SENATE BILL No. 353

DIGEST OF SB 353 (Updated February 23, 2017 3:18 pm - DI 128)

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) Expand the scope of the statute to cover improvements made to commercial real property in addition to residential real property. (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 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) Make conforming changes.

Effective: July 1, 2017.

Head, Randolph Lonnie M

January 10, 2017, read first time and referred to Committee on Civil Law. 
February 23, 2017, read second time, amended, ordered engrossed.

SB 353—LS 7189/DI 101
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:

SECTION 1. IC 24-5-0.5-3, AS AMENDED BY P.L.65-2014, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 3. (a) A supplier may not commit an unfair, abusive, or deceptive act, omission, or practice in connection with a consumer transaction. Such an act, omission, or practice by a supplier is a violation of this chapter whether it occurs before, during, or after the transaction. An act, omission, or practice prohibited by this section includes both implicit and explicit misrepresentations.

(b) Without limiting the scope of subsection (a), the following acts, and the following representations as to the subject matter of a consumer transaction, made orally, in writing, or by electronic communication, by a supplier, are deceptive acts:

(1) That such subject of a consumer transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits it does not have which the supplier knows or should
reasonably know it does not have.

(2) That such subject of a consumer transaction is of a particular standard, quality, grade, style, or model, if it is not and if the supplier knows or should reasonably know that it is not.

(3) That such subject of a consumer transaction is new or unused, if it is not and if the supplier knows or should reasonably know that it is not.

(4) That such subject of a consumer transaction will be supplied to the public in greater quantity than the supplier intends or reasonably expects.

(5) That replacement or repair constituting the subject of a consumer transaction is needed, if it is not and if the supplier knows or should reasonably know that it is not.

(6) That a specific price advantage exists as to such subject of a consumer transaction, if it does not and if the supplier knows or should reasonably know that it does not.

(7) That the supplier has a sponsorship, approval, or affiliation in such consumer transaction the supplier does not have, and which the supplier knows or should reasonably know that the supplier does not have.

(8) That such consumer transaction involves or does not involve a warranty, a disclaimers of warranties, or other rights, remedies, or obligations, if the representation is false and if the supplier knows or should reasonably know that the representation is false.

(9) That the consumer will receive a rebate, discount, or other benefit as an inducement for entering into a sale or lease in return for giving the supplier the names of prospective consumers or otherwise helping the supplier to enter into other consumer transactions, if earning the benefit, rebate, or discount is contingent upon the occurrence of an event subsequent to the time the consumer agrees to the purchase or lease.

(10) That the supplier is able to deliver or complete the subject of the consumer transaction within a stated period of time, when the supplier knows or should reasonably know the supplier could not. If no time period has been stated by the supplier, there is a presumption that the supplier has represented that the supplier will deliver or complete the subject of the consumer transaction within a reasonable time, according to the course of dealing or the usage of the trade.

(11) That the consumer will be able to purchase the subject of the consumer transaction as advertised by the supplier, if the supplier does not intend to sell it.

SB 353—LS 7189/DI 101
(12) That the replacement or repair constituting the subject of a consumer transaction can be made by the supplier for the estimate the supplier gives a customer for the replacement or repair, if the specified work is completed and:

(A) the cost exceeds the estimate by an amount equal to or greater than ten percent (10%) of the estimate;
(B) the supplier did not obtain written permission from the customer to authorize the supplier to complete the work even if the cost would exceed the amounts specified in clause (A);
(C) the total cost for services and parts for a single transaction is more than seven hundred fifty dollars ($750); and
(D) the supplier knew or reasonably should have known that the cost would exceed the estimate in the amounts specified in clause (A).

(13) That the replacement or repair constituting the subject of a consumer transaction is needed, and that the supplier disposes of the part repaired or replaced earlier than seventy-two (72) hours after both:

(A) the customer has been notified that the work has been completed; and
(B) the part repaired or replaced has been made available for examination upon the request of the customer.

(14) Engaging in the replacement or repair of the subject of a consumer transaction if the consumer has not authorized the replacement or repair, and if the supplier knows or should reasonably know that it is not authorized.

(15) The act of misrepresenting the geographic location of the supplier by listing a fictitious business name or an assumed business name (as described in IC 23-15-1) in a local telephone directory if:

(A) the name misrepresents the supplier's geographic location;
(B) the listing fails to identify the locality and state of the supplier's business;
(C) calls to the local telephone number are routinely forwarded or otherwise transferred to a supplier's business location that is outside the calling area covered by the local telephone directory; and
(D) the supplier's business location is located in a county that is not contiguous to a county in the calling area covered by the local telephone directory.

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

(32) A violation of IC 24-5-21 (concerning prescription drug
discount cards), as set forth in IC 24-5-21-7.

(33) A violation of IC 24-5-23.5-7 (concerning real estate
appraisals), as set forth in IC 24-5-23.5-9.

