

COMMITTEE SUBSTITUTE

for

H. B. 2395

(BY DELEGATE(S) WESTFALL, PASDON, B. WHITE,
FRICH, O'NEAL AND ASHLEY)

(Originating in the House Committee on the Judiciary)

[February 25, 2015]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §46A-6M-1, §46A-6M-2, §46A-6M-3, §46A-6M-4, §46A-6M-5 and §46A-6M-6, all relating generally to providing consumers with the right to cancel residential roofing contracts where the contract is expected to be paid from a property and casualty insurance policy; providing definitions; establishing a consumer's right to cancel; creating standard disclosure and notice requirements; providing for

advanced payment prohibition, refunds, emergency repairs and unenforceability of contract; prohibiting certain acts; private remedies; and misdemeanor criminal offense and penalty.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6M. STORM SCAMMER CONSUMER PROTECTION ACT.

§46A-6M-1. Definitions.

1 As used in this article:

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

5 (2) “Roof system” means the components of a roof to
6 include, but not be limited to, covering, framing, insulation,
7 sheathing, ventilation, guttering and weatherproofing; and

8 (3) “Roofing contractor” means a person or entity in the
9 business of contracting or offering to contract with an owner of
10 residential real estate to repair or replace a roof system.

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

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

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

18 (c) Notice of cancellation given by the person need not take
19 a particular form and is sufficient if it indicates by any form of

20 written expression the intention of the person not to be bound by
21 the contract.

§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
2 the provision of goods or services relating to the repair or
3 replacement of any part of a roof system of residential real estate
4 as provided in section two of this article, a roofing contractor
5 shall furnish the owner of the residential real estate with:

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

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

10 (3) A statement in at least ten point boldface type that states:
11 “Because all or part of the cost of the roofing repair or
12 replacement is expected to be paid out of the proceeds of a
13 property and casualty insurance policy, you may cancel this
14 contract at any time before midnight on the fifth business day
15 after you have received written notification from your insurer
16 that all or any part of the claim or contract is not a covered loss

17 under the insurance policy. This right to cancel is in addition to
18 any other rights of cancellation you may have under state or
19 federal law or regulation. However, be advised that if you cancel
20 this contract, you will still be responsible to pay the reasonable
21 and customary expenses of any emergency repair services you
22 have authorized. See the attached Notice of Cancellation form
23 for an explanation of this right.”; and

24 (4) A fully completed form in duplicate, under the
25 conspicuous caption “NOTICE OF CANCELLATION,” and
26 attached to but easily detachable from the contract, in at least ten
27 point boldface type that shall read as follows:

28 “NOTICE OF CANCELLATION

29 (enter date of transaction)

30 If you are notified by your insurer that all or any part of the
31 claim or contract is not a covered loss under the insurance
32 policy, you may cancel this contract without penalty or monetary
33 obligation, except where you have authorized emergency repair
34 services which you will still be responsible for paying, before
35 midnight of the fifth business day after you have received notice
36 from your insurer. To cancel this transaction you may use any of

37 the following methods: Mail or otherwise deliver a signed and
38 dated copy of this cancellation notice, or any other written notice
39 of cancellation which you- sign-and date, to (enter physical
40 address of roofing contractor), or e-mail a notice of cancellation
41 to (enter e-mail address of roofing contractor), or transmit a
42 notice of cancellation to (enter facsimile number of roofing
43 contractor), not later than midnight of the fifth day after you
44 receive notice from your insurer. By signing below, you certify
45 that your insurer has denied all or part of your claim.

46 I HEREBY ATTEST THAT I HAVE BEEN NOTIFIED BY
47 THE INSURER THAT ALL OR PART OF MY CLAIM HAS
48 BEEN DENIED AND I HEREBY CANCEL THIS
49 TRANSACTION.

50 (Date)

51 (Buyer's Signature)"

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

1 (a) Except as provided in subsection (c) of this section, on or
2 after July 1, 2015, a roofing contractor may not require any
3 advance payments under a contract for the repair or replacement

4 of any part of a roof system of residential real estate when
5 payment is expected to be made from the proceeds of a property
6 or casualty insurance policy until the cancellation period, as
7 provided in section two of this article has expired.

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

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

17 (d) Any provision in a contract executed on or after July 1,
18 2015, for the repair of a roof system of residential real estate, as
19 provided in sections one and five of this article, that requires the
20 payment of any fee, except for repair services performed under
21 subsection (c) of this section, is not enforceable against any
22 person who has canceled a contract under section two of this
23 article.

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

1 (a) Notwithstanding the provisions relating to public
2 adjusters as defined in section one-e, article twelve-b, chapter
3 thirty-three of this code, on or after July 1, 2015, a roofing
4 contractor may not represent, negotiate, or advertise to represent
5 or negotiate on behalf of an owner of residential real estate on
6 any insurance claim in connection with the repair or replacement
7 of a roof system. Nothing in this subsection may be construed to
8 prohibit a roofing contractor from:

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

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

15 (b) On or after July 1, 2015, a roofing contractor or person
16 representing a roofing contractor may not:

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

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

24 (A) Bonus;

25 (B) Coupon;

26 (C) Credit;

27 (D) Gift;

28 (E) Prize;

29 (F) Referral fee; or

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

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

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

6 (b) A roofing contractor who willfully violates the
7 provisions of this article is guilty of a misdemeanor and, upon

- 8 conviction thereof, shall be fined not more than \$5,000 or
- 9 confined in jail not more than one year, or both fined and
- 10 confined.

