

STATE OF NEW YORK

10035

IN ASSEMBLY

March 8, 2018

Introduced by M. of A. SKOUFIS -- read once and referred to the Committee on Higher Education

AN ACT to amend the education law, in relation to establishing the "consumer construction protection act" and the licensing and certification of plumbing and mechanical trades

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. This act shall be known and may be cited as the "consumer
2 construction protection act".

3 § 2. Legislative intent. It is the intent of this legislation to regulate,
4 license and certify the business of plumbing and related mechanical
5 trades, within the state of New York, in order to protect and
6 promote the health, safety and welfare of the residents of the state of
7 New York. This legislation provides that no person, business, partnership
8 or other entity shall engage in the work or trade of installing,
9 altering, removing, replacing, testing, or repairing of plumbing and
10 related systems, as provided herein, within the state of New York unless
11 duly licensed or permitted as required by this legislation.

12 § 3. The education law is amended by adding a new article 152 to read
13 as follows:

ARTICLE 152

PLUMBING AND MECHANICAL TRADES

Section 7530. Introduction.

7531. Definitions.

7532. Practice of plumbing and mechanical trades.

7533. State board of trades.

7534. Licensing requirements and procedures.

7535. Mechanical trades certification.

7536. Special provisions.

7537. Prohibited acts and enforcement.

7538. Insurance.

7539. Waiver.

7540. Repealer.

7541. Severability.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD10357-01-7

1 § 7530. Introduction. This article applies to the profession of
2 plumbing and mechanical trades. The general provisions for all
3 professions contained in article one hundred thirty of this title shall
4 apply to this article.

5 § 7531. Definitions. For the purposes of this article, the following
6 terms shall have the following meanings, unless otherwise indicated by
7 the context:

8 1. Board. The New York state board of trades as provided by this arti-
9 cle.

10 2. Business entity. As used in this article, the term "business enti-
11 ty" shall include any corporation, partnership, limited partnership or
12 joint venture formed for the purpose of engaging in the business and/or
13 trade of plumbing and/or related mechanical trades.

14 3. Certificate of competency. A certificate issued by the board to
15 persons who have successfully completed an examination for master plum-
16 ber or other mechanical trade as provided for by the provisions of this
17 article.

18 4. Director. The New York state department of labor commissioner.

19 5. Family. A spouse of a board member, or a person claimed as a
20 dependent on the board member's latest individual tax return.

21 6. Fire protection sprinkler systems. All devices and apparatuses
22 comprising the sprinkler system extending from the clapper valve station
23 or stations to and including the sprinkler heads and inspection test
24 stations, and any other required apparatuses and terminal points within
25 the piping system.

26 7. Apprentice. A person who is at least sixteen years of age who has
27 entered into a written agreement with a sponsor to provide for his or
28 her participation in an approved program of training through employment
29 and related and supplemental instruction in accordance with the New York
30 state department of labor apprenticeship programs and agreements.

31 8. HVAC system. Any device or apparatus used in connection with a
32 heating, ventilation and/or air-conditioning system located in any
33 building structure whatsoever. For purposes of this article, this defi-
34 nition shall include all conveyance pipes for any and all types of
35 refrigerant gas, oil and/or water, including piping to potable water
36 connections.

37 9. Incidental potable water connection. A connection to an existing
38 potable water system that does not involve substantial modification,
39 alteration and/or repair to the existing system. For purposes of this
40 article, an "incidental potable water connection" does not include the
41 installation of, alteration of and/or modification to a potable water,
42 waste, soil and/or vent system or replacement of valves or back-flowing
43 devices.

44 10. Journeyman. A person who works in New York state and is employed
45 by and under the direct supervision and control of a licensed master
46 plumber or a licensed or certified mechanical tradesperson, with a mini-
47 mum of ten thousand hours of experience as an apprentice in the plumbing
48 or heating trade, or with a minimum of two thousand hours of experience
49 as an apprentice in the L.P. gas, sprinkler, pump installation, water
50 treatment, or well drilling trade, or a minimum of six thousand hours
51 experience in HVAC. A journeyman will be required to successfully
52 complete an examination for registration as a journeyman plumber card-
53 holder or certification as a journeyman mechanical tradesperson card-
54 holder. Prior to the thirtieth day of June next succeeding the effective
55 date of this article, the board will issue journeyman plumber cards and

1 journeyman mechanical tradesperson cards upon successful application to
2 the board.

