

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 2802-01  
Bill No.: SB 635  
Subject: Consumer Protection, Contractors, Housing  
Type: Original  
Date: December 11, 2001

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**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON STATE FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2003</b>	<b>FY 2004</b>	<b>FY 2005</b>
<b>Total Estimated Net Effect on <u>All</u> State Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2003</b>	<b>FY 2004</b>	<b>FY 2005</b>
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2003</b>	<b>FY 2004</b>	<b>FY 2005</b>
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

Numbers within parentheses: ( ) indicate costs or losses.

This fiscal note contains 4 pages.

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**FISCAL ANALYSIS**

ASSUMPTION

In response to a similar proposal in the prior session, officials from the **Department of Economic Development - Division of Credit Unions and Division of Finance, Office of the State Courts Administrator, and State Public Defender** assumed the proposed legislation would have no fiscal impact on their agencies.

In response to a similar proposal in the prior session, officials from the **Office of Prosecution Services** assume the proposed legislation could have a potential fiscal impact on local prosecutors since it creates new crimes. **Oversight** assumes any additional caseload for local prosecutors generated by this proposal could be absorbed by the local government.

In response to a similar proposal in the prior session, officials from the **Office of the Attorney General** assume the cost of this proposal could be absorbed as it appears to contemplate only a private right of action.

<u>FISCAL IMPACT - State Government</u>	FY 2003 (10 Mo.)	FY 2004	FY 2005
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
<u>FISCAL IMPACT - Local Government</u>	FY 2003 (10 Mo.)	FY 2004	FY 2005
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

The proposed legislation could have a potential fiscal impact on small businesses involved in the home improvement industry.

## DESCRIPTION

The proposed legislation provides for various consumer protections regarding homes.

The proposal defines and prohibits certain unfair or deceptive practices relating to home improvement loans. Prohibited are home solicitations where a home improvement loan is made encumbering the person's home to pay the loan and where the practice violates the federal Truth in Lending Act by: (1) extending credit under a mortgage for home improvements secured by the dwelling without regard for repayment ability; (2) paying a contractor from the proceeds of a mortgage in a way other than the prescribed way; or (3) selling or assigning certain mortgages without furnishing notice that the mortgage is subject to special rules under the federal Truth in Lending Act. The proposal exempts third parties from liability, except where there was an agency relationship between the solicitor and the third party or where the third party had actual knowledge of or participated in the unfair or deceptive transaction. Third party holders in due course under a home solicitation transaction will not be liable. Any person violating the provisions of the proposal is guilty of a Class A misdemeanor and will be required to make restitution.

The proposal also mandates warranties to protect new home purchasers from losses caused by faulty installation, major construction defects, and noncompliance with building standards. There are three distinct warranties for new homes. The first covers the home against faulty workmanship and defective materials for a three year period. The second warranty covers new homes against faulty installation of plumbing, electrical, heating and cooling systems for a five-year period. The third warranty covers the home against major construction defects (foundation) for a ten-year period. These warranties are extended to subsequent purchasers of the home, and may not be waived or modified except in very limited circumstances.

The act also mandates similar warranties to protect homeowner from losses caused by home improvement defects. The warranties are statutory and do not require the creation of documents. Under the first warranty, the home improvement contract warrants that the home improvements will be free from defects caused by faulty workmanship and defective materials for a two-year period. The home improvement warranty also guarantees that the home improvement will be free from major construction defects for a ten-year period. Improvements involving plumbing, electrical, heating and cooling systems are guaranteed to be free from defects for a period of two years. If the seller of the house or the home improvement contractor violates these implied warranties then the homeowner may bring a cause of action against that person for actual damages. The court shall also award the homeowner court costs and reasonable attorney fees. If the breach of the warranties were willful or deceitful, then the court may assess punitive damages.

DESCRIPTION - continued

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

NOT RESPONDING

Office of State Courts Administrator  
Attorney General's Office  
Department of Economic Development



Jeanne Jarrett, CPA  
Director  
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