

HOUSE BILL No. 6539

December 3, 2002, Introduced by Reps. Scranton and Lemmons and referred to the Committee on Insurance and Financial Services.

A bill to amend 1965 PA 332, entitled
"Home improvement finance act,"
by amending section 422 (MCL 445.1422).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 422. (1) The attorney general or the prosecuting
2 attorney of ~~any~~ A county may bring an action in the name of
3 ~~the~~ THIS state ~~to restrain or prevent any violation of this~~
4 ~~act or any continuance of any such violation. Such~~ FOR 1 OR
5 MORE OF THE FOLLOWING:

6 (A) INJUNCTIVE RELIEF AGAINST A VIOLATION OR CONTINUING VIO-
7 LATION OF THIS ACT.

8 (B) INJUNCTIVE RELIEF AGAINST AN INDIVIDUAL WHO IS NOT
9 LICENSED UNDER ARTICLE 24 OF THE OCCUPATIONAL CODE, 1980 PA 299,
10 MCL 339.2401 TO 339.2412.

(C) AN ORDER COMPELLING SATISFACTORY COMPLETION OF A HOME IMPROVEMENT CHARGE AGREEMENT, HOME IMPROVEMENT CHARGE SALE, HOME IMPROVEMENT INSTALLMENT CONTRACT, OR HOME IMPROVEMENT INSTALLMENT SALE.

(D) RESTITUTION.

(2) AN action ~~, in the case of~~ BROUGHT BY the attorney general ~~,~~ shall be brought in the circuit court of Ingham county, upon which jurisdiction ~~thereof~~ is conferred. ~~,~~ and, ~~in the case of~~ AN ACTION BROUGHT BY the prosecuting attorney ~~,~~ SHALL BE BROUGHT in the county where the defendant resides ~~,~~ OR has his OR HER principal place of business ~~,~~ or where the act sought to be restrained has been ~~,~~ PERFORMED or is about to be ~~,~~ performed.

(3) ~~-(2)-~~ A person who violates ~~any~~ AN order or decree entered ~~,~~ or injunction issued, pursuant to OR AN INJUNCTION ISSUED BY THE CIRCUIT COURT IN AN ACTION BROUGHT UNDER subsection (1) is ~~liable~~ SUBJECT to a civil ~~penalty~~ FINE of not more than \$1,000.00. ~~,~~ in the discretion of the court, to be recovered as judgments are now by law recovered. For the purpose of this section, the circuit court entering ~~any~~ AN order or judgment, or issuing ~~any~~ AN injunction, under ~~the provisions of~~ this section may retain jurisdiction, and the cause may be continued.

(4) A PERSON WHO SUFFERS LOSS AS A RESULT OF A VIOLATION OF THIS ACT MAY BRING AN ACTION AGAINST A HOME IMPROVEMENT CONTRACTOR FOR ACTUAL, CONSEQUENTIAL, EXEMPLARY, AND PUNITIVE DAMAGES AND REASONABLE ATTORNEY FEES AND COSTS.

1 (5) A PERSON WHO SUFFERS LOSS AS A RESULT OF A VIOLATION OF
2 THIS ACT IS ENTITLED TO STATUTORY DAMAGES IN THE AMOUNT OF
3 \$1,000.00 FOR EACH VIOLATION IN ADDITION TO ANY DAMAGES, FEES, OR
4 COSTS IMPOSED UNDER SUBSECTION (4).

5 (6) A PERSON WHO SUFFERS LOSS AS A RESULT OF A VIOLATION OF
6 THIS ACT MAY BRING A CLASS ACTION ON BEHALF OF PERSONS RESIDING
7 OR INJURED IN THIS STATE FOR A VIOLATION OF THIS ACT FOR ACTUAL,
8 CONSEQUENTIAL, EXEMPLARY, AND PUNITIVE DAMAGES.

