



Reprinted
April 6, 2017

ENGROSSED SENATE BILL No. 353

DIGEST OF SB 353 (Updated April 5, 2017 5:51 pm - DI 101)

Citations Affected: IC 24-5; IC 35-52.

Synopsis: Real property improvement contracts. Amends the statute concerning home improvement contracts to do the following: (1) Redesignate a "home improvement contract" a "real property improvement contract" and make conforming changes in terminology throughout the statute. (2) Specify that for purposes of the statute, improvements include interior improvements made to real property, including improvements made to a basement. (3) Expand a consumer's right to cancel a contract to include canceling a contract before midnight on the third business day after the later of the following: (A) The date the contract is signed by the consumer and the real property improvement supplier. (B) If applicable, the date the consumer receives
(Continued next page)

Effective: July 1, 2017.

Head, Doriot, Randolph Lonnie M, Buck

(HOUSE SPONSORS — CARBAUGH, LEHMAN, PRESSEL, VANNATTER)

January 10, 2017, read first time and referred to Committee on Civil Law.
February 21, 2017, amended, reported favorably — Do Pass.
February 23, 2017, read second time, amended, ordered engrossed.
February 24, 2017, engrossed.
February 27, 2017, read third time, passed. Yeas 49, nays 0.

HOUSE ACTION

March 7, 2017, read first time and referred to Committee on Judiciary.
April 3, 2017, reported — Do Pass.
April 5, 2017, read second time, amended, ordered engrossed.

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written notice from the consumer's insurance company of a final determination as to whether the consumer's claim or the contract is a covered loss under an insurance policy. (Current law allows an insured consumer to cancel a contract only before midnight on the third business day after the insured consumer has received written notice from the consumer's insurance company that any part of the claim or contract is not a covered loss under the insurance policy.) (4) Require that a real property improvement contract include an electronic mail address for the real property improvement supplier and each owner, officer, employee, or agent to whom consumer problems and inquiries can be directed. (5) Allow a consumer to submit a notice of contract cancellation by electronic mail. (6) Prohibit a third party subcontractor or vendor from initiating or pursuing a claim with an insured consumer's insurance company. (7) Provide that a real property improvement contract: (A) may not assign any rights of the consumer to any supplier or third party; and (B) must reflect the full amount of the contract price, less any discounts offered. (8) Make it a Class A misdemeanor for a real property improvement supplier or a third party to recklessly, knowingly, or intentionally impersonate a consumer.



Reprinted
April 6, 2017

First Regular Session 120th General Assembly (2017)

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 2016 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 353

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 24-5-0.5-3, AS AMENDED BY P.L.65-2014,
2 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2017]: Sec. 3. (a) A supplier may not commit an unfair,
4 abusive, or deceptive act, omission, or practice in connection with a
5 consumer transaction. Such an act, omission, or practice by a supplier
6 is a violation of this chapter whether it occurs before, during, or after
7 the transaction. An act, omission, or practice prohibited by this section
8 includes both implicit and explicit misrepresentations.
9 (b) Without limiting the scope of subsection (a), the following acts,
10 and the following representations as to the subject matter of a
11 consumer transaction, made orally, in writing, or by electronic
12 communication, by a supplier, are deceptive acts:
13 (1) That such subject of a consumer transaction has sponsorship,
14 approval, performance, characteristics, accessories, uses, or
15 benefits it does not have which the supplier knows or should

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- 1 reasonably know it does not have.
- 2 (2) That such subject of a consumer transaction is of a particular
3 standard, quality, grade, style, or model, if it is not and if the
4 supplier knows or should reasonably know that it is not.
- 5 (3) That such subject of a consumer transaction is new or unused,
6 if it is not and if the supplier knows or should reasonably know
7 that it is not.
- 8 (4) That such subject of a consumer transaction will be supplied
9 to the public in greater quantity than the supplier intends or
10 reasonably expects.
- 11 (5) That replacement or repair constituting the subject of a
12 consumer transaction is needed, if it is not and if the supplier
13 knows or should reasonably know that it is not.
- 14 (6) That a specific price advantage exists as to such subject of a
15 consumer transaction, if it does not and if the supplier knows or
16 should reasonably know that it does not.
- 17 (7) That the supplier has a sponsorship, approval, or affiliation in
18 such consumer transaction the supplier does not have, and which
19 the supplier knows or should reasonably know that the supplier
20 does not have.
- 21 (8) That such consumer transaction involves or does not involve
22 a warranty, a disclaimer of warranties, or other rights, remedies,
23 or obligations, if the representation is false and if the supplier
24 knows or should reasonably know that the representation is false.
- 25 (9) That the consumer will receive a rebate, discount, or other
26 benefit as an inducement for entering into a sale or lease in return
27 for giving the supplier the names of prospective consumers or
28 otherwise helping the supplier to enter into other consumer
29 transactions, if earning the benefit, rebate, or discount is
30 contingent upon the occurrence of an event subsequent to the time
31 the consumer agrees to the purchase or lease.
- 32 (10) That the supplier is able to deliver or complete the subject of
33 the consumer transaction within a stated period of time, when the
34 supplier knows or should reasonably know the supplier could not.
35 If no time period has been stated by the supplier, there is a
36 presumption that the supplier has represented that the supplier
37 will deliver or complete the subject of the consumer transaction
38 within a reasonable time, according to the course of dealing or the
39 usage of the trade.
- 40 (11) That the consumer will be able to purchase the subject of the
41 consumer transaction as advertised by the supplier, if the supplier
42 does not intend to sell it.