3 11. Lawn, garden and agricultural sprinkler system. A system of piping
4 or other mechanical means for the purpose of supplying land with water
5 by artificial means, as by diverting streams, flooding or spraying, or
6 to moisten, wet or nourish vegetation, lawns, crops or other agricul-
7 tural means.

8 12. L.P. gas system. All devices and apparatuses comprising the liquid
9 petroleum gas piping system for all L.P. gas burning appliances extend-
10 ing from the point of connection with the local supplier's meter and/or
11 storage tank to all termination points contained in the customer's
12 piping system.

13 13. Master plumber. A person who engages in or carries on the craft of
14 plumbing, as provided for by the provisions of this article.

15 14. Mechanical trades. Trades that are directly related to the trade
16 of plumbing and subject to certification under the provisions of this
17 article, including:

18 (a) Fire sprinkler systems: installation, repair and maintenance;

19 (b) Lawn, garden and/or agricultural sprinkler systems: installation,
20 repair and maintenance;

21 (c) L.P. gas systems (including natural, propane, butane, and any
22 other gas used for heating, cooking, or ornamental purposes from the
23 point of connection with the local supplier's meter and/or storage tank
24 to all termination points contained in consumers' piping systems, and
25 oxygen and similar piping systems located at medical offices): installa-
26 tion, repair, maintenance, extension, relocation and/or alteration;

27 (d) Heating, ventilation and air-conditioning ("HVAC") systems:
28 installation, repair and maintenance, extension and/or alteration; and

29 (e) Water well, pump, storage, treatment and/or filtration systems:
30 installation, drilling, repair and maintenance.

31 15. Mechanical tradesperson. A person engaged in any one of the
32 mechanical trades as defined by this article.

33 16. Person. For purposes of this article, the term "person" shall
34 include an individual partnership, corporation, business organization or
35 other similar entity.

36 17. Plumber. A craftsman who installs, repairs pipes, fixtures and
37 other apparatus for the distribution of water or gas in a building or
38 for the disposal of sewage, as defined in chapter two of the New York
39 state plumbing code.

40 18. Potable water source. Water free from impurities present in
41 amounts sufficient to cause disease or harmful physiological effects and
42 conforming in bacteriological and chemical quality to the requirements
43 of the public health authority having jurisdiction.

44 19. Sheet metal. Utility consisting of the duct work and material for
45 the distribution of air-controlled movement.

46 § 7532. Practice of plumbing and mechanical trades. 1. No person
47 shall engage in, carry on or conduct the business or trade of plumbing
48 or similar mechanical trade within the state of New York, and no person
49 shall represent himself or herself to be, or advertise as a plumber,
50 master plumber or mechanical tradesperson within the state of New York
51 unless duly licensed or certified in accordance with the provisions of
52 this article.

53 2. No person shall engage in the business or trade of plumbing or
54 other similar mechanical trade, as defined herein, or hire himself or
55 herself out to perform the services of master plumber, licensed or
56 certified mechanical tradesperson, journeyman plumber or journeyman

1 mechanical tradesperson, or apprentice unless he or she has been duly
2 authorized to do so by the issuance of a master plumber license, mechan-
3 ical trades certification, journeyman plumber card or journeyman mechan-
4 ical tradesperson card, or apprentice registration.

5 3. No person who has been licensed or certified under the provisions
6 of this article shall commence any new installation, repair or alter-
7 ation to any plumbing or gas system within the state of New York without
8 first having obtained the appropriate permit or permits from the local
9 building department having jurisdiction, which shall forward a copy of
10 the same to the board.

11 4. Nothing contained in this article shall be construed to obviate the
12 need for procuring any and all permits otherwise required by law for the
13 performance of plumbing and/or mechanical trades work.

14 § 7533. State board of trades. A state board of trades shall be
15 appointed by the board of regents on recommendation of the commissioner
16 for the purpose of assisting the board of regents and the department on
17 matters of professional licensing and professional conduct in accordance
18 with section sixty-five hundred eight of this title. The board of trades
19 shall be composed of not less than seven members of the plumbing indus-
20 try or related mechanical trades licensed in this state. An executive
21 secretary to the board shall be appointed by the board of regents on
22 recommendation of the commissioner and shall be a member of the plumbing
23 industry or related mechanical trades who is licensed in this state.

