

E N R O L L E D

COMMITTEE SUBSTITUTE

for

H. B. 2395

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

[Passed March 14, 2015;
in effect ninety days from passage.]

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) “Emergency repair” means a repair that is necessary to
3 prevent the risk of imminent injury to a person or further damage
4 to the homeowner’s residence;

5 (2) “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 (3) “Roof system” means the components of a roof to
9 include, but not be limited to, covering, framing, insulation,
10 sheathing, ventilation, guttering and weatherproofing; and

11 (4) “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.

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

1 (a) An owner, 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 and who expects
4 the goods or services to be paid from the proceeds of a property
5 and casualty insurance policy, may cancel the contract prior to
6 midnight of the fifth business day after the owner has received

7 notice from the insurer that all or part of the claim is not a
8 covered loss under the property and casualty insurance policy.

9 (b) The contract with the roofing contract is cancelled when
10 the owner either personally delivers written notice of
11 cancellation to the roofing contractor; deposits the written notice
12 of cancellation in the United States mail, postage prepaid and
13 addressed to the roofing contractor at the address stated in the
14 contract; transmits the notice of cancellation to the roofing
15 contractor by facsimile; or sends an e-mails containing a notice
16 of cancellation.

17 (c) The owner may use any form of notice of cancellation
18 that is sufficient to indicate, by any form of written expression,
19 the intention of the owner not to be bound by 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 of the
10 contractor;

11 (3) A statement in at least ten point boldface type that states:
12 "Because you expect all or part of the cost of the roofing repair
13 or replacement to be paid out of the proceeds of a property and
14 casualty insurance policy, you may cancel this contract at any
15 time before midnight on the fifth business day after you have

16 received written notification from your insurer that all or any
17 part of the claim or contract is not a covered loss under the
18 insurance policy. This right to cancel is in addition to any other
19 rights of cancellation you may have under state or federal law or
20 rule or regulation. However, be advised that if you cancel this
21 contract, you are still responsible to pay the reasonable and
22 customary expenses of any emergency repair services you
23 authorized. See the attached Notice of Cancellation form for an
24 explanation of this right.”; and

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

29 “NOTICE OF CANCELLATION

30 (enter date of transaction)

31 If you are notified by your insurer that all or any part of the
32 claim or contract is not a covered loss under the insurance
33 policy, you may cancel this contract without penalty or monetary
34 obligation, except where you have authorized emergency repair
35 services for which you are still responsible for payment, before
36 midnight of the fifth business day after you have received notice
37 from your insurer. To cancel this transaction you may use any of
38 the following methods: Mail or otherwise deliver a signed and
39 dated copy of this cancellation notice, or any other written notice
40 of cancellation which you- sign-and date, to (enter physical
41 address of roofing contractor), or e-mail a notice of cancellation
42 to (enter e-mail address of roofing contractor), or transmit a
43 notice of cancellation to (enter facsimile number of roofing
44 contractor), not later than midnight of the fifth day after you
45 receive notice from your insurer. By signing below, you certify
46 that your insurer has denied all or part of your claim.

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

51 (Date)

52 (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 a 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 owner, 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 for 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 roof system 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 roofing 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 owner 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 owner 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.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within _____ this the _____
day of _____, 2015.

Governor

