

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 style="text-align:center">**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.

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

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

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

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

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

52 'NOTICE OF CANCELLATION'
 53 If you are notified by your insurer that all or any part of the claim or contract is not a
 54 covered loss under the insurance policy, you may cancel the contract by mailing or
 55 delivering a signed and dated copy of this cancellation notice or any other written
 56 notice to (name of contractor) at (address of contractor's place of business) at any time
 57 prior to midnight on the fifth business day after you have received such notice from
 58 your insurer.

59 I HEREBY CANCEL THIS TRANSACTION

60 _____

61 (date)

62 _____

63 (insured's signature).

64 (d) In circumstances in which payment may be made from the proceeds of a property and
 65 casualty insurance policy, a residential roofing contractor shall not require any payments
 66 from an insured until the five-day cancellation period has expired. If, however, the
 67 residential roofing contractor has performed any emergency services, acknowledged by the
 68 insured in writing to be necessary to prevent damage to the premises, the residential roofing
 69 contractor shall be entitled to collect the amount due for the emergency services at the time
 70 they are rendered. Any provision in a contract as provided in subsection (b) of this Code
 71 section that requires the payment of any fee for anything except emergency services shall
 72 not be enforceable against any insured who has canceled a contract under this Code section.
 73 (e) A residential roofing contractor shall not represent or negotiate, or offer or advertise
 74 to represent or negotiate, on behalf of an owner or possessor of residential real estate on
 75 any insurance claim in connection with the repair or replacement of roof systems. This
 76 subsection shall not apply to a public adjuster licensed under Chapter 23 of Title 33."

77 SECTION 2.

78 Article 1 of Chapter 23 of Title 33 of the Official Code of Georgia Annotated, relating to
 79 agents, agencies, subagents, counselors, and adjusters, is amended by revising Code Section
 80 33-23-43, relating to authority of adjusters and penalty for violation, as follows:

81 "33-23-43.

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

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

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

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

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

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

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

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

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

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

114 SECTION 3.

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

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

122 SECTION 4.

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