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**SENATE BILL 6124**

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**State of Washington**

**53rd Legislature**

**1994 Regular Session**

**By** Senators Prentice, Newhouse, Fraser, Haugen, Winsley, Franklin and Oke

Read first time 01/13/94. Referred to Committee on Labor & Commerce.

1 AN ACT Relating to the protection of a homeowner's equity by  
2 prohibiting certain unfair business practices; amending RCW 19.146.030  
3 and 19.146.030; adding a new chapter to Title 19 RCW; creating a new  
4 section; providing an effective date; and providing an expiration date.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** The legislature finds that many homeowners  
7 are solicited by siding and roofing contractors to purchase home  
8 improvements. Some contractors misrepresent the financing terms or the  
9 cost of the improvements, preventing the homeowner from making an  
10 informed decision about whether the improvements are affordable. The  
11 result is that many homeowners face financial hardship including the  
12 loss of their homes through foreclosure. The legislature declares that  
13 this is a matter of public interest. It is the intent of the  
14 legislature to establish rules of business practice for roofing and  
15 siding contractors to promote honesty and fair dealing with homeowners.

16 NEW SECTION. **Sec. 2.** Unless the context clearly requires  
17 otherwise, the definitions in this section apply throughout this  
18 chapter.

1 (1) "Roofing or siding contract" means an agreement between a  
2 roofing or siding contractor or salesperson and a homeowner that  
3 includes, in part, an agreement to install, repair or replace  
4 residential roofing or siding for a total cost including labor and  
5 materials in excess of one thousand dollars.

6 (2) "Roofing or siding contractor" means a person who owns or  
7 operates a contracting business that purports to install, repair, or  
8 replace or subcontracts to install, repair, or replace residential  
9 roofing or siding.

10 (3) "Roofing or siding salesperson" means a person who solicits,  
11 negotiates, executes, or otherwise endeavors to procure a contract with  
12 a homeowner to install, repair, or replace residential roofing or  
13 siding on behalf of a roofing or siding contractor.

14 (4) "Residential roofing or siding" means roofing or siding  
15 installation, repair or replacement for an existing single-family  
16 dwelling or multiple family dwelling of four or less units, provided  
17 that this does not apply to a residence under construction.

18 (5) "Person" includes an individual, corporation, company,  
19 partnership, joint venture, or a business entity.

20 NEW SECTION. **Sec. 3.** A roofing or siding contract shall be in  
21 writing. A copy of the contract shall be given to the homeowner at the  
22 time the homeowner signs the contract. The contract shall be typed or  
23 printed legibly and contain the following provisions:

24 (1) An itemized list of all work to be performed;

25 (2) A good faith itemized estimate of the cost for labor and the  
26 cost for materials. The estimated cost for materials shall include the  
27 total cost and the cost per unit, if applicable, including but not  
28 limited to the cost of siding per square foot, the cost of shingles per  
29 square, or the cost of plywood per square foot;

30 (3) The grade or quality and brand name of materials to be used;

31 (4) A statement as to whether all or part of the work is to be  
32 subcontracted to another person. If a part of the labor is to be  
33 subcontracted, the contract shall include the name, address and  
34 telephone number of the subcontractor, whether the subcontractor is  
35 bonded and licensed, and the work that is to be performed by the  
36 subcontractor;

1 (5) The contract shall require the homeowner to disclose whether he  
2 or she intends to obtain a loan in order to pay for all or part of the  
3 amount due under the contract;

4 (6) If the customer indicates that he or she intends to obtain a  
5 loan to pay for a portion of the roofing or siding contract, the  
6 homeowner shall have the right to rescind the contract within three  
7 business days of receiving truth-in-lending disclosures or three  
8 business days of receiving written notification that the loan  
9 application was denied, whichever date is later; and

10 (7) The contract shall provide the following notice in ten point  
11 boldface type in capital letters:

12 "THIS CONTRACT MAY RESULT IN HAVING A LIEN PLACED AGAINST YOUR  
13 PROPERTY. IF YOU FAIL TO PAY THE AMOUNT DUE, THE LIEN MAY BE  
14 FORECLOSED AND YOU COULD LOSE YOUR HOME.