(34) A violation of IC 24-5-26 (concerning identity theft), as set
forth in IC 24-5-26-3.

(35) A violation of IC 24-5.5 (concerning mortgage rescue fraud),
as set forth in IC 24-5.5-6-1.

(36) A violation of IC 24-8 (concerning promotional gifts and
contests), as set forth in IC 24-8-6-3.

(37) A violation of IC 21-18.5-6 (concerning representations
made by a postsecondary credit bearing proprietary educational
institution), as set forth in IC 21-18.5-6-22.5.

(c) Any representations on or within a product or its packaging or
in advertising or promotional materials which would constitute a
deceptive act shall be the deceptive act both of the supplier who places
such representation thereon or therein, or who authored such materials,
and such other suppliers who shall state orally or in writing that such
representation is true if such other supplier shall know or have reason
to know that such representation was false.

(d) If a supplier shows by a preponderance of the evidence that an
act resulted from a bona fide error notwithstanding the maintenance of
procedures reasonably adopted to avoid the error, such act shall not be
deceptive within the meaning of this chapter.

(e) It shall be a defense to any action brought under this chapter that
the representation constituting an alleged deceptive act was one made
in good faith by the supplier without knowledge of its falsity and in
reliance upon the oral or written representations of the manufacturer,
the person from whom the supplier acquired the product, any testing
organization, or any other person provided that the source thereof is
disclosed to the consumer.

(f) For purposes of subsection (b)(12), a supplier that provides
estimates before performing repair or replacement work for a customer
shall give the customer a written estimate itemizing as closely as
possible the price for labor and parts necessary for the specific job
before commencing the work.

(g) For purposes of subsection (b)(15) and (b)(16), a telephone
company or other provider of a telephone directory or directory
assistance service or its officer or agent is immune from liability for
publishing the listing of a fictitious business name or assumed business
name of a supplier in its directory or directory assistance database
unless the telephone company or other provider of a telephone
directory or directory assistance service is the same person as the
supplier who has committed the deceptive act.

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

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

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

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

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

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

SB 353—LS 7189/DI 101
(1) personal line policy of property and casualty insurance coverage;
(2) commercial line farm insurance policy that insures residential property; or
(3) commercial line policy of property and casualty insurance coverage in which the policyholder has not more than fifty (50) employees.

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

(1) that is a policyholder or an insured under a:
   (A) personal line policy of property and casualty insurance coverage;
   (B) commercial line farm insurance policy that insures residential property; or
   (C) commercial line property and casualty insurance coverage in which the person has not more than fifty (50) employees; and

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

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

SECTION 9. IC 24-5-11-3, AS AMENDED BY P.L.82-2012, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 3. (a) As used in this chapter, "home real property improvement" means any alteration, repair, replacement, reconstruction, or other modification of residential real property.
   (b) The term includes the following:
      (1) An exterior home improvement.
      (2) An interior improvement.

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

SECTION 11. IC 24-5-11-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 5. As used in this chapter, "home real property improvement contract price" means the amount actually charged for the services, materials, and work to be performed under the home real property improvement contract but does not include financing costs, loan consolidation amounts, taxes, and governmental fees paid by or on behalf of the consumer, amounts returned to or on behalf of the consumer, or similar costs not related to the home real property improvement.

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

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

(a) who is a policyholder or an insured under a:
   (A) personal line policy of property and casualty insurance coverage; or
   (B) commercial line farm insurance policy that insures residential property; and

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

SECTION 14. IC 24-5-11-7.5 IS REPEALED [EFFECTIVE JULY 1, 2017]. Sec. 7.5: (a) As used in this chapter, "residential property" means real property that:

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

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

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

SECTION 16. IC 24-5-11-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 9. Where If a license

SB 353—LS 7189/DI 101
or permit is necessary for any part of a home real property improvement, the home real property improvement contract shall must be subject to conditioned upon the appropriate party obtaining the necessary licenses or permits prior to before any work commencing under the real property improvement contract commences.

SECTION 17. IC 24-5-11-10, AS AMENDED BY P.L.82-2012, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 10. (a) The home A real property improvement supplier shall provide a completed home real property improvement contract to the consumer before it is signed by the consumer. Except as provided in subsection (c), and subject to subsection (e) and section 10.6 of this chapter for contracts entered into after June 30, 2017, the contract must contain at a minimum the following:

(1) The name of the consumer and the address of the residential real property that is the subject of the home real property improvement.

(2) The following information:
   (A) The name and address of the home real property improvement supplier and, each of the telephone numbers and names of any for a real property improvement contract executed after June 30, 2017, an electronic mail address maintained and used by the real property improvement supplier to communicate with consumers.
   (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 home real property improvement contract was submitted to the consumer and any time limitation on the consumer's acceptance of the home real property improvement contract.

