

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 2395**

4 (By Delegates Westfall, Pasdon, B. White, Frich, O'Neal
5 and Ashley)

6
7 (Originating in the House Committee on Judiciary)

8 [February 25, 2015]

9
10 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
11 designated §46A-6M-1, §46A-6M-2, §46A-6M-3, §46A-6M-4, §46A-6M-5 and §46A-6M-6,
12 all relating generally to providing consumers with the right to cancel residential roofing
13 contracts where the contract is expected to be paid from a property and casualty insurance
14 policy; providing definitions; establishing a consumer's right to cancel; creating standard
15 disclosure and notice requirements; providing for advanced payment prohibition, refunds,
16 emergency repairs and unenforceability of contract; prohibiting certain acts; private
17 remedies; and misdemeanor criminal offense and penalty.

18 *Be it enacted by the Legislature of West Virginia:*

19 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
20 article, designated §46A-6M-1, §46A-6M-2, §46A-6M-3, §46A-6M-4, §46A-6M-5 and §46A-6M-6,
21 all to read as follows:

22 **ARTICLE 6M. STORM SCAMMER CONSUMER PROTECTION ACT.**

23 **§46A-6M-1. Definitions.**

24 As used in this article:

1 (1) "Residential real estate" means any real property located in West Virginia, upon which
2 is constructed or intended to be constructed a dwelling;

3 (2) "Roof system" means the components of a roof to include, but not be limited to, covering,
4 framing, insulation, sheathing, ventilation, guttering and weatherproofing; and

5 (3) "Roofing contractor" means a person or entity in the business of contracting or offering
6 to contract with an owner of residential real estate to repair or replace a roof system.

7 **§46A-6M-2. Consumer's right to cancel residential roofing contract.**

8 (a) A person, who on or after July 1, 2015, enters into a contract with a roofing contractor
9 to provide goods or services related to a roof system of residential real estate where the goods or
10 services are expected to be paid from the proceeds of a property and casualty insurance policy, may
11 cancel the contract prior to midnight of the fifth business day after the person has received notice
12 from the insurer that all or part of the claim is not a covered loss under the property and casualty
13 insurance policy.

14 (b) Cancellation shall be considered to have occurred when the person either personally
15 delivers written notice of cancellation to the roofing contractor; deposits the written notice of
16 cancellation in the United States mail, postage prepaid and addressed to the roofing contractor at the
17 address stated in the contract; or, if applicable, at the time notice of cancellation is transmitted to the
18 roofing contractor by facsimile or at the time an e-mail notice of cancellation is sent.

19 (c) Notice of cancellation given by the person need not take a particular form and is sufficient
20 if it indicates by any form of written expression the intention of the person not to be bound by the
21 contract.

22 **§46A-6M-3. Roofing contractor's duty to disclose rights of the consumer via standard form.**

1 Prior to entering into a contract on or after July 1, 2015, for the provision of goods or services
2 relating to the repair or replacement of any part of a roof system of residential real estate as provided
3 in section two of this article, a roofing contractor shall furnish the owner of the residential real estate
4 with:

5 (1) The mailing address of the roofing contractor through which written communication may
6 be received;

7 (2) The telephone number of the roofing contractor and, if applicable, the facsimile number
8 and e-mail address;

9 (3) A statement in at least ten point boldface type that states: "Because all or part of the cost
10 of the roofing repair or replacement is expected to be paid out of the proceeds of a property and
11 casualty insurance policy, you may cancel this contract at any time before midnight on the fifth
12 business day after you have received written notification from your insurer that all or any part of the
13 claim or contract is not a covered loss under the insurance policy. This right to cancel is in addition
14 to any other rights of cancellation you may have under state or federal law or regulation. However,
15 be advised that if you cancel this contract, you will still be responsible to pay the reasonable and
16 customary expenses of any emergency repair services you have authorized. See the attached Notice
17 of Cancellation form for an explanation of this right."; and

18 (4) A fully completed form in duplicate, under the conspicuous caption "NOTICE OF
19 CANCELLATION," and attached to but easily detachable from the contract, in at least ten point
20 boldface type that shall read as follows:

21 "NOTICE OF CANCELLATION

22 (enter date of transaction)

