

IN THE SENATE

SENATE BILL NO. 1057

BY COMMERCE AND HUMAN RESOURCES COMMITTEE

AN ACT

1 RELATING TO THE INSURED HOMEOWNER PROTECTION ACT; AMENDING TITLE 41, IDAHO
2 CODE, BY THE ADDITION OF A NEW CHAPTER 66, TITLE 41, IDAHO CODE, TO PRO-
3 VIDE A SHORT TITLE, TO REQUIRE COMPLIANCE WITH THE PROVISIONS OF THE
4 CHAPTER, TO DEFINE TERMS, TO ESTABLISH PROVISIONS REGARDING CERTAIN
5 CONTRACTS OR AGREEMENTS, TO PROHIBIT CERTAIN ACTS, TO PROVIDE REQUIRE-
6 MENTS FOR AN ASSIGNMENT OF BENEFITS CONTRACT OR AGREEMENT, TO REQUIRE
7 AN ITEMIZED DESCRIPTION OF WORK, TO REQUIRE CERTAIN NOTICE, TO PROVIDE
8 THAT RIGHTS CONFERRED BY THE CHAPTER MAY NOT BE WAIVED, TO PROVIDE THAT
9 CONTRACTS IN VIOLATION OF THE CHAPTER ARE VOID, AND TO PROVIDE RULEMAK-
10 ING AUTHORITY.
11

12 Be It Enacted by the Legislature of the State of Idaho:

13 SECTION 1. That Title 41, Idaho Code, be, and the same is hereby amended
14 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
15 ter 66, Title 41, Idaho Code, and to read as follows:

16 CHAPTER 66

17 INSURED HOMEOWNER PROTECTION ACT

18 41-6601. SHORT TITLE. This chapter shall be known and may be cited as
19 the "Insured Homeowner Protection Act."

20 41-6602. ASSIGNMENT OF BENEFITS. An assignment or assignment of bene-
21 fits contract or agreement and the parties to such a contract are required to
22 comply with every provision of this chapter.

23 41-6603. DEFINITIONS. As used in this chapter:

24 (1) "Assignment" or "assignment of benefits contract or agreement"
25 means a contract whereby a policyholder as defined in section 41-1850, Idaho
26 Code, assigns or otherwise transfers the proceeds, or portion of the pro-
27 ceeds, of a claim made under a property or casualty insurance policy insuring
28 residential real estate to a residential contractor.

29 (2) "Residential contractor" means a person in the business of con-
30 tracting or offering to contract with an owner or a possessor of residential
31 real estate to:

32 (a) Repair or perform replacement, construction, or reconstruction
33 work on residential real estate;

34 (b) Perform interior or exterior cleanup services on residential real
35 estate; or

36 (c) Arrange for, manage, or process the work referred to in paragraph

37 (a) or (b) of this subsection.

1 (3) "Residential real estate" means a new or an existing building, in-
2 cluding a detached garage, constructed for habitation by at least one (1) but
3 no more than four (4) families.

4 41-6604. CONTRACT TO BE PAID FROM PROCEEDS OF PROPERTY AND CASUALTY
5 INSURANCE POLICY -- RIGHT TO CANCEL -- DUTIES. (1) A person who enters into an
6 assignment of benefits contract or agreement with a residential contractor
7 to provide goods or services to be paid in part or in whole from the proceeds
8 of a property and casualty insurance policy may cancel the contract before
9 midnight on the later of:

10 (a) The fifth business day after the person has entered into the assign-
11 ment of benefits contract or agreement; or

12 (b) The fifth business day after the person has received written notice
13 from the person's insurer that all or part of the claim or contract is
14 not a covered loss under the insurance policy.

15 (2) The assignment of benefits contract or agreement must include a
16 statement that the insured homeowner has the right to cancel the contract in
17 accordance with subsection (1) of this section.

18 (3) The person seeking to cancel the contract must evidence the cancel-
19 lation by giving the residential contractor a signed and dated copy of writ-
20 ten or electronic notice of the cancellation.

