

House Bill 423

By: Representatives Maxwell of the 17th, Golick of the 34th, Hembree of the 67th, Murphy of the 120th, Hugley of the 133rd, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 1 of Chapter 6 of Title 33 of the Official Code of Georgia Annotated,
2 relating to general provisions relative to unfair trade practices, so as to provide that certain
3 acts by residential contractors as they relate to insurance claims shall be considered
4 violations of unfair trade practice; to provide for definitions; to provide for certain
5 contractual requirements; to prohibit rebate or other compensation as inducement for an
6 insured to enter into an agreement; to provide for notice language; to provide for penalties;
7 to provide for related matters; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 SECTION 1.

10 Article 1 of Chapter 26 of Title 33 of the Official Code of Georgia Annotated, relating to
11 general provisions relative to unfair trade practices, is amended by adding a new Code
12 section to read as follows:

13 "33-6-5.1.

14 (a) As used in this Code section, the term:

15 (1) 'Residential contractor' means a person or entity in the business of contracting or
16 offering to contract with an owner or possessor of residential real estate to repair or
17 replace roof systems or perform any other exterior repair, replacement, construction, or
18 reconstruction work on residential real estate.

19 (2) 'Residential real estate' means a new or existing building constructed for habitation
20 by one to four families, including detached garages.

21 (3) 'Roof system' means a roof coverings, roof sheathing, roof weatherproofing, and
22 insulation.

23 (b) A residential contractor shall not advertise or promise to pay or rebate all or any
24 portion of any insurance deductible as an inducement to the sale of goods or services. As
25 used in this subsection, a 'promise to pay or rebate' includes granting any allowance or
26 offering any discount against the fees to be charged or paying the insured or any person

27 directly or indirectly associated with the property any form of compensation, gift, prize,
 28 bonus, coupon, credit, referral fee, or other item of monetary value for any reason,
 29 including, but not limited to, permitting the residential contractor to display a sign or any
 30 other type of advertisement at the insured's premises.

31 (c) A person who has entered into a written contract with a residential contractor to
 32 provide goods or services to be paid from the proceeds of a property and casualty insurance
 33 policy may cancel the contract prior to midnight on the fifth business day after the insured
 34 has received written notice from the insurer that all or any part of the claim or contract is
 35 not a covered loss under such insurance policy. Cancellation shall be evidenced by the
 36 insured giving written notice of cancellation to the residential contractor at the address
 37 stated in the contract. Notice of cancellation, if given by mail, shall be effective upon
 38 deposit into the United States mail, postage prepaid and properly addressed to the
 39 residential contractor. Notice of cancellation need not take a particular form and shall be
 40 sufficient if it indicates, by any form of written expression, the intention of the insured not
 41 to be bound by the contract.

42 (d) Before entering a contract as provided in subsection (c) of this Code section, the
 43 residential contractor shall:

44 (1) Furnish the insured a statement in boldface type of a minimum size of ten points, in
 45 substantially the following form:

46 'You may cancel this contract at any time before midnight on the fifth business day after
 47 you have received written notification from your insurer that all or any part of the claim
 48 or contract is not a covered loss under the insurance policy. See attached notice of
 49 cancellation form for an explanation of this right'; and

50 (2) Furnish each insured a fully completed form in duplicate, captioned 'NOTICE OF
 51 CANCELLATION,' which shall be attached to the contract but easily detachable, and
 52 which shall contain in boldface type of a minimum size of ten points the following
 53 statement:

54 'NOTICE OF CANCELLATION

55 If you are notified by your insurer that all or any part of the claim or contract is not a
 56 covered loss under the insurance policy, you may cancel the contract by mailing or
 57 delivering a signed and dated copy of this cancellation notice or any other written
 58 notice to (name of contractor) at (address of contractor's place of business) at any time
 59 prior to midnight on the fifth business day after you have received such notice from
 60 your insurer. If you cancel, any payments made by you under the contract will be
 61 returned to you within ten business days following receipt by the contractor of your
 62 cancellation notice.

63 I HEREBY CANCEL THIS TRANSACTION

64 _____
 65 (date)

66 _____
 67 (insured's signature).