9 (7) IF A HOME IMPROVEMENT CONTRACTOR VIOLATES THIS ACT, A
10 LIEN ACQUIRED BY THE HOME IMPROVEMENT CONTRACTOR OR A LIEN
11 ACQUIRED BY ANY LENDER WITH WHOM THE HOME IMPROVEMENT CONTRACTOR
12 ARRANGES FINANCING, AS A RESULT OF FINANCING THE TRANSACTION OR
13 BY OPERATION OF LAW IS VOID. AS USED IN THIS SUBSECTION,
14 "LENDER" MEANS A BANKING INSTITUTION, A FINANCING AGENCY, OR A
15 PERSON WHO, DIRECTLY OR INDIRECTLY, MAKES OR OFFERS TO MAKE LOANS
16 FOR THE MODERNIZATION, REHABILITATION, REPAIR, ALTERATION, OR
17 IMPROVEMENT OF REAL PROPERTY.

18 (8) A HOME IMPROVEMENT CHARGE AGREEMENT, HOME IMPROVEMENT
19 CHARGE SALE, HOME IMPROVEMENT INSTALLMENT CONTRACT, OR HOME
20 IMPROVEMENT INSTALLMENT SALE UNDER THIS ACT THAT IS NEGOTIATED,
21 SIGNED, OR PERFORMED BY A HOME IMPROVEMENT CONTRACTOR WITHOUT A
22 LICENSE IS VOID AND UNENFORCEABLE BY THE HOME IMPROVEMENT CON-
23 TRACTOR OR AN ASSIGNEE OF THE HOME IMPROVEMENT CONTRACTOR. ALL
24 MONEY PAID BY A PERSON PURSUANT TO THE VOID AND UNENFORCEABLE
25 HOME IMPROVEMENT CHARGE AGREEMENT, HOME IMPROVEMENT CHARGE SALE,
26 HOME IMPROVEMENT INSTALLMENT CONTRACT, OR HOME IMPROVEMENT

1 INSTALLMENT SALE SHALL BE REFUNDED BY THAT HOME IMPROVEMENT
2 CONTRACTOR WITHOUT A LICENSE.

3 (9) FOR PURPOSES OF THIS SECTION, A HOME IMPROVEMENT CON-
4 TRACTOR IS LIABLE FOR THE ACTS OF ANY AGENT, SUBCONTRACTOR,
5 DIRECTOR, EMPLOYEE, MANAGER, OFFICER, PARTNER, OR SALESPERSON OF
6 THE HOME IMPROVEMENT CONTRACTOR THAT RESULTS IN A VIOLATION OF
7 THIS ACT, UNLESS THE COURT FINDS EITHER OF THE FOLLOWING:

8 (A) THE EMPLOYEE WAS ACTING OUTSIDE OF THE SCOPE OF THE
9 EMPLOYMENT.

10 (B) THE HOME IMPROVEMENT CONTRACTOR OR ANY AGENT, DIRECTOR,
11 EMPLOYEE, MANAGER, OFFICER, PARTNER, OR SALESPERSON OF THE HOME
12 IMPROVEMENT CONTRACTOR USED REASONABLE MEASURES TO PREVENT THE
13 VIOLATION BUT WAS UNABLE TO PREVENT THE VIOLATION.

14 (10) ~~(3)~~ Any penalty directed to be paid under ~~the provi-~~
15 ~~sions of~~ this section shall be in addition to any penalty
16 ~~which~~ THAT may be imposed under ~~the provisions of~~ section
17 421.

18 Enacting section 1. This amendatory act does not take
19 effect unless all of the following bills of the 91st Legislature
20 are enacted into law:

21 (a) Senate Bill No. ____ or House Bill No. 6540 (request
22 no. 06266'01).

23 (b) Senate Bill No. ____ or House Bill No. 6541 (request
24 no. 06266'01 a).

25 (c) Senate Bill No. ____ or House Bill No. 6542 (request
26 no. 06266'01 b).

1 (d) Senate Bill No. ____ or House Bill No. 6543 (request
2 no. 06266'01 c).

3 (e) Senate Bill No. ____ or House Bill No. 6544 (request
4 no. 06266'01 d).

5 (f) Senate Bill No. ____ or House Bill No. 6545 (request
6 no. 06266'01 e).

7 (g) Senate Bill No. ____ or House Bill No. 6546 (request
8 no. 06266'01 f).