15 **CUSTOMER'S RIGHT TO CANCEL**

16 **IF YOU HAVE INDICATED IN THIS CONTRACT THAT YOU INTEND TO**  
17 **OBTAIN A LOAN TO PAY FOR ALL OR PART OF THE WORK SPECIFIED IN**  
18 **THE CONTRACT, YOU HAVE THE RIGHT TO CHANGE YOUR MIND AND CANCEL**  
19 **THIS CONTRACT WITHIN THREE DAYS OF THE DATE WHEN THE LENDER**  
20 **PROVIDES YOU WITH YOUR TRUTH-IN-LENDING DISCLOSURE STATEMENT OR**  
21 **THE DATE WHEN YOU RECEIVE WRITTEN NOTIFICATION THAT YOUR LOAN**  
22 **WAS DENIED."**

23 NEW SECTION. **Sec. 4.** If the customer indicates that he or she  
24 intends to obtain a loan to pay for all or part of the cost of the  
25 roofing or siding contract, the roofing or siding contractor shall not  
26 begin work until after the homeowner's rescission rights provided in  
27 section 3(7) of this act have expired. If the roofing or siding  
28 contractor commences work under the contract before the homeowner's  
29 rescission rights have expired, the roofing or siding contractor or  
30 salesperson shall be prohibited from enforcing terms of the contract,  
31 including claims for labor or materials, in a court of law and shall  
32 terminate any security interest or statutory lien created under the  
33 transaction within twenty days of receiving written rescission of the  
34 contract from the customer.

1        NEW SECTION.    **Sec. 5.**    A person who purchases or is otherwise  
2 assigned a roofing or siding contract shall be subject to all claims  
3 and defenses with respect to the contract that the homeowner could  
4 assert against the siding or roofing contractor or salesperson.    A  
5 person who sells or otherwise assigns a roofing or siding contract  
6 shall include a prominent notice of the potential liability under this  
7 section.

8        NEW SECTION.    **Sec. 6.**    The legislature finds and declares that a  
9 violation of this chapter substantially affects the public interest and  
10 is an unfair and deceptive act or practice and unfair method of  
11 competition in the conduct of trade or commerce as set forth under  
12 chapter 19.86 RCW.

13        NEW SECTION.    **Sec. 7.**    A roofing or siding contractor or  
14 salesperson who fails to comply with the requirements of this chapter  
15 shall be liable to the homeowner for any actual damages sustained by  
16 the person as a result of the failure.

17        **Sec. 8.**    RCW 19.146.030 and 1993 c 468 s 12 are each amended to  
18 read as follows:

19        (1) Upon receipt of a loan application and before the receipt of  
20 any moneys from a borrower, a mortgage broker shall provide to each  
21 borrower a written notice indicating the number of the lenders with  
22 whom it maintains a written correspondent or loan brokerage agreement,  
23 unless exempt from licensing under this chapter, and make a full  
24 written disclosure to each borrower containing an itemization and  
25 explanation of all fees and costs that the borrower is required to pay  
26 in connection with obtaining a residential mortgage loan.    A good faith  
27 estimate of a fee or cost shall be provided if the exact amount of the  
28 fee or cost is not determinable.

29        (2) The written disclosure shall contain the following information:

30        (a) The annual percentage rate, finance charge, amount financed,  
31 total amount of all payments, number of payments, amount of each  
32 payment, amount of points or prepaid interest and the conditions and  
33 terms under which any loan terms may change between the time of  
34 disclosure and closing of the loan; and if a variable rate, the  
35 circumstances under which the rate may increase, any limitation on the  
36 increase, the effect of an increase, and an example of the payment

1 terms resulting from an increase. Disclosure in compliance with the  
2 requirements of the Truth-in-Lending Act, 15 U.S.C. Sec. 1601 and  
3 Regulation Z, 12 C.F.R. Sec. 226, as now or hereafter amended, shall be  
4 deemed to comply with the disclosure requirements of this subsection;

5 (b) The itemized costs of any credit report, appraisal, title  
6 report, title insurance policy, mortgage insurance, escrow fee,  
7 property tax, insurance, structural or pest inspection, and any other  
8 third-party provider's costs associated with the residential mortgage  
9 loan. Disclosure through good faith estimates of settlement services  
10 and special information booklets in compliance with the requirements of  
11 the Real Estate Settlement Procedures Act, 12 U.S.C. Sec. 2601, and  
12 Regulation X, 24 C.F.R. Sec. 3500, as now or hereafter amended, shall  
13 be deemed to comply with the disclosure requirements of this  
14 subsection;

15 (c) If applicable, the cost, terms, duration, and conditions of a  
16 lock-in agreement and whether a lock-in agreement has been entered;

17 (d) A statement that if the borrower is unable to obtain a loan for  
18 any reason, the mortgage broker must, within five days of a written  
19 request by the borrower, give copies of any appraisal, title report, or  
20 credit report paid for by the borrower to the borrower, and transmit  
21 the appraisal, title report, or credit report to any other mortgage  
22 broker or lender to whom the borrower directs the documents to be sent;

23 (e) The name of the lender and the nature of the business  
24 relationship between the lender providing the residential mortgage loan  
25 and the mortgage broker, if any: PROVIDED, That this disclosure may be  
26 made at any time up to the time the borrower accepts the lender's  
27 commitment; and

28 (f) A statement providing that moneys paid by the borrower to the  
29 mortgage broker for third-party provider services are held in a trust  
30 account and any moneys remaining after payment to third-party providers  
31 will be refunded.