68 (e) Within ten days after a contract as provided in subsection (c) of this Code section has
 69 been cancelled, the contractor shall tender to the insured any payments, partial payments,
 70 or deposits made by the insured and any note or other evidence of indebtedness. If,
 71 however, the contractor has performed any emergency services, acknowledged by the
 72 insured in writing to be necessary to prevent damage to the premises, the contractor shall
 73 be entitled to the reasonable value of such services. Any provision in a contract as
 74 provided in subsection (c) of this Code section that requires the payment of any fee for
 75 anything except emergency services shall not be enforceable against any insured who has
 76 cancelled a contract under this Code section.

77 (f) A residential contractor shall not represent or negotiate, or offer or advertise to
 78 represent or negotiate, on behalf of an owner or possessor of residential real estate on any
 79 insurance claim in connection with the repair or replacement of roof systems or the
 80 performance of any other exterior repair, replacement, construction, or reconstruction
 81 work. This subsection shall not apply to a public adjuster licensed under Chapter 23 of this
 82 title.

83 (g) Any acts or practices in violation of this Code section shall be deemed unfair methods
 84 of competition and unfair and deceptive acts or practices in the business of insurance and
 85 shall be subject to powers of the Commissioner and penalties as provided for in this
 86 article."

87 **SECTION 2.**

88 Said article is further amended by revising subsection (a) of Code Section 33-6-7, relating
 89 to the conduct of hearings by the Commissioner, as follows:

90 "(a) Whenever the Commissioner shall have reason to believe that any person has been
 91 engaged or is engaging in this state in any unfair method of competition or any unfair or
 92 deceptive act or practice, whether or not defined in Code Sections 33-6-4, ~~and~~ 33-6-5, ~~and~~
 93 ~~33-6-5.1~~, and have reason to believe that a proceeding by the Commissioner in respect to
 94 such unfair method of competition or such unfair or deceptive act or practice would be in
 95 the public interest, he or she shall issue and serve upon the person a statement of the
 96 charges in that respect and a notice of a hearing on the charges to be held at a time and
 97 place fixed in the notice, which time shall not be less than 15 days after the date of the
 98 service of the notice."

99

SECTION 3.

100 Said article is further amended by revising subsection (a) of Code Section 33-6-8, relating
101 to issuance of cease and desist orders and other relief, as follows:

102 "(a) If, after the hearing provided for in Code Section 33-6-7, the Commissioner shall
103 determine that the person charged has engaged in an unfair method of competition or an
104 unfair or deceptive act or practice, he or she shall reduce his or her findings to writing and
105 shall issue and cause to be served upon the person charged with the violation a copy of the
106 findings and an order requiring such person to cease and desist from engaging in the
107 method of competition, act, or practice; and, if the act or practice is a violation of Code
108 Sections 33-6-4, ~~and 33-6-5,~~ and 33-6-5.1, the Commissioner may at his or her discretion
109 order any one or more of the following:

- 110 (1) Payment of a monetary penalty of not more than \$1,000.00 for each and every act or
111 violation, unless the person knew or reasonably should have known he or she was in
112 violation of this article, in which case the penalty shall be not more than \$5,000.00 for
113 each and every act or violation;
- 114 (2) Suspension or revocation of the person's license, if he or she knew or reasonably
115 should have known he or she was in violation of this article; or
- 116 (3) Any other relief as is reasonable and appropriate."

117

SECTION 4.

118 Said article is further amended by revising Code Section 33-6-12, relating to the
119 promulgation of rules and regulation by the Commissioner, as follows:

120 "33-6-12.

121 The Commissioner after notice and hearing may promulgate reasonable rules and
122 regulations as are necessary or proper to identify specific methods of competition or acts
123 or practice which are prohibited by Code Sections 33-6-4, ~~and 33-6-5,~~ and 33-6-5.1; but
124 the rules and regulations shall not enlarge upon or extend the provisions of Code Sections
125 33-6-4, ~~and 33-6-5,~~ and 33-6-5.1. The rules and regulations shall be subject to Code
126 Section 33-2-9."

127

SECTION 5.

128 All laws and parts of laws in conflict with this Act are repealed.