

SENATE BILL No. 244

DIGEST OF INTRODUCED BILL

Citations Affected: IC 24-5-11.

Synopsis: Surety bond for home improvement suppliers. Amends the statute governing residential real property improvement contracts (statute) to provide that before entering into a real property improvement contract (contract) after June 30, 2023, and throughout the duration of the contract, a real property improvement supplier (supplier) must be covered by a surety bond in the amount of \$50,000. Provides that the bond must be payable to the state and must secure the payment of restitution to a person aggrieved by a violation of the statute by the supplier. Provides that the terms of a contract entered into after June 30, 2023, between a supplier and a consumer must include the name of the issuer of the supplier's bond, along with the bond number or similar identifier. Amends provisions concerning a consumer's right to cancel a contract to provide that a consumer may cancel a contract before midnight on the third business day after the latest of the following occurs: (1) The date the contract is signed by the consumer and the supplier. (2) If applicable, the date the consumer receives written notice from the consumer's insurance company as to whether all or any part of the consumer's claim or the contract is a covered loss. (3) For a contract entered into after June 30, 2023, the date the supplier provides the consumer with the name of the issuer of the supplier's required bond, along with the bond number or similar identifier. (Current law provides that a consumer may cancel a contract before midnight on the third business day after the later of the following: (1) The date the contract is signed by the consumer and the supplier. (2) If applicable, the date the consumer receives written notice from the consumer's insurance company as to whether all or any part of the consumer's claim or the contract is a covered loss.)

Effective: July 1, 2023.

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January 11, 2023, read first time and referred to Committee on Commerce and Technology.



First Regular Session of the 123rd General Assembly (2023)

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 2022 Regular Session of the General Assembly.

SENATE BILL No. 244

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 24-5-11-10, AS AMENDED BY P.L.170-2017,
2 SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2023]: Sec. 10. (a) A real property improvement supplier shall
4 provide a completed real property improvement contract to the
5 consumer before it is signed by the consumer. Except as provided in
6 subsection (c), and subject to subsection (e) and section 10.6 of this
7 chapter for contracts entered into after June 30, 2017, the contract must
8 contain at a minimum the following:
9 (1) The name of the consumer and the address of the real property
10 that is the subject of the real property improvement.
11 (2) The following information:
12 (A) The name and address of the real property improvement
13 supplier and, for a real property improvement contract
14 executed after June 30, 2017, an electronic mail address
15 maintained and used by the real property improvement
16 supplier to communicate with consumers.
17 (B) The following information with respect to each owner,



officer, employee, or agent of the real property improvement supplier to whom consumer problems and inquiries can be directed:

(i) Name.

(ii) Telephone number.

(iii) For a real property improvement contract executed after June 30, 2017, an electronic mail address maintained and used by the owner, officer, employee, or agent to communicate with consumers.

(3) The date the real property improvement contract was submitted to the consumer and any time limitation on the consumer's acceptance of the real property improvement contract.

(4) A reasonably detailed description of the proposed real property improvements.

(5) If the description required by subdivision (4) does not include the specifications for the real property improvement, a statement that the specifications will be provided to the consumer before any work is commenced under the real property improvement contract and that the real property improvement contract is subject to the consumer's separate written and dated approval of the specifications.

(6) The approximate starting and completion dates of the real property improvements.

(7) A statement of any contingencies that would materially change the approximate completion date.

(8) The real property improvement contract price.

(9) Subject to subsections (b) and (c)(8), for a real property improvement contract executed after June 30, 2017, a statement as to whether any third party, including any:

(A) subcontractor;

(B) vendor; or

(C) other person;

that is not a party to the contract, will lease or furnish any labor, services, material, equipment, or machinery to, or on behalf of, the real property improvement supplier in connection with the real property improvement.

(10) For a real property improvement contract entered into after June 30, 2023, the name of the issuer of the bond required by section 10.7 of this chapter, along with the bond number or similar identifier.

~~(10)~~ **(11)** Signature lines for the real property improvement supplier or the supplier's agent and for each consumer who is to



1 be a party to the real property improvement contract with a legible
 2 printed or a typed version of that person's name placed directly
 3 after or below the signature.

4 (b) The real property improvement contract must be in a form that
 5 each consumer who is a party to it can reasonably read and understand.

6 (c) If a real property improvement contract is entered into for
 7 damage, loss, or expense that is to be paid, in whole or in part, from the
 8 proceeds of an insurance policy, or for damage, loss, or expense for
 9 which a third party is liable, the following conditions and requirements
 10 apply to the real property improvement contract:

11 (1) For the purpose of subsection (a)(4) through (a)(7), the
 12 description, completion dates, and statement of contingencies
 13 must be prepared for the proposed real property improvements to
 14 the extent that the damage, loss, or expense is reasonably known
 15 by the real property improvement supplier.