24 § 7534. Licensing requirements and procedures. 1. Written applica-
25 tions for licensure and/or certification shall be submitted to the
26 secretary of the board on the form prescribed by the board. At a mini-
27 mum, each application shall set forth the name, residence address, busi-
28 ness address, telephone numbers and trade names of the applicant, plus
29 such additional information concerning his or her qualifications as the
30 board may require. All applications shall be signed by the applicant,
31 whose signature shall be duly acknowledged. Applications must be made
32 in the name of the individual seeking licensure and/or certification. If
33 the applicant is an officer, owner or employee of a plumbing and/or
34 mechanical trade business, partnership or corporation, then the applica-
35 tion shall set forth the names of all officers, owners and employees
36 thereof as of the date of application.

37 2. Applicants shall include with their application satisfactory
38 evidence that they have successfully completed a minimum number of hours
39 of experience in their respective trade as described below. Such
40 documentation shall be submitted together with such other information
41 and/or documentation as the board may require in considering said appli-
42 cation. Failure to submit the foregoing evidence and/or information will
43 result in a denial of said application.

44 (a) Applicants for a master plumber's license must include with their
45 application satisfactory evidence that they have successfully completed
46 ten thousand hours of experience as an apprentice and eight thousand
47 hours of experience as a journeyman in the plumbing trade under the
48 employ of a licensed master plumber.

49 (b) Applicants for a license in the heating, HVAC or sheet metal
50 trades must include with their application satisfactory evidence that
51 they have successfully completed six thousand hours of experience as an
52 apprentice and eight thousand hours of experience as a journeyman in the
53 heating, HVAC or sheet metal trade under the employ of a licensed master
54 tradesman.

55 (c) Applicants for a license in the L.P. gas, sprinkler, pump instal-
56 lation, water treatment or well drilling trades must include with their

1 application satisfactory evidence that they have completed two thousand
2 hours of experience as an apprentice and two thousand hours of experi-
3 ence as a journeyman in the L.P. gas, sprinkler, pump installation,
4 water treatment or well drilling trades under the employ of a licensed
5 master tradesman.

6 (d) The board shall not require a letter from a former employer
7 evidencing experience in the applicant's respective field.

8 3. Upon receipt of an application, the secretary shall immediately
9 forward a copy of the same to the chairman of the board.

10 4. Where applicable, applications must be accompanied by the appropri-
11 ate testing fee. Testing fees collected under this article shall not be
12 refundable in the event of failure to take or pass the written examina-
13 tion. These fees shall be split between the state of New York and the
14 county government in which the applicant resides.

15 5. Upon satisfactory submission of all application materials, the
16 applicant shall be required to take and successfully complete the appro-
17 priate New York state examination for the trade for which licensure
18 and/or certification is sought. Either the board or an approved testing
19 agency shall provide written examinations a minimum of four times per
20 calendar year. The date, time and place of testing shall be determined
21 by the board or the approved testing agency. The board shall provide
22 applicants with a minimum of two weeks' written notice of testing dates.
23 A complete record of every examination administered under the provisions
24 of this article shall be kept on file with the board for a period of
25 three years following the date of examination.

26 6. Applicants must receive a grade of seventy percent or higher on the
27 written examination to qualify for licensure. Applicants shall be noti-
28 fied of the results of their written examination within ten working days
29 after the date of the examination. The names and addresses of all
30 successful applicants shall be registered by the board in the plumbing
31 and mechanical trades licensing records maintained by the board.

32 7. In the event an applicant fails the written examination, he or she
33 may reapply for licensure under the provisions of this article, subject
34 to the following additional waiting periods:

35 (a) Second written examination: at the next available test date, meas-
36 ured from the date of the applicant's first written examination.

37 (b) Third and subsequent written examination: one year waiting period,
38 measured from the date of the applicant's preceding written examination.

39 (c) New application required. An applicant who fails the written exam-
40 ination three times must submit a new application, accompanied by
41 payment of the appropriate fee.

42 8. The amounts for testing, licensing, renewal and other fees provided
43 for under the provisions of this article shall be set by resolution of
44 the legislature. All fees collected under the provisions of this article
45 are nonrefundable and split between the state of New York and the county
46 government in which the applicant resides.

47 9. The board, with legislative approval, may waive the examination
48 requirements and issue a master plumbing license or a mechanical trade
49 certification to any person holding an equivalent current and valid
50 license or certification issued by other political subdivisions of the
51 state of New York, provided that, in the judgment of the board the qual-
52 ifications for such license or certification by such other political
53 subdivisions are substantially similar to those required by or permitted
54 pursuant to this article. Furthermore, such political subdivision shall
55 similarly issue a license or certification without examination to an
56 individual with such qualifications licensed or certified in New York

1 state, as evidenced by local law and/or resolution by such political
2 subdivision. Both the state of New York and the political subdivision
3 shall file with their respective county or town clerk these reciprocity
4 agreements. All other requirements for licensure and/or certification
5 provided for by this article remain applicable to such persons. Such
6 persons are subject to all provisions of this article.