21 (a) The signed and dated copy of the written or electronic notice of
22 cancellation may be delivered or mailed via email or United States mail
23 to the address of the residential contractor's place of business as
24 stated in the contract.

25 (b) The notice of cancellation delivered by United States mail or email
26 is effective upon deposit in the United States mail, postage prepaid, or
27 when sent by email provided that it is correctly addressed to the resi-
28 dential contractor.

29 (c) The notice of cancellation is not required to be in a particular
30 form and is sufficient if the notice indicates the intent of the insured
31 not to be bound by the contract.

32 (4) Within ten (10) days after a contract to provide goods or services
33 to be paid from the proceeds of a property and casualty insurance policy has
34 been canceled by notification pursuant to this section, the residential con-
35 tractor must tender to the person canceling the contract any payments, par-
36 tial payments, or deposits made by the person and any note or other evidence
37 of indebtedness, except if the residential contractor has provided goods or
38 services agreed to by the person in writing to be necessary to prevent dam-
39 age to the premises, the residential contractor is entitled to be paid the
40 reasonable value of those goods or services. A contract provision to pro-
41 vide goods or services to be paid from the proceeds of a property and casualty
42 insurance policy requiring the payment of a fee that is not for the goods or
43 services is not enforceable against a person who has canceled a contract pur-
44 suant to this section.

45 41-6605. PROHIBITED ACTS. A residential contractor may not promise to
46 rebate a portion of an insurance deductible as an inducement to the sale of
47 goods or services. A promise to rebate a portion of an insurance deductible
48 includes granting an allowance or offering a discount against the fees to be

1 charged or paying an insured or a person associated with the residential real
2 estate a form of compensation, except for an item of nominal value. A viola-
3 tion of this section is hereby deemed to be a violation of chapter 13, title
4 41, Idaho Code.

5 41-6606. POST-LOSS ASSIGNMENT OF RIGHTS OR BENEFITS. (1) The assign-
6 ment of benefits contract or agreement may only authorize a residential con-
7 tractor to be named as a copayee for the payment of benefits under a property
8 and casualty insurance policy covering residential real estate.

9 (2) The assignment of benefits contract or agreement must:

10 (a) Be provided by the party receiving the assignment to the insurer of
11 the residential real estate within five (5) business days after execu-
12 tion;

13 (b) Include a statement that the residential contractor made no assur-
14 ances the claimed loss will be fully covered by an insurance contract
15 and must include the following notice in capitalized 14-point type:
16 "YOU ARE AGREEING TO ASSIGN CERTAIN RIGHTS YOU HAVE UNDER YOUR INSUR-
17 ANCE POLICY. THE ITEMIZED DESCRIPTION OF THE WORK TO BE DONE SHOWN IN
18 THIS ASSIGNMENT FORM HAS NOT BEEN AGREED TO BY THE INSURER. PLEASE READ
19 AND UNDERSTAND THIS DOCUMENT BEFORE SIGNING. THE INSURER MAY ONLY PAY
20 FOR THE COST TO REPAIR OR REPLACE DAMAGED PROPERTY CAUSED BY A COVERED
21 PERIL, SUBJECT TO THE TERMS OF THE POLICY."; and