1 If you are notified by your insurer that all or any part of the claim or contract is not a covered
2 loss under the insurance policy, you may cancel this contract without penalty or monetary obligation,
3 except where you have authorized emergency repair services which you will still be responsible for
4 paying, before midnight of the fifth business day after you have received notice from your insurer.
5 To cancel this transaction you may use any of the following methods: Mail or otherwise deliver a
6 signed and dated copy of this cancellation notice, or any other written notice of cancellation which
7 you- sign-and date, to (enter physical address of roofing contractor), or e-mail a notice of
8 cancellation to (enter e-mail address of roofing contractor), or transmit a notice of cancellation to
9 (enter facsimile number of roofing contractor), not later than midnight of the fifth day after you
10 receive notice from your insurer. By signing below, you certify that your insurer has denied all or
11 part of your claim.

12 I HEREBY ATTEST THAT I HAVE BEEN NOTIFIED BY THE INSURER THAT ALL OR PART
13 OF MY CLAIM HAS BEEN DENIED AND I HEREBY CANCEL THIS TRANSACTION.

14 (Date)

15 (Buyer's Signature)"

16 **§46A-6M-4. Advanced payments prohibited; refunds; emergency repairs; unenforceable**
17 **contract.**

18 (a) Except as provided in subsection (c) of this section, on or after July 1, 2015, a roofing
19 contractor may not require any advance payments under a contract for the repair or replacement of
20 any part of a roof system of residential real estate when payment is expected to be made from the
21 proceeds of a property or casualty insurance policy until the cancellation period, as provided in
22 section two of this article has expired.

1 (b) Within ten days after a contract has been canceled as provided in section two of this
2 article, a roofing contractor shall tender to the payor any payments, partial payments, or deposits
3 made, and any note or other evidence of indebtedness, except as provided in subsection (c) of this
4 section.

5 (c) A roofing contractor that performs any emergency repair services authorized by the owner
6 of residential real estate, may collect a reasonable and customary amount for the emergency repair
7 services performed from the authorizing owner.

8 (d) Any provision in a contract executed on or after July 1, 2015, for the repair of a roof
9 system of residential real estate, as provided in sections one and five of this article, that requires the
10 payment of any fee, except for repair services performed under subsection (c) of this section, is not
11 enforceable against any person who has canceled a contract under section two of this article.

12 **§46A-6M-5. Roofing contractors; prohibited acts.**

13 (a) Notwithstanding the provisions relating to public adjusters as defined in section one-e,
14 article twelve-b, chapter thirty-three of this code, on or after July 1, 2015, a roofing contractor may
15 not represent, negotiate, or advertise to represent or negotiate on behalf of an owner of residential
16 real estate on any insurance claim in connection with the repair or replacement of a roof system.

17 Nothing in this subsection may be construed to prohibit a roofing contractor from:

18 (1) Providing an estimate for repair, replacement, construction or reconstruction of the
19 property to the owner of residential real estate; or

20 (2) Conferring with an insurance company's representative about damage to the property after
21 a claim has been submitted by the owner of residential real estate.

22 (b) On or after July 1, 2015, a roofing contractor or person representing a roofing contractor

1 may not:

2 (1) Offer to pay or rebate all or any portion of an insurance deductible or claims proceeds as
3 an inducement to the sale of goods or services related to a residential roof contract;

4 (2) Pay the owner of residential real estate for whom services have been performed pursuant
5 to this article for any reason or any form of compensation, including, but not limited to a:

6 (A) Bonus;

7 (B) Coupon;

8 (C) Credit;

9 (D) Gift;

10 (E) Prize;

11 (F) Referral fee; or

12 (G) Any other tangible item having a monetary value.

13 **§46A-6M-6. Private remedies for violation of article; criminal penalties.**

14 (a) If a roofing contractor violates the provisions of this article, the insured or the applicable
15 insurer may bring an action against the roofing contractor in a court of competent jurisdiction for
16 damages sustained by the insured or insurer as a consequence of the roofing contractor's violation.

17 (b) A roofing contractor who willfully violates the provisions of this article is guilty of a
18 misdemeanor and, upon conviction thereof, shall be fined not more than \$5,000 or confined in jail
19 not more than one year, or both fined and confined.

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