7 10. Upon payment of the appropriate fee, the board shall issue a
8 license or mechanical trade certificate to the approved applicant,
9 together with an indicia of licensure or certification evidencing the
10 same (which shall remain the property of the state of New York).
11 Licenses and/or certifications shall be issued to individuals only.

12 11. (a) Each master plumbing license and/or mechanical trades certifi-
13 cation issued hereunder shall expire on the thirty-first day of Decem-
14 ber.

15 (b) Beginning on the thirtieth day of June next succeeding the effec-
16 tive date of this article, each journeyman plumber's card and each jour-
17 neyman mechanical tradesperson card shall be issued for a two-year peri-
18 od expiring on the succeeding thirtieth day of June and shall be issued
19 upon the payment of a two-year fee. Thereafter, such journeyman
20 plumber's card and journeyman mechanical trades card shall expire on the
21 thirtieth day of June of each even numbered year.

22 (c) All apprentice registration cards issued pursuant to the defi-
23 nition of "apprentice" in section seventy-five hundred thirty-one of
24 this article shall expire on June thirtieth, next succeeding the effec-
25 tive date of this article and shall be issued upon payment of a two year
26 fee. Thereafter each apprentice registration card shall expire on the
27 thirtieth day of June of each odd-numbered year.

28 12. Applications for renewal of a license or certification duly issued
29 under the provisions of this article shall be submitted to the secretary
30 of the board on the form prescribed by the board at least thirty days
31 prior to the expiration date of the license and/or certification, and
32 shall be accompanied by the appropriate annual licensing fee. Upon
33 request by the board, applicants for renewal must provide the board with
34 such proof as may be necessary and appropriate to satisfy the board of
35 the applicant's qualifications, competency and fitness to carry on the
36 trade for which he or she is licensed and/or certified.

37 13. If application for renewal is not made within the time prescribed
38 herein, the board, in its sole discretion, may nevertheless renew the
39 license and/or certification in accordance with the board's rules and
40 regulations. In such event, before the board may issue a renewal, the
41 license or certificate holder must pay the appropriate penalty fee, as
42 set by the legislature. If an application for a renewal is not made by
43 March thirty-first, the board will notify the applicant by registered
44 mail that his or her application for renewal has not yet been received,
45 and an additional late fee, in an amount set by the board and approved
46 by the legislature, shall be assessed against the licensee or certifi-
47 cate holder, which fee shall be paid in full prior to the issuance of a
48 license or certificate renewal.

49 14. Whenever a licensed master plumber or licensed or certified
50 mechanical tradesperson representing a plumbing or mechanical trades
51 business, which operates under a trade, partnership or corporate name,
52 severs his or her relationship with such business, it shall be the duty
53 of the license and/or certificate holder and the business to notify the
54 board of such action within thirty days from the date thereof. Failure
55 to do so shall be deemed sufficient cause for denying a new license,
56 certification and/or renewal thereof to such person and prohibiting the

1 business to continue in the business of plumbing and/or mechanical
2 trades.

3 15. All licensees, certificate holders and card holders shall be
4 required to present evidence of licensure, certification or registration
5 upon demand by the director, the code enforcement officer or officers
6 and/or the license enforcement officer or officers appointed under this
7 article. Failure to do so shall constitute a violation of this article.
8 A violation of this section shall subject such person to civil and/or
9 criminal penalties as provided for in this article.

10 (a) Licensed and certified contractors shall require all workers work-
11 ing for the licensed or certified contractor on a job site to carry
12 identification at all times on the job site. A violation of this section
13 shall subject the licensed or certified contractor to a civil penalty as
14 provided for in this article.

15 (b) Should a licensed or certified contractor be charged with a
16 violation for a worker not carrying identification, the licensed or
17 certified contractor shall have two business days to produce the work-
18 er's identification to the department of consumer affairs for a
19 reduction in the civil penalty. In order to receive a reduction in the
20 civil penalty, at the time the identification is produced to the depart-
21 ment of consumer affairs the licensed or certified contractor shall
22 present the payroll records of the employee or evidence of the licensed
23 or certified contractor's payment to the company that employs the worker
24 found on the job site without identification.

