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A Bill

HOUSE BILL 1308

By: Representative Steimel
By: Senator B. Johnson

Filed with: House Committee on Insurance and Commerce
pursuant to A.C.A. §10-3-217.

For An Act To Be Entitled

AN ACT CONCERNING UNFAIR PRACTICES RELATED TO
RESIDENTIAL REAL ESTATE REPAIR CONTRACTS; TO REGULATE
SOLICITING RESIDENTIAL CONTRACTORS AND TREE
CONTRACTORS; AND FOR OTHER PURPOSES.

Subtitle

CONCERNING UNFAIR PRACTICES RELATED TO
RESIDENTIAL REAL ESTATE REPAIR CONTRACTS;
AND TO REGULATE SOLICITING RESIDENTIAL
CONTRACTORS AND TREE CONTRACTORS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

*SECTION 1. Arkansas Code § 4-88-901(4), concerning the definition of
"residential real estate" used for unfair practices related to residential
real estate repair contracts, is amended to read as follows:*

*(4) "Residential real estate" means a new or existing dwelling
constructed for habitation by one (1) to four (4) families, including a
detached garage and the curtilage around the dwelling;*

*SECTION 2. Arkansas Code § 4-88-902, concerning definitions used for unfair practices
related to residential real estate repair contracts, is amended to add additional subdivisions to read
as follows:*

(7)(A) "Soliciting" means the marketing of a product or service initiated by

contacting an insured at his or her residence without a prior invitation to encourage the insured to purchase or obtain the product or service.

(B) "Soliciting" does not include marketing communications directed at the general public; and

(8) "Tree contractor" means a person or an entity in the business of:

(A) Felling trees;

(B) Removing fallen trees;

(C) Cutting or trimming tree limbs or branches; or

(D) Diagnosing or treating diseased trees.

SECTION 3. Arkansas Code § 4-88-905 is amended to read as follows:
4-88-905. Violations.

(a) A violation of this subchapter by a residential contractor ~~or tree contractor is an unfair and deceptive act or practice as defined by this chapter~~ an unfair or deceptive trade practice under this chapter.

(b) This subchapter does not prohibit an insured that is harmed by a deceptive trade practice from commencing a civil action against a residential contractor ~~or tree contractor~~.

(c)(1) A residential contractor or tree contractor shall receive a warning for his or her first violation of this subchapter.

(2) In addition to the penalties under this chapter, a residential contractor or tree contractor may receive a fine up to five thousand dollars (\$5,000) for each subsequent violation of this subchapter.

(3) Violations under this subchapter shall be reported to the Contractors Licensing Board that may adjudicate violations of this subchapter.

(4)(A) The board shall collect any fines assessed under this subchapter.

(B) The board shall disburse the fines collected under subdivision (c)(4)(A) of this section as follows:

(i) Fifty percent (50%) to be used to enforce this subchapter; and

(ii) Fifty percent (50%) to be remitted monthly to the Arkansas Roofing Association's education fund.

SECTION 4. Arkansas Code Title 4, Chapter 88, Subchapter 9, is amended to add an additional section to read as follows:

4-88-906. Prohibited practices.

(a)(1) A residential real estate repair contract between a residential contractor and an insured for the repair or replacement of a roof system shall include:

(A) The roofing components to be used or excluded in the roof system repair or replacement including without limitation the type of shingle, starter, underlayment, ridge cap, and ice and water shield;

(B) The residential contractor's license or registration number;

(C) A statement that rotted roof decking may not be covered by the insured's property and casualty insurance company;

(D) The estimate price for the roof system repair or replacement; and

(E) Reference to this section.

(2) A residential real estate repair contract between a tree contractor and an insured for the felling or removal of trees shall include:

(A) The scope of work to include the type of equipment or machinery to be used to fell or remove the trees, man hours or labor estimated, and number of trees included;

(B) The estimated price for the scope of work; and

(C) A reference to this section.

(3) A residential real estate repair contract shall be structured as a fixed-price agreement, subject to supplement, or other forms of compensation that are not contingent on external factors such as insurance payouts or financial assistance from a third party.

(b)(1) A residential contractor or tree contractor shall not:

(A) Engage in the practice of soliciting a residential real estate repair contract from an insured unless:

(i)(a) He or she has on his or her person data showing that a significant wind event or a significant hail event has occurred at the insured's dwelling in the past twelve (12) months that likely caused damage anticipated to be covered by the insured's property insurance.

(b) As used in subdivision (b)(1)(A)(i)(a) of this section:

(1) "Significant wind event" means a period in which wind speeds reach forty miles per hour (40 mph) or greater; and

(2) "Significant hail event" means a period in which falling hail stones reach one inch (1") in diameter or greater; and

(ii) He or she is wearing identification visible to the insured that includes his or her photo, his or her first and last name, the name of the company that he or she is working for, and the company's license number or registration number; or

(B)(i) Offer to or encourage an insured to represent to the insured's property and casualty insurance company that the insured has paid the contractor an amount equal to the insured's deductible, unless the deductible has been fully paid by the insured in cash, check, or other monetary equivalent.

(ii) An insurance deductible shall not be covered by any rebate, credit, coupon, or similar financial incentive.

(iii) Any money offered or paid in exchange for the insured referring the contractor's services shall not be used to cover, waive, or offset the insured's deductible.

(iv) This subdivision (b)(1)(B) shall be strictly enforced, and any attempt to waive an insurance deductible shall be a violation of this subchapter.

(2) Payment by the insured or property and casualty insurance company to a residential contractor or tree contractor for services rendered does not constitute compensation for a referral under subdivision (b)(1)(B)(i) of this section.

(c) A residential contractor in the business of repairing or replacing roof systems may:

(1) Advise an insured of dates that a wind or hail event has occurred at his or her dwelling;

(2) Educate an insured of his or her property insurance policy's coverage related to wind and hail; and

(3) Advocate on behalf of an insured when the insured's property insurance carrier:

(A) Sends an unlicensed adjuster to inspect the insured's property damage;

(B) Denies the existence of covered property damage that the residential contractor has documented; or

(C) Fails to include items necessary to properly repair, replace, or warranty the roof system in its scope of loss.

(d)(1) For the purposes of this section, an act of an employee on behalf of a residential contractor or tree contractor that violates subsection (a) or subsection (b) of this section, is considered an action of the residential contractor or tree contractor.

(2) Residential contractors and tree contractors shall have the duty to educate any nonemployees of the contents of subsection (a) and subsection (b) of this section.

SECTION 5. Arkansas Code § 17-25-502, concerning the definitions regarding residential contractors, is amended to add an additional subdivision to read as follows:

(4) "Tree contractor" means a person or an entity in the business of performing the following:

(A) Felling trees;

(B) Removing fallen trees;

(C) Cutting or trimming tree limbs or branches; or

(D) Diagnosing or treating diseased trees.

SECTION 6. Arkansas Code § 17-25-504, concerning authority of the

1 *Residential Contractors Committee, is amended to add an additional*
2 *subdivision to read as follows:*

3 *(8) Levy a civil penalty against an unlicensed individual or entity found to be*
4 *performing work that requires a license under § 17-25-505.*

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6 /s/Steimel

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9 Referred requested by the Arkansas House of Representatives

10 Prepared by: ANS/AMS