22 (c) Include a statement of the right to cancel the assignment, in ac-
23 cordance with section 41-6604, Idaho Code, before midnight on the fifth
24 business day after the person has entered the written contract or af-
25 ter the person has received notice from the person's insurer that all
26 or part of the claim or contract is not a covered loss under the insur-
27 ance policy, whichever is later, and must include the following notice
28 in capitalized 14-point type: "YOU MAY CANCEL THIS ASSIGNMENT WITHOUT
29 PENALTY BEFORE MIDNIGHT ON THE LATER OF THE FIFTH BUSINESS DAY AFTER YOU
30 EXECUTED THE ASSIGNMENT OR AFTER YOU RECEIVED WRITTEN NOTICE FROM YOUR
31 INSURER THAT ALL OR PART OF THE CLAIM OR CONTRACT IS NOT A COVERED LOSS
32 UNDER THE INSURANCE POLICY. YOU MUST CANCEL THE ASSIGNMENT IN WRITING
33 AND THE CANCELLATION MUST BE DELIVERED TO: [INSERT THE ADDRESS OF THE
34 RESIDENTIAL CONTRACTOR'S PLACE OF BUSINESS]. IF MAILED, THE CANCELLA-
35 TION IS EFFECTIVE UPON DEPOSIT IN THE UNITED STATES MAIL, POSTAGE PRE-
36 PAID, AS LONG AS IT IS CORRECTLY ADDRESSED TO THE RESIDENTIAL CONTRAC-
37 TOR."

38 (3) The assignment may not:

39 (a) Impair the interest of a person holding a security interest in the
40 property that is the subject of the assignment; or

41 (b) Prevent or inhibit an insurer from communication with the named in-
42 sured or person holding a security interest in the property that is the
43 subject of the assignment.

44 41-6607. ITEMIZED DESCRIPTION OF WORK. Before commencement of repair
45 or replacement work, a residential contractor must furnish the insured and
46 insurer with an itemized description of the work to be done and the materi-
47 als, labor, and fees for repair or replacement of the damaged residential
48 real estate and the total itemized amount agreed to be paid for the work to be

1 performed, except the description may not limit the insured or residential
2 contractor from identifying other goods and services necessary to complete
3 repairs or replacement associated with a covered loss.

4 41-6608. NOTICE REQUIRED. A written contract, repair estimate, or
5 work order prepared by a residential contractor to provide goods or services
6 to be paid from the proceeds of a property and casualty insurance policy
7 must include the following notice of the prohibition contained in section
8 41-6605, Idaho Code, in capitalized 14-point type that must be signed by
9 the named insured and sent to the named insured's insurer before payment of
10 proceeds under the applicable insurance policy: "IT IS A VIOLATION OF THE
11 INSURANCE LAWS OF IDAHO TO REBATE ANY PORTION OF AN INSURANCE DEDUCTIBLE AS
12 AN INDUCEMENT TO THE INSURED TO ACCEPT A RESIDENTIAL CONTRACTOR'S PROPOSAL
13 TO REPAIR DAMAGED PROPERTY. REBATE OF A DEDUCTIBLE INCLUDES GRANTING AN AL-
14 LOWANCE OR OFFERING A DISCOUNT AGAINST THE FEES TO BE CHARGED FOR WORK TO BE
15 PERFORMED OR PAYING THE INSURED HOMEOWNER THE DEDUCTIBLE AMOUNT SET FORTH
16 IN THE INSURANCE POLICY. THE INSURED HOMEOWNER IS PERSONALLY RESPONSIBLE
17 FOR PAYMENT OF THE DEDUCTIBLE. CHAPTER 13, TITLE 41, IDAHO CODE, AND RELATED
18 IDAHO CRIMINAL STATUTES PROHIBIT THE RESIDENTIAL CONTRACTOR FROM OFFERING
19 THE INSURED HOMEOWNER A REBATE OF THE DEDUCTIBLE OR OTHERWISE OFFERING AN
20 ALLOWANCE OR DISCOUNT TO COVER THE COST OF THE DEDUCTIBLE. VIOLATIONS MAY BE
21 PUNISHABLE BY CIVIL OR CRIMINAL PENALTIES."

22 41-6609. NO WAIVER. A policyholder may not waive any of the rights
23 granted by this chapter.

24 41-6610. VIOLATION OF THIS CHAPTER. A contract entered with a resi-
25 dential contractor is void if the residential contractor violates this chap-
26 ter.

27 41-6611. RULEMAKING AUTHORITY. The director may, in accordance with
28 section 41-211, Idaho Code, promulgate reasonable rules as are necessary and
29 proper to carry out the purposes of this chapter.