25 16. Military service exception. In the event a license and/or certif-
26 icate holder is called to active duty in the United States military, his
27 or her license and/or certificate shall be deemed frozen during the
28 period of such active duty. Upon return from active duty, and presenta-
29 tion to the board of proof of the dates of active duty, such license
30 and/or certificate shall be reactivated effective the day after the last
31 date of active duty and credited for each day of active duty. This
32 exception shall retroactively apply to any deployments occurring after
33 September eleventh, two thousand one.

34 17. No holder of a license or mechanical trade certification duly
35 issued under the provisions of this article shall, directly or indirect-
36 ly, authorize, consent to or permit the use of his or her license or
37 certification by or on behalf of any other person or business entity. A
38 violation of this subdivision shall be grounds for immediate revocation
39 or suspension of license or certification in accordance with this arti-
40 cle, and shall subject such license and/or certificate holder to civil
41 and criminal penalties as provided for in this article.

42 18. No person who is licensed as a master plumber or licensed or
43 certified as a mechanical tradesperson pursuant to this article shall
44 hire any person to perform services of a journeyman plumber or journey-
45 man tradesperson in the state of New York unless such person has
46 obtained a journeyman plumber card or journeyman mechanical tradesperson
47 card under this law.

48 19. No person who is licensed as a master plumber or licensed or
49 certified as a mechanical tradesperson pursuant to this article shall
50 hire any person to perform services of an apprentice in the state of New
51 York unless such person has registered as an apprentice under this arti-
52 cle.

53 20. A violation of this section shall subject such person to civil
54 and/or criminal penalties as provided for in this article, except that a
55 master plumber shall be responsible for any and all unregistered employ-
56 ees.

1 21. This section shall not be construed to impose penalties upon an
2 employee of an unlicensed plumber or an unlicensed or uncertified
3 mechanical tradesperson. Should an unlicensed plumber or unlicensed or
4 uncertified mechanical tradesperson hire a journeyman plumber, journey-
5 man mechanical tradesperson or apprentice, the unlicensed plumber or
6 uncertified mechanical tradesperson shall be penalized.

7 22. No person who has not qualified for and obtained a license,
8 certificate, or registration card issued under the provisions of this
9 article shall represent himself or herself to the public, or engage in
10 the work of, a licensed master plumber, journeyman plumber, licensed or
11 certified mechanical tradesperson, journeyman mechanical tradesperson or
12 apprentice in the state of New York.

13 23. A violation of this section shall subject such person to civil
14 and/or criminal penalties as provided for in this article, except that a
15 master plumber shall be responsible for any and all unregistered employ-
16 ees.

17 24. The board shall have the power to suspend or revoke any license,
18 certification or renewal thereof duly issued under the provisions of
19 this article upon a showing, made in accordance with the rules and regu-
20 lations of the board and supported by substantial evidence, that:

21 (a) The license and/or certificate holder violated any provision of
22 this article the rules and regulations of the board, or any other law
23 or ordinance pertaining to plumbing or mechanical trades; or

24 (b) The license and/or certificate holder is unfit or incapable of
25 performing or engaging in the trade for which he or she is licensed
26 and/or certified, as evidenced by substantiated complaints and/or charg-
27 es filed against the licensee and/or certificate holder with the board.

28 25. Prior to taking action to suspend or revoke a license and/or
29 certificate, the board shall provide notice and conduct a hearing in
30 accordance with the procedures set forth in this article.

31 26. In the event the board suspends or revokes a license and/or
32 certificate issued hereunder, it shall set forth in writing the reasons
33 supporting such determination and provide a copy of the same to the
34 license and/or certificate holder within ten days after the close of the
35 hearing.

36 27. In the event of suspension, said determination shall set forth the
37 term of the suspension.

38 28. In the event of revocation, the licensee and/or certificate holder
39 shall return his or her indicia of licensure or certification to the
40 board via certified mail, return receipt requested. Such person shall
41 not be eligible for relicensing and/or recertification unless and until
42 he or she receives written authorization to re-apply from the board, and
43 only then after successful re-examination in accordance with the
44 provisions of this article.

45 29. (a) Upon written request by the licensee and/or certificate hold-
46 er, setting forth in detail the reasons therefor, the board may deem a
47 license or certificate shelved, subject to the following:

48 (i) The licensee and/or certificate holder shall surrender his or her
49 plate to the board.