16 (2) For the purpose of subsection (a)(4), the requirement that a
 17 reasonably detailed description be included in the contract may be
 18 satisfied with a statement that the subject real estate will be
 19 repaired or restored to the same condition in which the real estate
 20 existed before the damage, loss, or expense occurred, or to a
 21 comparable condition.

22 (3) For the purpose of subsection (a)(6), the starting and
 23 completion dates may be expressed in terms of the number of
 24 days elapsed from the date when sufficient approval of the
 25 insurance carrier terms allowing for adequate repair or restoration
 26 is obtained.

27 (4) For the purpose of subsection (a)(8), the consumer or insured
 28 consumer may agree to a contract price expressed in terms of the
 29 consumer's or insured consumer's liability for payment after the
 30 application of insurance proceeds or payments from a liable third
 31 party.

32 (5) The consumer or insured consumer may elect, in writing, to
 33 authorize the commencement of work on the real property before
 34 the consumer or insured consumer receives complete
 35 specifications. However, a consumer or an insured consumer who
 36 elects to authorize the commencement of work under this
 37 subdivision is obligated for the real property improvements
 38 specified and, if applicable, agreed to by the insurance carrier.

39 (6) This subdivision applies to a real property improvement
 40 contract that is entered into by a real property improvement
 41 supplier and an insured consumer after June 30, 2012, and before
 42 July 1, 2017, and that includes one (1) or more exterior



improvements. Before entering into a real property improvement contract that is to be paid, in whole or in part, from the proceeds of an insurance policy, the real property improvement supplier must inform the insured consumer of the insured consumer's rights under section 10.5(b) of this chapter by doing the following:

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

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

"NOTICE OF CANCELLATION

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

If you cancel the contract, any payments made by you under the contract will be returned to you within ten (10) business days following receipt by (name of real property improvement supplier) of your cancellation notice, minus any amounts you may owe for work already done by (name of real property improvement supplier).

I HEREBY CANCEL THIS TRANSACTION

(date)

(insured consumer's signature)".

(7) This subdivision applies to a real property improvement contract that is entered into as a result of damage, loss, or expense that is to be paid, in whole or in part, from the proceeds of an



1 insurance policy. However, this subdivision does not apply to a
2 consumer and a real property improvement supplier that have a
3 prior business relationship. After June 30, 2012, a real property
4 improvement supplier may not enter into a real property
5 improvement contract to which this subdivision applies unless
6 one (1) or more of the following apply:

7 (A) The real property improvement supplier resides, is
8 domiciled, or is authorized to do business in Indiana.

9 (B) The real property improvement supplier maintains in
10 Indiana one (1) or more fixed physical locations from which
11 the real property improvement supplier engages in or solicits
12 real property improvement contracts.

13 (C) The real property improvement supplier has appointed a
14 resident agent in Indiana for service of legal process.

15 (8) This subdivision applies to a real property improvement
16 contract that is entered into by a real property improvement
17 supplier and an insured consumer after June 30, 2017, and in
18 connection with which a third party described in subsection (a)(9)
19 will lease or furnish labor, services, material, equipment, or
20 machinery to, or on behalf of, the real property improvement
21 supplier. Subject to subsection (b), a real property improvement
22 contract to which this subdivision applies must include, in
23 addition to the statement required under subsection (a)(9), a
24 statement that neither the real property improvement supplier nor
25 a third party described in subsection (a)(9) may initiate or pursue
26 a claim with the insured consumer's insurance company.

27 (d) A modification to a real property improvement contract is not
28 enforceable against a consumer unless the modification is stated in a
29 writing that is signed by the consumer.

30 (e) This subsection applies to a real property improvement contract
31 that is executed after June 30, 2017, and in connection with which a
32 third party described in subsection (a)(9) leases or furnishes labor,
33 services, material, equipment, or machinery to, or on behalf of, the real
34 property improvement supplier that is a party to the contract. Neither
35 the real property improvement supplier nor a party described in
36 subsection (a)(9) may initiate or pursue a claim with an insured
37 consumer's insurance company.

38 (f) A real property improvement contract may not assign any rights
39 of the consumer to any supplier or third parties.

40 (g) A real property improvement contract must reflect the full
41 amount of the contract price less any discounts offered.

42 (h) A real property improvement supplier or third party who



recklessly, knowingly, or intentionally impersonates a consumer commits a Class A misdemeanor.