- 1 (12) That the replacement or repair constituting the subject of a
2 consumer transaction can be made by the supplier for the estimate
3 the supplier gives a customer for the replacement or repair, if the
4 specified work is completed and:
5 (A) the cost exceeds the estimate by an amount equal to or
6 greater than ten percent (10%) of the estimate;
7 (B) the supplier did not obtain written permission from the
8 customer to authorize the supplier to complete the work even
9 if the cost would exceed the amounts specified in clause (A);
10 (C) the total cost for services and parts for a single transaction
11 is more than seven hundred fifty dollars (\$750); and
12 (D) the supplier knew or reasonably should have known that
13 the cost would exceed the estimate in the amounts specified in
14 clause (A).
15 (13) That the replacement or repair constituting the subject of a
16 consumer transaction is needed, and that the supplier disposes of
17 the part repaired or replaced earlier than seventy-two (72) hours
18 after both:
19 (A) the customer has been notified that the work has been
20 completed; and
21 (B) the part repaired or replaced has been made available for
22 examination upon the request of the customer.
23 (14) Engaging in the replacement or repair of the subject of a
24 consumer transaction if the consumer has not authorized the
25 replacement or repair, and if the supplier knows or should
26 reasonably know that it is not authorized.
27 (15) The act of misrepresenting the geographic location of the
28 supplier by listing a fictitious business name or an assumed
29 business name (as described in IC 23-15-1) in a local telephone
30 directory if:
31 (A) the name misrepresents the supplier's geographic location;
32 (B) the listing fails to identify the locality and state of the
33 supplier's business;
34 (C) calls to the local telephone number are routinely forwarded
35 or otherwise transferred to a supplier's business location that
36 is outside the calling area covered by the local telephone
37 directory; and
38 (D) the supplier's business location is located in a county that
39 is not contiguous to a county in the calling area covered by the
40 local telephone directory.
41 (16) The act of listing a fictitious business name or assumed
42 business name (as described in IC 23-15-1) in a directory



- 1 assistance database if:
- 2 (A) the name misrepresents the supplier's geographic location;
- 3 (B) calls to the local telephone number are routinely forwarded
- 4 or otherwise transferred to a supplier's business location that
- 5 is outside the local calling area; and
- 6 (C) the supplier's business location is located in a county that
- 7 is not contiguous to a county in the local calling area.
- 8 (17) The violation by a supplier of IC 24-3-4 concerning
- 9 cigarettes for import or export.
- 10 (18) The act of a supplier in knowingly selling or reselling a
- 11 product to a consumer if the product has been recalled, whether
- 12 by the order of a court or a regulatory body, or voluntarily by the
- 13 manufacturer, distributor, or retailer, unless the product has been
- 14 repaired or modified to correct the defect that was the subject of
- 15 the recall.
- 16 (19) The violation by a supplier of 47 U.S.C. 227, including any
- 17 rules or regulations issued under 47 U.S.C. 227.
- 18 (20) The violation by a supplier of the federal Fair Debt
- 19 Collection Practices Act (15 U.S.C. 1692 et seq.), including any
- 20 rules or regulations issued under the federal Fair Debt Collection
- 21 Practices Act (15 U.S.C. 1692 et seq.).
- 22 (21) A violation of IC 24-5-7 (concerning health spa services), as
- 23 set forth in IC 24-5-7-17.
- 24 (22) A violation of IC 24-5-8 (concerning business opportunity
- 25 transactions), as set forth in IC 24-5-8-20.
- 26 (23) A violation of IC 24-5-10 (concerning home consumer
- 27 transactions), as set forth in IC 24-5-10-18.
- 28 (24) A violation of IC 24-5-11 (concerning **home real property**
- 29 improvement contracts), as set forth in IC 24-5-11-14.
- 30 (25) A violation of IC 24-5-12 (concerning telephone
- 31 solicitations), as set forth in IC 24-5-12-23.
- 32 (26) A violation of IC 24-5-13.5 (concerning buyback motor
- 33 vehicles), as set forth in IC 24-5-13.5-14.
- 34 (27) A violation of IC 24-5-14 (concerning automatic
- 35 dialing-announcing devices), as set forth in IC 24-5-14-13.
- 36 (28) A violation of IC 24-5-15 (concerning credit services
- 37 organizations), as set forth in IC 24-5-15-11.
- 38 (29) A violation of IC 24-5-16 (concerning unlawful motor
- 39 vehicle subleasing), as set forth in IC 24-5-16-18.
- 40 (30) A violation of IC 24-5-17 (concerning environmental
- 41 marketing claims), as set forth in IC 24-5-17-14.
- 42 (31) A violation of IC 24-5-19 (concerning deceptive commercial