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

(5) If the description required by subdivision (4) does not include the specifications for the home real property improvement, a
statement that the specifications will be provided to the consumer before commencing any work is commenced under the real property improvement contract and that the home 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 home real property improvements.
(7) A statement of any contingencies that would materially change the approximate completion date.
(8) The home real property improvement contract price.
(9) Subject to subsections (b) and (c)(9), 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.
(9) (10) Signature lines for the home real property improvement supplier or the supplier's agent and for each consumer who is to be a party to the home real property improvement contract with a legible printed or a typed version of that person's name placed directly after or below the signature.
(b) The home real property improvement contract must be in a form that each consumer who is a party to it can reasonably read and understand.
(c) If a home real property improvement contract is entered into for 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, or for damage, loss, or expense for which a third party is liable, the following conditions and requirements apply to the home real property improvement contract:
   (1) For the purpose of subsection (a)(4) through (a)(7), the description, completion dates, and statement of contingencies must be prepared for the proposed home real property improvements to the extent that the damage, loss, or expense is reasonably known by the home real property improvement supplier.
   (2) For the purpose of subsection (a)(4), the requirement that a
reasonably detailed description be included in the contract may be satisfied with a statement that the subject real estate will be repaired or restored to the same condition in which the real estate existed before the damage, loss, or expense occurred, or to a comparable condition.

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

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

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

(6) This subdivision applies to a home real property improvement contract that is entered into by a home real property improvement supplier and an insured consumer after June 30, 2012, and before July 1, 2017, and that includes one (1) or more exterior home improvements. Before entering into a home real property improvement contract 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 insurance policy that insures residential property, described in section 2.6(1) or 2.6(2) of this chapter, the home 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 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 described in section 2.6(1) or 2.6(2) of this chapter. 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
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 insurance policy described in section 2.6(3) of
this chapter. However, this subdivision does not apply to a
consumer and a real property improvement supplier that
have a prior business relationship. After June 30, 2017, a real
property improvement supplier may not enter into a real
property improvement contract to which this subdivision
applies unless one (1) or more of the following apply:
(A) The real property improvement supplier resides, is
domiciled, or is authorized to do business in Indiana.
(B) The real property improvement supplier maintains in
Indiana one (1) or more fixed physical locations from
which the real property improvement supplier engages in
or solicits real property improvement contracts.
(C) The real property improvement supplier has appointed
a resident agent in Indiana for service of legal process.

(9) This subdivision applies to a real property improvement
contract that is entered into by a real property improvement
supplier and an insured consumer after June 30, 2017, and in
connection with which a third party described in subsection
(a)(9) will lease or furnish labor, services, material,
equipment, or machinery to, or on behalf of, the real property
improvement supplier. Subject to subsection (b), a real
property improvement contract to which this subdivision
applies must include, in addition to the statement required
under subsection (a)(9), a statement that neither the real
property improvement supplier nor a third party described in
subsection (a)(9) may initiate or pursue a claim with the
insured consumer's insurance company.
(d) A modification to a home real property improvement contract
is not enforceable against a consumer unless the modification is stated
in a writing that is signed by the consumer.
(e) This subsection applies to a real property improvement
contract that is executed after June 30, 2017, and in connection
with which a third party described in subsection (a)(9) leases or
furnishes labor, services, material, equipment, or machinery to, or
on behalf of, the real property improvement supplier that is a
party to the contract. Neither the real property improvement
supplier nor a party described in subsection (a)(9) may initiate or
pursue a claim with an insured consumer's insurance company.

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

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

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

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

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

(2) Advertising, offering, or promising to pay to an insured
consumer, or to any other person, any form of compensation,
including a gift, prize, bonus, coupon, credit, referral fee, or other
item of monetary value for any reason, including the display of a
sign or advertisement on residential real property.

(b) This subsection applies to a home real property improvement
contract that is entered into by a home real property improvement
supplier and an insured consumer after June 30, 2012, and before July
1, 2017, and that includes one (1) or more exterior home
improvements. An insured consumer who enters into a home real
property improvement contract for which the home real property
improvement contract price, or charges for other goods and services
under the contract, are 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 insurance policy that insures residential
property, described in section 2.6(1) or 2.6(2) of this chapter, may
cancel the contract before midnight on the third business day after the
insured consumer has received written notice from the insurance

SB 353—LS 7189/DI 101
company that any part of the claim or contract is not a covered loss under the insurance policy. An insured consumer who seeks to cancel a home real property improvement contract under this subsection must provide to the home real property improvement supplier, at the address specified in the form provided under section 10(c)(6)(B) of this chapter, written notice of the insured 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 home real property improvement supplier. Subject to subsection (c), not later than ten (10) days after a home real property improvement contract is cancelled under this subsection, the home real property improvement supplier shall tender to the insured consumer:

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

(c) If:

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

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

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

SECTION 19. IC 24-5-11-10.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: 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 of the following:"

(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.

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 of the following:

(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.

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

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

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

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.
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