a person, firm or corporation's license was revoked based on a conviction for a violation of § 39-14-153, the board shall not reissue the license until the person, firm or corporation has served the entire term of the sentence imposed as a result of such violation; and

(ii) If a person, firm or corporation's license was revoked based on a second or subsequent conviction for a violation of § 39-14-153, the board shall not reissue the license.

SECTION 7. This act shall take effect July 1, 2010, the public welfare requiring it and shall apply to any contract for home improvement services entered into on or after the effective date of this act.