- 1 solicitation), as set forth in IC 24-5-19-11.
- 2 (32) A violation of IC 24-5-21 (concerning prescription drug
3 discount cards), as set forth in IC 24-5-21-7.
- 4 (33) A violation of IC 24-5-23.5-7 (concerning real estate
5 appraisals), as set forth in IC 24-5-23.5-9.
- 6 (34) A violation of IC 24-5-26 (concerning identity theft), as set
7 forth in IC 24-5-26-3.
- 8 (35) A violation of IC 24-5.5 (concerning mortgage rescue fraud),
9 as set forth in IC 24-5.5-6-1.
- 10 (36) A violation of IC 24-8 (concerning promotional gifts and
11 contests), as set forth in IC 24-8-6-3.
- 12 (37) A violation of IC 21-18.5-6 (concerning representations
13 made by a postsecondary credit bearing proprietary educational
14 institution), as set forth in IC 21-18.5-6-22.5.
- 15 (c) Any representations on or within a product or its packaging or
16 in advertising or promotional materials which would constitute a
17 deceptive act shall be the deceptive act both of the supplier who places
18 such representation thereon or therein, or who authored such materials,
19 and such other suppliers who shall state orally or in writing that such
20 representation is true if such other supplier shall know or have reason
21 to know that such representation was false.
- 22 (d) If a supplier shows by a preponderance of the evidence that an
23 act resulted from a bona fide error notwithstanding the maintenance of
24 procedures reasonably adopted to avoid the error, such act shall not be
25 deceptive within the meaning of this chapter.
- 26 (e) It shall be a defense to any action brought under this chapter that
27 the representation constituting an alleged deceptive act was one made
28 in good faith by the supplier without knowledge of its falsity and in
29 reliance upon the oral or written representations of the manufacturer,
30 the person from whom the supplier acquired the product, any testing
31 organization, or any other person provided that the source thereof is
32 disclosed to the consumer.
- 33 (f) For purposes of subsection (b)(12), a supplier that provides
34 estimates before performing repair or replacement work for a customer
35 shall give the customer a written estimate itemizing as closely as
36 possible the price for labor and parts necessary for the specific job
37 before commencing the work.
- 38 (g) For purposes of subsection (b)(15) and (b)(16), a telephone
39 company or other provider of a telephone directory or directory
40 assistance service or its officer or agent is immune from liability for
41 publishing the listing of a fictitious business name or assumed business
42 name of a supplier in its directory or directory assistance database



1 unless the telephone company or other provider of a telephone
 2 directory or directory assistance service is the same person as the
 3 supplier who has committed the deceptive act.

4 (h) For purposes of subsection (b)(18), it is an affirmative defense
 5 to any action brought under this chapter that the product has been
 6 altered by a person other than the defendant to render the product
 7 completely incapable of serving its original purpose.

8 SECTION 2. IC 24-5-10-12 IS AMENDED TO READ AS
 9 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 12. If the consumer
 10 exercises the right to cancel under this chapter, the supplier shall,
 11 within ten (10) business days after the notice of cancellation is
 12 delivered, return to the consumer any payment or other consideration
 13 transferred to the supplier by the consumer. However, if the transaction
 14 constitutes a **home real property** improvement contract under
 15 IC 24-5-11 and if the **home real property** improvement has been made
 16 on an emergency basis within three (3) days after final agreement to the
 17 contract, the supplier is entitled to recover from the consumer the fair
 18 market value of the material and labor involved to alleviate the
 19 emergency.

20 SECTION 3. IC 24-5-11-1, AS AMENDED BY P.L.82-2012,
 21 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 22 JULY 1, 2017]: Sec. 1. This chapter applies only to residential **real**
 23 **property located in Indiana, including all fixtures to, structures on,**
 24 **and improvements to the real property.**

25 SECTION 4. IC 24-5-11-2 IS AMENDED TO READ AS
 26 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 2. As used in this
 27 chapter, "consumer" means ~~an individual who~~ **a person that** owns,
 28 leases, or rents the residential **real** property that is the subject of a
 29 **home real property** improvement contract.