SECTION 2. IC 24-5-11-10.6, AS ADDED BY P.L.170-2017, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 10.6. (a) This section applies to a real property improvement contract that is entered into by a real property improvement supplier and a consumer after June 30, 2017.

(b) Before entering into a real property improvement contract with a consumer, the real property improvement supplier must inform the consumer of the consumer's rights under this section by doing the following:

(1) Furnishing to the consumer the following statement: "You may cancel this contract at any time before midnight on the third business day after the ~~later latest~~ of the ~~following~~: **following occurs:**

(A) The date this contract is signed by you and (name of real property improvement supplier).

(B) If applicable, the date you receive written notification from your insurance company of a final determination as to whether all or any part of your claim or this contract is a covered loss under your insurance policy.

(C) If you are entering into this contract after June 30, 2023, the date (name of real property improvement supplier) provides you with the name of the issuer of the bond that (name of real property improvement supplier) is required to maintain by Indiana law, along with the bond number or similar identifier.

See attached notice of cancellation form for an explanation of this right."

(2) Furnishing to the consumer a form, in duplicate, that is captioned "NOTICE OF CANCELLATION" and is attached to the contract but easily detachable, and that contains the following statement in at least 10 point, boldface type:

"NOTICE OF CANCELLATION

You may cancel this contract by mailing, delivering, or submitting by electronic mail a signed and dated copy of this cancellation notice or any other written notice to (name of real property improvement supplier) at (address of real property improvement supplier's place of business), or (electronic mail address described in section 10(a)(2)(A) or 10(a)(2)(B)(iii) of this chapter), at any time before midnight on the third business day after the ~~later latest~~ of the ~~following~~: **following occurs:**



(A) The date this contract is signed by you and (name of real property improvement supplier).

(B) If applicable, the date you receive written notification from your insurance company of a final determination as to whether all or any part of your claim or this contract is a covered loss under your insurance policy.

(C) If you are entering into this contract after June 30, 2023, the date (name of real property improvement supplier) provides you with the name of the issuer of the bond that (name of real property improvement supplier) is required to maintain by Indiana law, along with the bond number or similar identifier.

If you cancel this contract, any payments made by you under the contract will be returned to you within ten (10) business days following receipt by (name of real property improvement supplier) of your cancellation notice, minus any amounts you may owe for work already done by (name of real property improvement supplier).

I HEREBY CANCEL THIS TRANSACTION

(date)

(consumer's signature)".

(c) A consumer may cancel a real property improvement contract under this section before midnight on the third business day after the ~~later latest~~ of the following: **following occurs:**

(1) The date the real property improvement contract is signed by the consumer and the real property improvement supplier.

(2) If applicable, the date the consumer receives written notification from the consumer's insurance company of a final determination as to whether all or any part of the consumer's claim or the real property improvement contract is a covered loss under the consumer's insurance policy.

(3) For a real property improvement contract entered into after June 30, 2023, the date the real property improvement supplier provides the consumer with the name of the issuer of the bond required by section 10.7 of this chapter, along with the bond number or similar identifier.

(d) A consumer who seeks to cancel a real property improvement contract under this section must provide to the real property improvement supplier, at the address or electronic mail address specified in the form provided under subsection (b), written notice of



the consumer's intent not to be bound by the contract. If the notice of cancellation is sent by mail, the notice is effective upon deposit of the notice into the United States mail, with postage prepaid and the notice properly addressed to the real property improvement supplier. If the notice of cancellation is submitted by electronic mail, the notice is effective on the date it is electronically submitted. Subject to subsection (e), not later than ten (10) days after a real property improvement contract is canceled under this section, the real property improvement supplier shall tender to the consumer:

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

(e) If:

- (1) a consumer cancels a real property improvement contract under this section; and
- (2) the real property improvement supplier has performed emergency or temporary services that the consumer acknowledged in writing before their performance to be necessary to prevent damage to the real property;

the real property improvement supplier is entitled to the reasonable value of the emergency or temporary services performed.

SECTION 3. IC 24-5-11-10.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: **Sec. 10.7. (a) Before entering into a real property improvement contract after June 30, 2023, and throughout the duration of the contract, a real property improvement supplier must be covered by a surety bond in the amount of fifty thousand dollars (\$50,000).**

(b) The bond required by this section must:

- (1) be issued by a bonding, surety, or insurance company authorized to do business in Indiana;**
- (2) be payable to the state;**
- (3) secure the payment of restitution to a person aggrieved by a violation of this chapter by the real property improvement supplier after judgment has been rendered in favor of the state; and**
- (4) secure payment of penalties, costs, and fees included in the judgment.**

