

1 **Senate Bill No. 466**

2 (By Senators D. Hall, Tucker, Barnes, Green, Cann, Carmichael,
3 Nohe, Stollings, Williams, Beach and Kessler (Mr. President))

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5 [Introduced February 3, 2014; referred to the Committee on
6 Banking and Insurance; and then to the Committee on the
7 Judiciary.]
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10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new article, designated §46A-6M-1, §46A-6M-2,
12 §46A-6M-3, §46A-6M-4, §46A-6M-5 and §46A-6M-6, all relating
13 generally to providing consumers with the right to cancel
14 residential roofing contracts where the contract is expected
15 to be paid from a property and casualty insurance policy;
16 providing definitions; establishing a consumer's right to
17 cancel; creating standard disclosure and notice requirements;
18 providing rules for the proscribed cancellation period;
19 prohibiting certain acts; and misdemeanor criminal offense and
20 penalty.

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

22 That the Code of West Virginia, 1931, as amended, be amended
23 by adding thereto a new section, designated §46A-6M-1, §46A-6M-2,
24 §46A-6M-3, §46A-6M-4, §46A-6M-5 and §46A-6M-6, all to read as

1 follows:

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

3 **§46A-6M-1. Definitions.**

4 As used in this article:

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

8 (b) "Roof system" means the components of a roof to include,
9 but not be limited to, covering, framing, insulation, sheathing,
10 ventilation, guttering and weatherproofing; and

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

14 **§46A-6M-2. Consumer's right to cancel residential roofing**
15 **contract.**

16 (a) A person, who on or after July 1, 2014, enters into a
17 contract with a roofing contractor to provide goods or services
18 related to a roof system of residential real estate where the goods
19 or services are expected to be paid from the proceeds of a property
20 and casualty insurance policy, may cancel the contract prior to
21 midnight of the fifth business day after the person has received
22 written notice from the insurer that all or part of the claim is
23 not a covered loss under the property and casualty insurance

1 policy.

2 (b) Cancellation shall be considered to have occurred when the
3 person either personally delivers written notice of cancellation to
4 the roofing contractor; deposits the written notice of cancellation
5 in the United States mail, postage prepaid and addressed to the
6 roofing contractor at the address stated in the contract; or, if
7 applicable, at the time notice of cancellation is transmitted to
8 the roofing contractor by facsimile or at the time an e-mail notice
9 of cancellation is sent.

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

14 **§46A-6M-3. Roofing contractor's duty to disclose rights of the**
15 **consumer via standard form.**

16 Prior to entering into a contract on or after July 1, 2014,
17 for the provision of goods or services relating to the repair or
18 replacement of any part of a roof system of residential real estate
19 as provided in section two of this article, a roofing contractor
20 shall furnish the owner of the residential real estate with:

21 (a) The mailing address of the roofing contractor through
22 which written communication may be received;

23 (b) The telephone number of the roofing contractor and, if
24 applicable, the facsimile number and e-mail address;

1 (c) A statement in at least ten point boldface type that
2 states: "You may cancel this contract at any time before midnight
3 on the fifth business day after you have received written
4 notification from your insurer that all or any part of the claim or
5 contract is not a covered loss under the insurance policy. This
6 right to cancel is in addition to any other rights of cancellation
7 you may have under state or federal law or regulation. See the
8 attached Notice of Cancellation form for an explanation of this
9 right."; and

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

14 "NOTICE OF CANCELLATION

15 (enter date of transaction)

16 If you are notified by your insurer that all or any part of
17 the claim or contract is not a covered loss under the insurance
18 policy, you may cancel this contract without penalty or monetary
19 obligation before midnight of the fifth business day after you have
20 received notice from your insurer. To cancel this transaction you
21 may use any of the following methods: Mail or otherwise deliver a
22 signed and dated copy of this cancellation notice, or any other
23 written notice of cancellation which you sign and date, to (enter
24 physical address of roofing contractor), or e-mail a notice of

1 cancellation to (enter e-mail address of roofing contractor), or
2 transmit a notice of cancellation to (enter facsimile number of
3 roofing contractor), not later than midnight of the fifth day after
4 you receive notice from your insurer.

5 I HEREBY CANCEL THIS TRANSACTION.

6 (Date)

7 (Buyer's Signature) "

8 **§46A-6M-4. Rules for proscribed consumer cancellation period.**

9 (a) Except as provided in subsection (c) of this section, on
10 or after July 1, 2014, a roofing contractor may not require any
11 advance payments under a contract for the repair or replacement of
12 any part of a roof system of residential real estate when payment
13 is expected to be made from the proceeds of a property or casualty
14 insurance policy until the cancellation period, as provided in
15 section two of this article has expired.

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

21 (c) A roofing contractor that performs any repair services
22 authorized by the owner of residential real estate, including, but
23 not limited to, repair services necessary to prevent further damage
24 to the premises, may collect a reasonable and customary amount for

1 the repair services performed.

2 (d) Any provision in a contract executed on or after July 1,
3 2014, for the repair of a roof system of residential real estate,
4 as provided in sections one and five of this article, that requires
5 the payment of any fee, except for repair services performed under
6 subsection (c) of this section, is not enforceable against any
7 person who has canceled a contract under section two of this
8 article.

9 **§46A-6M-5. Roofing contractors; prohibited acts.**

10 (a) On or after July 1, 2014, a roofing contractor may not
11 represent, negotiate, or advertise to represent or negotiate on
12 behalf of an owner of residential real estate on any insurance
13 claim in connection with the repair or replacement of a roof
14 system. Nothing in this subsection may be construed to prohibit a
15 roofing contractor from:

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

19 (2) Conferring with an insurance company's representative
20 about damage to the property after a claim has been submitted by
21 the owner of residential real estate. This subsection does not
22 apply to a public adjuster as defined in section one-e, article
23 twelve-b, chapter thirty-three of this code.

24 (b) On or after July 1, 2014, a roofing contractor or person

1 representing a roofing contractor may not:

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

5 (2) Grant an allowance or discount against the fee to be
6 charged under the contract; or

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

10 (A) Bonus;

11 (B) Coupon;

12 (C) Credit;

13 (D) Gift;

14 (E) Prize;

15 (F) Referral fee; or

16 (G) Any other item having a monetary value.

17 **§46A-6M-6. Private remedies for violations of this article;**
18 **penalties.**

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

24 (b) A roofing contractor who willfully violates the provisions

1 of this article is guilty of a misdemeanor and, upon conviction
2 thereof, shall be fined not more than \$5,000 or confined in jail
3 not more than one year, or both fined and confined.

NOTE: The purpose of this bill is to provide consumers with the right to cancel residential roofing contracts where the contract is expected to be paid from a property and casualty insurance policy. The bill provides definitions; establishes a consumer's right to cancel; creates standard disclosure and notice requirements; and provides rules for the proscribed cancellation period. The bill also prohibits certain acts and provides misdemeanor criminal offense and penalty.

This article is new; therefore, strike-throughs and underscoring have been omitted.