30 SECTION 5. IC 24-5-11-2.5, AS ADDED BY P.L.82-2012,
 31 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 32 JULY 1, 2017]: Sec. 2.5. As used in this chapter, "exterior **home**
 33 **improvement**" means any alteration, repair, replacement,
 34 reconstruction, or other modification made to the exterior of residential
 35 **real** property, including the exterior of any structure on or fixture or
 36 improvement to the property. The term also includes the alteration,
 37 repair, replacement, reconstruction, or other modification of a
 38 residential roof system.

39 SECTION 6. IC 24-5-11-2.6 IS ADDED TO THE INDIANA CODE
 40 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY
 41 1, 2017]: **Sec. 2.6. As used in this chapter, "insurance policy" refers**
 42 **to a:**



1 **(1) personal line policy of property and casualty insurance**
 2 **coverage; or**

3 **(2) commercial line farm insurance policy that insures**
 4 **residential property.**

5 SECTION 7. IC 24-5-11-2.7 IS ADDED TO THE INDIANA CODE
 6 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY
 7 1, 2017]: **Sec. 2.7. As used in this chapter, "insured consumer"**
 8 **refers to a person:**

9 **(1) that is a policyholder or an insured under a:**

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

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

14 **(2) that is or may become a consumer that enters into a real**
 15 **property improvement contract under this chapter.**

16 SECTION 8. IC 24-5-11-2.8 IS ADDED TO THE INDIANA CODE
 17 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY
 18 1, 2017]: **Sec. 2.8. As used in this chapter, "interior improvement"**
 19 **means any alteration, repair, replacement, reconstruction, or other**
 20 **modification made to the interior of real property, including the**
 21 **interior of any structure on or fixture or improvement to the**
 22 **property. The term also includes the alteration, repair,**
 23 **reconstruction, or other modification of a basement.**

24 SECTION 9. IC 24-5-11-3, AS AMENDED BY P.L.82-2012,
 25 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 26 JULY 1, 2017]: **Sec. 3. (a) As used in this chapter, "home "real**
 27 **property improvement" means any alteration, repair, replacement,**
 28 **reconstruction, or other modification of residential real property.**

29 **(b) The term includes the following:**

30 **(1) An exterior home improvement.**

31 **(2) An interior improvement.**

32 SECTION 10. IC 24-5-11-4 IS AMENDED TO READ AS
 33 FOLLOWS [EFFECTIVE JULY 1, 2017]: **Sec. 4. As used in this**
 34 **chapter, "home "real property improvement contract" means an**
 35 **agreement, oral or written, between a home real property**
 36 **improvement supplier and a consumer to make a home real property**
 37 **improvement and for which the real property improvement contract**
 38 **price exceeds one hundred fifty dollars (\$150).**

39 SECTION 11. IC 24-5-11-5 IS AMENDED TO READ AS
 40 FOLLOWS [EFFECTIVE JULY 1, 2017]: **Sec. 5. As used in this**
 41 **chapter, "home "real property improvement contract price" means the**
 42 **amount actually charged for the services, materials, and work to be**



1 performed under the **home real property** improvement contract but
 2 does not include financing costs, loan consolidation amounts, taxes,
 3 and governmental fees paid by or on behalf of the consumer, amounts
 4 returned to or on behalf of the consumer, or similar costs not related to
 5 the **home real property** improvement.

6 SECTION 12. IC 24-5-11-6 IS AMENDED TO READ AS
 7 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 6. As used in this
 8 chapter, "**home "real property** improvement supplier" means a person
 9 who engages in or solicits **home real property** improvement contracts
 10 whether or not the person deals directly with the consumer.

11 SECTION 13. IC 24-5-11-6.2 IS REPEALED [EFFECTIVE JULY
 12 1, 2017]. Sec. 6.2: As used in this chapter, "**insured consumer**" refers
 13 to a person:

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

15 (A) personal line policy of property and casualty insurance
 16 coverage; or

17 (B) commercial line farm insurance policy that insures
 18 residential property; and

19 (2) who is or may become a consumer who enters into a home
 20 improvement contract under this chapter.

21 SECTION 14. IC 24-5-11-7.5, AS ADDED BY P.L.82-2012,
 22 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 23 JULY 1, 2017]: Sec. 7.5. (a) As used in this chapter, "**real property**"
 24 or "**residential real property**" means real property that:

25 (1) contains one (1) to four (4) units; and

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

27 (b) The term includes all fixtures to, structures on, and
 28 improvements to the real property.

29 SECTION 15. IC 24-5-11-8 IS AMENDED TO READ AS
 30 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 8. As used in this
 31 chapter, "specifications" means the plans, detailed drawings, lists of
 32 materials, or other methods customarily used in the **home improvement**
 33 **residential building** industry as a whole to describe with particularity
 34 the work, workmanship, materials, and quality of materials for each
 35 **home improvement project**.

