

IN THE SENATE

SENATE BILL NO. 1057, As Amended

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, unless a property owner and the  
23 property owner's insurer have agreed otherwise.

24 41-6603. DEFINITIONS. As used in this chapter:

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

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

33 (i) Repair or perform replacement, construction, or reconstruc-  
34 tion work on residential real estate;

35 (ii) Perform interior or exterior cleanup services, including but  
36 not limited to mitigation, demolition, structural drying, or any  
37 other reasonably necessary remediation services, on residential  
38 real estate; or

- 1 (iii) Direct, manage, or process the work referred to in subpara-  
2 graph (i) or (ii) of this paragraph.
- 3 (b) The term "residential contractor" does not include an insurer or a  
4 third-party adjuster or public adjuster working on behalf of a property  
5 owner.
- 6 (3) "Residential real estate" means a new or existing building, includ-  
7 ing a detached garage or any outbuilding, constructed for habitation by at  
8 least one (1) but no more than four (4) families, excluding multiple building  
9 properties.

10 41-6604. CONTRACT TO BE PAID FROM PROCEEDS OF PROPERTY AND CASUALTY  
11 INSURANCE POLICY -- RIGHT TO CANCEL -- DUTIES. (1) A person who enters into an  
12 assignment of benefits contract or agreement with a residential contractor  
13 to provide goods or services to be paid in part or in whole from the proceeds  
14 of a property and casualty insurance policy may cancel the contract before  
15 midnight on the later of:

- 16 (a) The fifth business day after the person has entered into the assign-  
17 ment of benefits contract or agreement; or
- 18 (b) The fifth business day after the person has received written notice  
19 from the person's insurer that all or part of the claim or contract is  
20 not a covered loss under the insurance policy.

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

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

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

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

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

38 (4) Within ten (10) days after a contract to provide goods or services  
39 to be paid from the proceeds of a property and casualty insurance policy has  
40 been canceled by notification pursuant to this section, the residential con-  
41 tractor must tender to the person canceling the contract any payments, par-  
42 tial payments, or deposits made by the person and any note or other evidence  
43 of indebtedness, except if the residential contractor has provided goods or  
44 services or ordered unreturnable materials agreed to by the person in writ-  
45 ing to be necessary to prevent damage to the premises, the residential con-  
46 tractor is entitled to be paid the reasonable value of those goods or ser-  
47 vices or verifiable return charges for returned ordered materials. A con-  
48 tract provision to provide goods or services to be paid from the proceeds of a  
49 property and casualty insurance policy requiring the payment of a fee that is

1 not for the goods or services is not enforceable against a person who has can-  
2 celed a contract pursuant to this section.

3 41-6605. PROHIBITED ACTS. A residential contractor may not promise to  
4 discount or rebate any or all of a portion of an insurance deductible as an  
5 inducement to the sale of goods or services. A violation of this section is  
6 hereby deemed to be a violation of chapter 13, title 41, Idaho Code.

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

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

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

15 (b) Include a statement that the residential contractor made no assur-  
16 ances the claimed loss will be fully covered by an insurance contract  
17 and must include the following notice in capitalized 14-point type:  
18 "YOU ARE AGREEING TO ASSIGN CERTAIN RIGHTS YOU HAVE UNDER YOUR INSURANCE  
19 POLICY. PLEASE READ AND UNDERSTAND THIS DOCUMENT BEFORE SIGNING. THE  
20 INSURER MAY ONLY PAY FOR THE COST TO REPAIR OR REPLACE DAMAGED PROPERTY  
21 CAUSED BY A COVERED 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. Unless the property owner and  
45 the property owner's insurer have agreed otherwise, before commencement of  
46 repair or replacement work, a residential contractor must furnish the in-  
47 sured and insurer with an itemized description of the work to be done and the

1 materials, labor, and fees for repair or replacement of the damaged residen-  
2 tial real estate and the total itemized amount agreed to be paid for the work  
3 to be performed, except the description may not limit the insured or residen-  
4 tial contractor from identifying other goods and services necessary to com-  
5 plete repairs or replacement associated with a covered loss.

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

24 41-6609. NO WAIVER. Unless the property owner and the property owner's  
25 insurer have agreed otherwise, a policyholder may not waive any of the rights  
26 granted by this chapter.

27 41-6610. VIOLATION OF THIS CHAPTER. A contract entered with a residen-  
28 tial contractor is void if the residential contractor violates this chapter.

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