



HOUSE BILL 643: Roofing Contractors/Consumer Protection

2015-2016 General Assembly

Committee: House Judiciary I
Introduced by: Rep. Arp
Analysis of: PCS to First Edition
H643-CSST-22

Date: April 19, 2015
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SUMMARY: *The proposed committee substitute for House Bill 643 would establish a new unfair and deceptive trade practice under Chapter 75 of the General Statutes. The PCS would do all of the following:*

- *Require all roofing repair contracts to be in writing.*
- *Require all roofing repair contracts where proceeds to pay for performance under the contract are expected from an insurance claim to have a right of cancellation if the consumer finds out the insurance claim will not be paid, in full or in part.*
- *Specify certain actions that a roof repair contractor cannot take.*

CURRENT LAW: North Carolina does not currently regulate or license individuals who perform roofing repair services, unless those services are performed as a general contractor.

G.S. 75-1.1 provides that unfair or deceptive acts or practices in or affecting commerce are unlawful. Whether an act or practice is unfair or deceptive usually depends on the facts of each case, but the general test is whether the act or practice has the capacity or tendency to deceive. Chapter 75 provides for the prosecution of such acts by the Attorney General and through private civil actions. Under suits initiated by the Attorney General, the court may impose a civil penalty of up to \$5,000 for each violation. Under private civil actions, the plaintiff may be entitled to treble damages and attorney's fees.

BILL ANALYSIS: The PCS would require that consumers (the person hiring a roofing repair contractor, including the property owner, person in legal possession of the property, or any agent thereof, including the State and any of its political subdivisions) and roofing repair contractors (any person engaged in the business of residential roofing services in North Carolina for a fee or who offers to engage in or solicits roofing-related services, including construction, installation, renovation, repair, maintenance, alteration, or waterproofing) who contract for a roofing repair (repairs to an existing roofing system with an estimated cost of more than \$750.00) to reduce that agreement to writing. The writing must contain: the name of the consumer; the name and contact information for the roofing repair contractor; the address and description of the property to be repaired; an estimate and description of the work to be done; the date of the contract; and a statement that the roofing repair contractor will hold in trust any payment from the consumer until the materials are delivered to the site or has performed a majority of the work.

If money to pay for performance on the roofing repair contract is expected to come from insurance proceeds, the contract must also allow for the consumer to cancel the contract if the insurance company does not pay, in full or in part, the insurance claim. In order to cancel, a consumer must notify the roofing repair contractor, in writing, by midnight of the third day following notification of the failure to

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pay, in full or in part, the insurance claim. All monies paid by the consumer to the roofing repair contractor must be returned to the consumer within 10 days upon cancellation, except for the reasonable value of any services performed by the roofing repair contractor for emergency services.

Roofing repair contractors are prohibited from doing any of the following:

1. Advertise or otherwise promise or offer to pay, or pay, all or any portion of any insurance deductible as an inducement to the sale of any materials, labor, and or services.
2. Offer, or provide, any upgraded work, material, or product, grant any allowance or offer any discount against the fees to be charged, or pay the consumer any form of compensation, gift, prize, bonus, coupon, credit, referral fee, trade-in or trade-in payment, advertising, or other fee or payment as an inducement to the sale of any materials, labor, or services.
3. Offer, or provide, anything of value in exchange for permitting the roofing repair contractor to display a sign or any other type of advertisement at the consumer's premises.
4. With respect to any insurance claim in connection with the repair or replacement of roof systems, or the performance of any other exterior repair, replacement, construction, or reconstruction work, do any of the following:
 - a. Seek to obtain, or obtain, a power of attorney from or on behalf of a consumer.
 - b. Offer to report or adjust a claim on behalf of a consumer.
 - c. Represent or negotiate, obtain, or attempt to obtain, an assignment of claims rights, benefits, or proceeds from or on behalf of a consumer.
 - d. Offer or advertise to represent or negotiate, obtain, or attempt to obtain an assignment of claims rights, benefits, or proceeds.

Violation of any of the above would be an unfair and deceptive trade practice.

This would not apply to persons engaged in the business of residential roofing services who meet any of the following descriptions:

- A licensed general contractor.
- A person engaged in the demolition of a structure or the cleanup of construction waste and debris that contains roofing material.
- A person working under the direct supervision of a roofing repair contractor who is hired either as an employee, day laborer, or contract laborer.
- A person providing roofing related services as a subcontractor under a licensed NC general contractor.

EFFECTIVE DATE: October 1, 2016, and applies to roofing repair contracts entered into on or after that date.