36 SECTION 16. IC 24-5-11-9 IS AMENDED TO READ AS
 37 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 9. ~~Where~~ **If** a license
 38 or permit is necessary for any part of a **home real property**
 39 improvement, the **home real property** improvement contract ~~shall~~
 40 **must** be ~~subject to~~ **conditioned upon the appropriate party** obtaining
 41 the necessary licenses or permits ~~prior to~~ **before** any work
 42 ~~commencing~~. **under the real property improvement contract**



- 1 **commences.**
 2 SECTION 17. IC 24-5-11-10, AS AMENDED BY P.L.82-2012,
 3 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 4 JULY 1, 2017]: Sec. 10. (a) ~~The home~~ **A real property** improvement
 5 supplier shall provide a completed ~~home real property~~ improvement
 6 contract to the consumer before it is signed by the consumer. Except as
 7 provided in subsection (c), **and subject to subsection (e) and section**
 8 **10.6 of this chapter for contracts entered into after June 30, 2017,**
 9 the contract must contain at a minimum the following:
 10 (1) The name of the consumer and the address of the ~~residential~~
 11 **real property** that is the subject of the ~~home real property~~
 12 improvement.
 13 (2) The **following information:**
 14 (A) The name and address of the ~~home real property~~
 15 improvement supplier and, ~~each of the telephone numbers and~~
 16 ~~names of any~~ **for a real property improvement contract**
 17 **executed after June 30, 2017, an electronic mail address**
 18 **maintained and used by the real property improvement**
 19 **supplier to communicate with consumers.**
 20 (B) The **following information with respect to each owner,**
 21 **officer, employee, or agent of the real property**
 22 **improvement supplier** to whom consumer problems and
 23 inquiries can be directed:
 24 (i) **Name.**
 25 (ii) **Telephone number.**
 26 (iii) **For a real property improvement contract executed**
 27 **after June 30, 2017, an electronic mail address**
 28 **maintained and used by the owner, officer, employee, or**
 29 **agent to communicate with consumers.**
 30 (3) The date the ~~home real property~~ improvement contract was
 31 submitted to the consumer and any time limitation on the
 32 consumer's acceptance of the ~~home real property~~ improvement
 33 contract.
 34 (4) A reasonably detailed description of the proposed ~~home real~~
 35 **property** improvements.
 36 (5) If the description required by subdivision (4) does not include
 37 the specifications for the ~~home real property~~ improvement, a
 38 statement that the specifications will be provided to the consumer
 39 before ~~commencing~~ any work **is commenced under the real**
 40 **property improvement contract** and that the ~~home real~~
 41 **property** improvement contract is subject to the consumer's
 42 separate written and dated approval of the specifications.



- 1 (6) The approximate starting and completion dates of the **home**
- 2 **real property** improvements.
- 3 (7) A statement of any contingencies that would materially
- 4 change the approximate completion date.
- 5 (8) The **home real property** improvement contract price.
- 6 **(9) Subject to subsections (b) and (c)(8), for a real property**
- 7 **improvement contract executed after June 30, 2017, a**
- 8 **statement as to whether any third party, including any:**
- 9 (A) **subcontractor;**
- 10 (B) **vendor; or**
- 11 (C) **other person;**
- 12 **that is not a party to the contract, will lease or furnish any**
- 13 **labor, services, material, equipment, or machinery to, or on**
- 14 **behalf of, the real property improvement supplier in**
- 15 **connection with the real property improvement.**
- 16 ~~(9)~~ **(10)** Signature lines for the **home real property** improvement
- 17 supplier or the supplier's agent and for each consumer who is to
- 18 be a party to the **home real property** improvement contract with
- 19 a legible printed or a typed version of that person's name placed
- 20 directly after or below the signature.
- 21 (b) The **home real property** improvement contract must be in a
- 22 form that each consumer who is a party to it can reasonably read and
- 23 understand.
- 24 (c) If a **home real property** improvement contract is entered into for
- 25 damage, loss, or expense that is to be paid, in whole or in part, from the
- 26 proceeds of a **personal line property and casualty insurance policy or**
- 27 **a commercial line farm an insurance policy, that insures residential**
- 28 **property;** or for damage, loss, or expense for which a third party is
- 29 liable, the following conditions and requirements apply to the **home**
- 30 **real property** improvement contract:
- 31 (1) For the purpose of subsection (a)(4) through (a)(7), the
- 32 description, completion dates, and statement of contingencies
- 33 must be prepared for the proposed **home real property**
- 34 improvements to the extent that the damage, loss, or expense is
- 35 reasonably known by the **home real property** improvement
- 36 supplier.
- 37 (2) For the purpose of subsection (a)(4), the requirement that a
- 38 reasonably detailed description be included in the contract may be
- 39 satisfied with a statement that the subject real estate will be
- 40 repaired or restored to the same condition in which the real estate
- 41 existed before the damage, loss, or expense occurred, or to a
- 42 comparable condition.



