

House Bill 423 (AS PASSED HOUSE AND SENATE)

By: Representatives Maxwell of the 17th, Golick of the 34th, Hembree of the 67th, Murphy of the 120th, Hugley of the 133rd, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Part 2 of Article 15 of Chapter 1 of Title 10 of the Official Code of Georgia
2 Annotated, the "Fair Business Practices Act of 1975," so as to provide that certain acts by
3 residential roofing contractors as they relate to insurance claims shall be considered
4 violations of unfair trade practice; to provide for definitions; to provide for certain
5 contractual requirements; to provide for notice language; to amend Article 1 of Chapter 23
6 of Title 33, relating to agents, agencies, subagents, counselors, and adjusters, so as to prohibit
7 certain acts by public adjusters or persons acting as public adjusters to use rebates or other
8 compensation as inducement for an insured to enter into a contract; to amend Code Section
9 43-40-25, relating to violations by licensed community association managers, salespersons,
10 associate brokers, brokers, schools, and instructors sanctions and unfair trade practices, so
11 as to change provisions relating to unfair trade practices; to provide for related matters; to
12 repeal conflicting laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

14 **SECTION 1.**

15 Part 2 of Article 15 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated, the
16 "Fair Business Practices Act of 1975," is amended by adding a new Code section to read as
17 follows:

18 "10-1-393.12.

19 (a) As used in this Code section, the term:

20 (1) 'Residential real estate' means a new or existing building constructed for habitation
21 by one to four families, including detached garages.

22 (2) 'Residential roofing contractor' means a person or entity in the business of contracting
23 or offering to contract with an owner or possessor of residential real estate to repair or
24 replace roof systems.

25 (3) 'Roof system' means a roof covering, roof sheathing, roof weatherproofing, roof
26 framing, roof ventilation system, and insulation.

(b) A person who has entered into a written contract with a residential roofing contractor to provide goods or services to be paid from the proceeds of a property and casualty insurance policy may cancel the contract prior to midnight on the fifth business day after the insured has received written notice from the insurer that all or any part of the claim or contract is not a covered loss under such insurance policy. Cancellation shall be evidenced by the insured giving written notice of cancellation to the residential roofing contractor at the address stated in the contract. Notice of cancellation, if given by mail, shall be effective upon deposit into the United States mail, postage prepaid and properly addressed to the residential roofing contractor. Notice of cancellation need not take a particular form and shall be sufficient if it indicates, by any form of written expression, the intention of the insured not to be bound by the contract.

(c) Before entering a contract as provided in subsection (b) of this Code section, the residential roofing contractor shall:

(1) Furnish the insured a statement in boldface type of a minimum size of ten points, in substantially the following form:

'You may cancel this contract at any time before midnight on the fifth business day after you have received written notification from your insurer that all or any part of the claim or contract is not a covered loss under the insurance policy. This right to cancel is in addition to any other rights of cancellation which may be found in state or federal law or regulation. See attached notice of cancellation form for an explanation of this right';
and

(2) Furnish each insured a fully completed form in duplicate, captioned 'NOTICE OF CANCELLATION,' which shall be attached to the contract but easily detachable, and which shall contain in boldface type of a minimum size of ten points the following statement:

'NOTICE OF CANCELLATION'

If you are notified by your insurer 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 contractor) at (address of contractor's place of business) at any time prior to midnight on the fifth business day after you have received such notice from your insurer.

I HEREBY CANCEL THIS TRANSACTION

(date)

(insured's signature).

(d) In circumstances in which payment may be made from the proceeds of a property and casualty insurance policy, a residential roofing contractor shall not require any payments from an insured until the five-day cancellation period has expired. If, however, the residential roofing contractor has performed any emergency services, acknowledged by the insured in writing to be necessary to prevent damage to the premises, the residential roofing contractor shall be entitled to collect the amount due for the emergency services at the time they are rendered. Any provision in a contract as provided in subsection (b) of this Code section that requires the payment of any fee for anything except emergency services shall not be enforceable against any insured who has canceled a contract under this Code section.

(e) A residential roofing contractor shall not represent or negotiate, or offer or advertise to represent or negotiate, on behalf of an owner or possessor of residential real estate on any insurance claim in connection with the repair or replacement of roof systems. This subsection shall not apply to a public adjuster licensed under Chapter 23 of Title 33."

SECTION 2.

Article 1 of Chapter 23 of Title 33 of the Official Code of Georgia Annotated, relating to agents, agencies, subagents, counselors, and adjusters, is amended by revising Code Section 33-23-43, relating to authority of adjusters and penalty for violation, as follows:

"33-23-43.

(a) An adjuster licensed as both an independent and a public adjuster shall not represent both the insurer and the insured in the same transaction.

(b) An adjuster shall have authority under his or her license only to investigate, settle, or adjust and report to his or her principal upon claims arising under insurance contracts on behalf of insurers only if licensed as an independent adjuster or on behalf of insureds only if licensed as a public adjuster.

(c) No public adjuster, at any time, shall knowingly:

(1) Suggest or advise the employment of or name for employment a specific attorney or attorneys to represent a person in any matter relating to a person's potential claims, including any motor vehicle accident claims for personal injury, loss of consortium, property damages, or other special damages;

(2) Accept or agree to accept any money or other compensation from an attorney or any person acting on behalf of an attorney which the adjuster knows or should reasonably know is payment for the suggestion or advice by the adjuster to seek the services of the attorney or for the referral of any portion of a person's claim to the attorney; ~~or~~

(3) Hire or procure another to do any act prohibited by this subsection; or

(4) Advertise or promise to pay or rebate all or any portion of any insurance deductible as an inducement to the sale of goods or services. As used in this subsection, the term

'promise to pay or rebate' includes (A) granting any allowance or offering any discount against the fees to be charged, including, but not limited to, an allowance or discount in return for displaying a sign or other advertisement at the insured's premises, or (B) paying the insured or any person directly or indirectly associated with the property any form of compensation, gift, prize, bonus, coupon, credit, referral fee, or other item of monetary value for any reason.

(d) For purposes of subsection (c) of this Code section, the term 'public adjuster' shall include licensed public adjusters as defined by Code Section 33-23-1, ~~and persons representing themselves to be public adjusters who are not properly licensed by the Commissioner, and persons committing any act under paragraph (4) of subsection (c) of this Code section.~~

(e) Any person who violates any provision of subsection (c) of this Code section shall be guilty of a misdemeanor and such violation shall be grounds for suspension or revocation of licenses under this chapter."

SECTION 3.

Code Section 43-40-25, relating to violations by licensed community association managers, salespersons, associate brokers, brokers, schools, and instructors sanctions and unfair trade practices, is amended by revising paragraph (35) of subsection (b) as follows:

"(35) Failing to obtain a person's written agreement to refer that person to another ~~licensee~~ licensed broker for brokerage or relocation services and to inform such person being referred whether or not the licensee will receive a valuable consideration for such referral ~~and an estimate of such consideration.~~"

SECTION 4.

All laws and parts of laws in conflict with this Act are repealed.