32 A violation of the Truth-in-Lending Act, Regulation Z, the Real  
33 Estate Settlement Procedures Act, and Regulation X is a violation of  
34 this section for purposes of this chapter.

35 (3) A mortgage broker shall not charge a fee in excess of one  
36 percent of the loan amount for a consumer credit transaction primarily  
37 for personal, family, or household purposes, other than a residential  
38 mortgage transaction for the purchase of a home or a transaction under  
39 an open-end credit plan, that is secured by a homeowner's principal

1 dwelling, where the rate of interest charged at consummation of the  
2 transaction will exceed the maximum interest rate specified in RCW  
3 19.52.020(1).

4       **Sec. 9.** RCW 19.146.030 and 1987 c 391 s 5 are each amended to read  
5 as follows:

6       Upon receipt of a loan application and before the receipt of any  
7 moneys from a borrower, a mortgage broker shall make a full written  
8 disclosure to each borrower containing an itemization and explanation  
9 of all fees and costs that the borrower is required to pay in  
10 connection with obtaining a residential mortgage loan. A good faith  
11 estimate of a fee or cost shall be provided if the exact amount of the  
12 fee or cost is not determinable. The written disclosure shall contain  
13 the following information:

14       (1) The annual percentage rate, finance charge, amount financed,  
15 total amount of all payments, number of payments, amount of each  
16 payment, amount of points or prepaid interest and the conditions and  
17 terms under which any loan terms may change between the time of  
18 disclosure and closing of the loan; and if a variable rate, the  
19 circumstances under which the rate may increase, any limitation on the  
20 increase, the effect of an increase, and an example of the payment  
21 terms resulting from an increase. Disclosure in compliance with the  
22 requirements of the Truth-in-Lending Act, 15 U.S.C. Sec. 1601 and  
23 Regulation Z, 12 C.F.R. Sec. 226, as now or hereafter amended, shall be  
24 deemed to comply with the disclosure requirements of this subsection;

25       (2) The itemized costs of any credit report, appraisal, title  
26 report, title insurance policy, mortgage insurance, escrow fee,  
27 property tax, insurance, structural or pest inspection, and any other  
28 third-party provider's costs associated with the residential mortgage  
29 loan. Disclosure through good faith estimates of settlement services  
30 and special information booklets in compliance with the requirements of  
31 the Real Estate Settlement Procedures Act, 12 U.S.C. Sec. 2601, and  
32 Regulation X, 24 C.F.R. Sec. 3500, as now or hereafter amended, shall  
33 be deemed to comply with the disclosure requirements of this  
34 subsection;

35       (3) If applicable, the cost, terms, and conditions of an agreement  
36 to lock-in or commit the mortgage broker or lender to a specific  
37 interest rate or other financing term for any period of time up to and  
38 including the time the loan is closed;

1 (4) A statement that if the borrower is unable to obtain a loan for  
2 any reason, the mortgage broker must, within five days of a written  
3 request by the borrower, give copies of any appraisal, title report, or  
4 credit report paid for by the borrower to the borrower, and transmit  
5 the appraisal, title report, or credit report to any other mortgage  
6 broker or lender to whom the borrower directs the documents to be sent;

7 (5) The name of the lender and the nature of the business  
8 relationship between the lender and the mortgage broker, if any:  
9 PROVIDED, That this disclosure may be made at any time up to the time  
10 the borrower accepts the lender's commitment; and

11 (6) A statement providing that moneys paid by the borrower to the  
12 mortgage broker for third-party provider services are held in a trust  
13 account and any moneys remaining after payment to third-party providers  
14 will be refunded.

15 A violation of the Truth-in-Lending Act, Regulation Z, the Real  
16 Estate Settlement Procedures Act, and Regulation X is a violation of  
17 this section for purposes of this chapter.

18 (7) A mortgage broker shall not charge a fee in excess of one  
19 percent of the loan amount for a consumer credit transaction primarily  
20 for personal, family, or household purposes, other than a residential  
21 mortgage transaction for the purchase of a home or a transaction under  
22 an open-end credit plan, that is secured by a homeowner's principal  
23 dwelling, where the rate of interest charged at consummation of the  
24 transaction will exceed the maximum interest rate specified in RCW  
25 19.52.020(1).

26 NEW SECTION. Sec. 10. Sections 2 through 7 of this act shall  
27 constitute a new chapter in Title 19 RCW.

28 NEW SECTION. Sec. 11. Section 8 of this act shall expire October  
29 31, 1994.

30 NEW SECTION. Sec. 12. Section 9 of this act shall take effect  
31 October 31, 1994.

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