- 1 (3) For the purpose of subsection (a)(6), the starting and
 2 completion dates may be expressed in terms of the number of
 3 days elapsed from the date when sufficient approval of the
 4 insurance carrier terms allowing for adequate repair or restoration
 5 is obtained.
- 6 (4) For the purpose of subsection (a)(8), the consumer or insured
 7 consumer may agree to a contract price expressed in terms of the
 8 consumer's or insured consumer's liability for payment after the
 9 application of insurance proceeds or payments from a liable third
 10 party.
- 11 (5) The consumer or insured consumer may elect, in writing, to
 12 authorize the commencement of work on the **home real property**
 13 before the consumer or insured consumer receives complete
 14 specifications. However, a consumer or an insured consumer who
 15 elects to authorize the commencement of work under this
 16 subdivision is obligated for the **home real property**
 17 improvements specified and, **if applicable**, agreed to by the
 18 insurance carrier.
- 19 (6) This subdivision applies to a **home real property**
 20 improvement contract that is entered into by a **home real**
 21 **property** improvement supplier and an insured consumer after
 22 June 30, 2012, **and before July 1, 2017**, and that includes one (1)
 23 or more exterior **home** improvements. Before entering into a
 24 **home real property** improvement contract that is to be paid, in
 25 whole or in part, from the proceeds of a **personal line property and**
 26 **casualty insurance policy** or a **commercial line farm an** insurance
 27 policy, **that insures residential property**; the **home real property**
 28 improvement supplier must inform the insured consumer of the
 29 insured consumer's rights under section 10.5(b) of this chapter by
 30 doing the following:
- 31 (A) Furnishing to the insured consumer the following
 32 statement: "You may cancel this contract at any time before
 33 midnight on the third business day after you have received
 34 written notification from your insurance company that all or
 35 any part of the claim or contract is not a covered loss under the
 36 insurance policy. See attached notice of cancellation form for
 37 an explanation of this right."
- 38 (B) Furnishing to the insured consumer a form, in duplicate,
 39 that is captioned "NOTICE OF CANCELLATION" and is
 40 attached to the contract but easily detachable, and that
 41 contains the following statement in at least 10 point, boldface
 42 type:



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"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 **home real property** improvement supplier) at (address of **home 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 **home real property** improvement supplier) of your cancellation notice, minus any amounts you may owe for work already done by (name of **home real property** improvement supplier).

I HEREBY CANCEL THIS TRANSACTION

(date)

(insured consumer's signature)".

(7) This subdivision applies to a **home 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 a ~~personal line property and casualty insurance policy or a commercial line farm an~~ insurance policy. ~~that insures residential property.~~ However, this subdivision does not apply to a consumer and a **home real property** improvement supplier that have a prior business relationship. After June 30, 2012, a **home real property** improvement supplier may not enter into a **home real property** improvement contract to which this subdivision applies unless one (1) or more of the following apply:

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

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

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

(8) This subdivision applies to a real property improvement



1 **contract that is entered into by a real property improvement**
 2 **supplier and an insured consumer after June 30, 2017, and in**
 3 **connection with which a third party described in subsection**
 4 **(a)(9) will lease or furnish labor, services, material,**
 5 **equipment, or machinery to, or on behalf of, the real property**
 6 **improvement supplier. Subject to subsection (b), a real**
 7 **property improvement contract to which this subdivision**
 8 **applies must include, in addition to the statement required**
 9 **under subsection (a)(9), a statement that neither the real**
 10 **property improvement supplier nor a third party described in**
 11 **subsection (a)(9) may initiate or pursue a claim with the**
 12 **insured consumer's insurance company.**

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

16 (e) **This subsection applies to a real property improvement**
 17 **contract that is executed after June 30, 2017, and in connection**
 18 **with which a third party described in subsection (a)(9) leases or**
 19 **furnishes labor, services, material, equipment, or machinery to, or**
 20 **on behalf of, the real property improvement supplier that is a**
 21 **party to the contract. Neither the real property improvement**
 22 **supplier nor a party described in subsection (a)(9) may initiate or**
 23 **pursue a claim with an insured consumer's insurance company.**

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

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

28 (h) A real property improvement supplier or third party who
 29 recklessly, knowingly, or intentionally impersonates a consumer
 30 commits a Class A misdemeanor.

31 SECTION 18. IC 24-5-11-10.5, AS ADDED BY P.L.82-2012,
 32 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 33 JULY 1, 2017]: Sec. 10.5. (a) A **home real property** improvement
 34 supplier shall not advertise, offer, or promise to pay or rebate any part
 35 of an insurance deductible to induce a person to enter into a **home real**
 36 **property** improvement contract or otherwise purchase goods or
 37 services from the **home real property** improvement supplier. Acts
 38 prohibited by this subsection include the following:

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

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



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

5 (b) This subsection applies to a **home real property** improvement
 6 contract that is entered into by a **home real property** improvement
 7 supplier and an insured consumer after June 30, 2012, **and before July**
 8 **1, 2017**, and that includes one (1) or more exterior **home**
 9 **improvements**. An insured consumer who enters into a **home real**
 10 **property** improvement contract for which the **home real property**
 11 improvement contract price, or charges for other goods and services
 12 under the contract, are to be paid, in whole or in part, from the
 13 proceeds of a ~~personal line property and casualty insurance policy or~~
 14 ~~a commercial line farm an~~ insurance policy, ~~that insures residential~~
 15 ~~property~~, may cancel the contract before midnight on the third business
 16 day after the insured consumer has received written notice from the
 17 insurance company that any part of the claim or contract is not a
 18 covered loss under the insurance policy. An insured consumer who
 19 seeks to cancel a **home real property** improvement contract under this
 20 subsection must provide to the **home real property** improvement
 21 supplier, at the address specified in the form provided under section
 22 10(c)(6)(B) of this chapter, written notice of the insured consumer's
 23 intent not to be bound by the contract. If the notice of cancellation is
 24 sent by mail, the notice is effective upon deposit of the notice into the
 25 United States mail, with postage prepaid and the notice properly
 26 addressed to the **home real property** improvement supplier. Subject
 27 to subsection (c), not later than ten (10) days after a **home real**
 28 **property** improvement contract is cancelled under this subsection, the
 29 **home real property** improvement supplier shall tender to the insured
 30 consumer:

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

34 (c) If:

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

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



1 (d) A **home real property** improvement supplier shall not act as a
 2 public adjuster (as defined in IC 27-1-27-1).

3 SECTION 19. IC 24-5-11-10.6 IS ADDED TO THE INDIANA
 4 CODE AS A NEW SECTION TO READ AS FOLLOWS
 5 [EFFECTIVE JULY 1, 2017]: **Sec. 10.6. (a) This section applies to a**
 6 **real property improvement contract that is entered into by a real**
 7 **property improvement supplier and a consumer after June 30,**
 8 **2017.**

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

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

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

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

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

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

28 "NOTICE OF CANCELLATION

29 You may cancel this contract by mailing, delivering, or
 30 submitting by electronic mail a signed and dated copy of this
 31 cancellation notice or any other written notice to (name of
 32 real property improvement supplier) at (address of real
 33 property improvement supplier's place of business), or
 34 (electronic mail address described in section 10(a)(2)(A) or
 35 10(a)(2)(B)(iii) of this chapter), at any time before midnight
 36 on the third business day after the later of the following:

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

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



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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 of the following:

- (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.

(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



1 **emergency or temporary services that the consumer**
 2 **acknowledged in writing before their performance to be**
 3 **necessary to prevent damage to the real property;**
 4 **the real property improvement supplier is entitled to the**
 5 **reasonable value of the emergency or temporary services**
 6 **performed.**

7 SECTION 20. IC 24-5-11-11 IS AMENDED TO READ AS
 8 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 11. Before ~~the a~~
 9 consumer signs ~~the home a real property~~ improvement contract and
 10 before the consumer can be required to make any down payment **in**
 11 **connection with the real property improvement contract**, the ~~home~~
 12 **real property** improvement supplier must have agreed unequivocally
 13 by written signature to all of the terms of the ~~home real property~~
 14 improvement contract.

15 SECTION 21. IC 24-5-11-12 IS AMENDED TO READ AS
 16 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 12. ~~The home A real~~
 17 **property** improvement supplier shall give a fully executed copy of ~~the~~
 18 ~~home a real property~~ improvement contract to the consumer
 19 immediately after the consumer signs it. The **real property**
 20 **improvement** contract must ~~also~~ show the dates the **real property**
 21 **improvement** supplier and each consumer executed the contract.

22 SECTION 22. IC 24-5-11-14 IS AMENDED TO READ AS
 23 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 14. A ~~home real~~
 24 **property** improvement supplier who violates this chapter commits a
 25 deceptive act that is actionable by the attorney general or by a
 26 consumer under IC 24-5-0.5-4 and is subject to the remedies and
 27 penalties under IC 24-5-0.5.

28 SECTION 23. IC 35-52-24-24.5 IS ADDED TO THE INDIANA
 29 CODE AS A **NEW SECTION** TO READ AS FOLLOWS
 30 [EFFECTIVE JULY 1, 2017]: **Sec. 24.5. IC 24-5-11-10(h) defines a**
 31 **crime concerning the impersonation of a consumer by a real**
 32 **property improvement supplier or third party.**



COMMITTEE REPORT

Madam President: The Senate Committee on Civil Law, to which was referred Senate Bill No. 353, 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 6, line 15, strike "home" and insert "**real property**".

Page 13, line 32, after "that" insert "**neither the real property improvement supplier nor**".

Page 13, line 33, delete "not".

Page 13, line 34, after "company" insert ".".

Page 13, delete lines 35 through 42.

Page 14, delete lines 1 through 3.

Page 14, line 12, delete "A third" and insert "**Neither the real property improvement supplier nor a**".

Page 14, line 13, delete "not".

Page 14, line 14, delete "without the express consent of the insured" and insert ".".

Page 14, delete lines 15 through 16.

Page 14, line 17, delete "A claim initiated or pursued by a third party described in".

Page 14, line 18, delete "subsection (a)(9), or any" and insert "**Any**".

Page 14, line 19, delete "claim initiated" and insert "**contract described in subsection (a)**".

Page 14, between lines 22 and 23, begin a new paragraph and insert:

"(g) The contract described in subsection (a) may not assign any rights of the consumer to any supplier or third parties.

(h) The real property improvement contract must reflect the full amount of the contract price less any discounts offered.

(i) A real property improvement supplier or third party who recklessly, knowingly, or intentionally impersonates a consumer commits a Class A misdemeanor."

Page 18, after line 19, begin a new paragraph and insert:

"SECTION 23. IC 35-52-24-24.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: **Sec. 24.5. IC 24-5-11-10(i) defines a**



crime concerning the impersonation of a consumer by a real property improvement supplier or third party."

and when so amended that said bill do pass.

(Reference is to SB 353 as introduced.)

HEAD, Chairperson

Committee Vote: Yeas 8, Nays 0.

SENATE MOTION

Madam President: I move that Senate Bill 353 be amended to read as follows:

Page 7, line 6, delete "coverage." and insert "**coverage in which the policyholder has not more than fifty (50) employees.**".

Page 7, line 17, delete "coverage; and" and insert "**coverage in which the person has not more than fifty (50) employees; and**".

Page 14, delete lines 5 through 9.

Page 14, line 10, delete "(g)" and insert "**(f)**".

Page 14, line 12, delete "(h)" and insert "**(g)**".

Page 14, line 14, delete "(i)" and insert "**(h)**".

(Reference is to SB 353 as printed February 22, 2017.)

HEAD

COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred Senate Bill 353, 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.

(Reference is to SB 353 as reprinted February 24, 2017.)

MCNAMARA

Committee Vote: Yeas 6, Nays 2



HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 353 be amended to read as follows:

Page 6, line 22, reset in roman "only".

Page 6, line 22, delete "or".

Page 6, line 23, delete "commercial".

Page 6, line 28, reset in roman "the residential".

Page 6, line 34, reset in roman "residential".

Page 6, line 38, reset in roman "residential".

Page 7, line 2, after "coverage;" insert "**or**".

Page 7, line 4, delete "property; or" and insert "**property.**".

Page 7, delete lines 5 through 7.

Page 7, line 14, after "coverage;" insert "**or**".

Page 7, line 16, delete "or" and insert "**and**".

Page 7, delete lines 17 through 19.

Page 7, line 34, reset in roman "residential".

Page 8, delete lines 27 through 33, begin a new paragraph and insert:

"SECTION 14. IC 24-5-11-7.5, AS ADDED BY P.L.82-2012, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 7.5. (a) As used in this chapter, "**real property**" or "residential **real property**" means real property that:

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

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

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

Page 8, line 38, delete "or commercial".

Page 10, line 11, delete "(c)(9)" and insert "**(c)(8)**".

Page 11, line 32, delete "policy" and insert "policy,".

Page 11, line 32, delete "described in section".

Page 11, line 33, delete "2.6(1) or 2.6(2) of this chapter,".

Page 12, line 32, delete "policy" insert "policy,".

Page 12, line 33, delete "described in section 2.6(1) or 2.6(2) of this".

Page 12, line 34, delete "chapter,".

Page 13, delete lines 7 through 24.

Page 13, line 25, delete "(9)" and insert "**(8)**".

Page 14, line 7, delete "The contract described in subsection (a)" and insert "**A real property improvement contract**".

Page 14, line 9, delete "The" and insert "A".

Page 14, line 39, delete "policy" and insert "policy,".



Page 14, line 40, delete "described in section 2.6(1) or 2.6(2) of this chapter,".

Page 18, line 13, delete "IC 24-5-11-10(i)" and insert "**IC 24-5-11-10(h)**".

Renumber all SECTIONS consecutively.

(Reference is to ESB 353 as printed April 3, 2017.)

CARBAUGH