50 (ii) The granting of a request for shelved status shall not be deemed
51 or otherwise considered a suspension of license or certificate.

52 (iii) The period of shelved status may be granted for a period of one
53 year.

54 (iv) The period of shelved status shall commence on January first of
55 the next year following the granting of approval by the board.

1 (b) On or before the December thirty-first of each year of shelved
2 status, the licensee and/or certificate holder must either:

3 (i) Submit a written request for an extension of shelved status, which
4 may be granted at the discretion of the board; or

5 (ii) Submit a written request that his or her license or certificate
6 be reactivated, which request shall be granted by the board without
7 further testing or qualification.

8 (c) Upon reactivation, the licensee and/or certificate holder shall be
9 required to pay the appropriate annual licensing or certificate fee
10 regardless of the time remaining in the calendar year.

11 (d) Any license or certificate holder of a shelved license found work-
12 ing in the state of New York shall be deemed unlicensed/uncertified. The
13 license or certificate holder shall be subject to fines and penalties as
14 provided for in this article, and shall permanently lose his/her eligi-
15 bility to apply for a shelved license in the future.

16 (e) A licensee or certificate holder granted shelved status must
17 complete any continuing education credit hours that may be required
18 during the period of time the license or certificate is shelved in order
19 to reactivate the license or certificate.

20 30. (a) For purposes of this section, a licensed master plumber or
21 mechanical tradesperson, as defined in this article, shall be eligible
22 to shelve his/her license/certification while he/she is exclusively
23 employed by:

24 (i) New York state government;

25 (ii) a town or village within New York state; or

26 (iii) a school district in New York state.

27 (b) The request for shelved status hereunder shall be made annually to
28 the board in writing. Once the board has granted authorization to
29 shelve, the license/certificate holder shall surrender his/her plate,
30 license/certificate and remove decals from his/her vehicles, prior to
31 activation of such shelving status. No shelved license/certificate hold-
32 er shall receive a copy or any other reproduction of such shelved
33 license/certification. In no way shall approval of shelved status here-
34 under be deemed a suspension.

35 (c) A fee shall be assessed against the license and/or certificate
36 holder during any period of approved shelving. If a licensee/certificate
37 holder activates his/her license/certification at any time during the
38 calendar year, he/she will be responsible for the full year's fee. Fees
39 shall not be prorated.

40 (d) Any license or certificate holder of a shelved license found work-
41 ing outside his/her exclusive employment by New York state government, a
42 New York state town or village, or school district within the state of
43 New York shall be deemed unlicensed/uncertified. He or she shall be
44 subject to fines and penalties as provided for in this article, and
45 shall permanently lose his or her eligibility to apply for a shelved
46 license in the future.

47 (e) A license or certificate holder granted shelved status must
48 complete any continuing education credit hours that may be required
49 during the period of time the license or certificate is shelved in order
50 to reactivate the license or certificate.

51 31. (a) Licenses may not be issued in the name of a corporate or busi-
52 ness entity. In the case of a corporation, partnership, limited partner-
53 ship or joint venture, the individuals who are responsible for the
54 performance of the work covered by this article on behalf of such corpo-
55 ration, partnership, limited partnership or joint venture, whether they
56 be employees, officers, owners, or shareholders of the same, must be

1 individually licensed or certified in accordance with the provisions of
2 this article.

3 (b) Such licensed master plumber or licensed or certified tradesperson
4 shall be solely responsible for the proper supervision and layout of any
5 plumbing or mechanical trade work performed in the name of such business
6 entity. All performing work under such licensed master plumber and/or
7 licensed or certified tradesperson must be active employees of such
8 business entity.

9 (c) All such corporations, partnerships, limited partnerships or joint
10 ventures must file with the board a certified copy of the applicable
11 business certification as is on file with the clerk of the county where
12 such business entity maintains its principal place of business.

13 (d) It shall be a violation of this article for any person or business
14 entity doing or seeking to do business in New York state to present
15 himself, herself or itself to the public as a "plumber", "master plum-
16 ber" or "mechanical tradesperson" by the use of such terms or other
17 words of similar import and meaning on signs, cards, stationery, printed
18 material or in any other manner whatsoever, unless such person or busi-
19 ness entity shall have complied with the requirements of this article.

20 § 7535. Mechanical trades certification. 1. Certification required.
21 Any person and/or business entity, including licensed master plumbers,
22 who wish to perform services in connection with the installation, repair
23 and maintenance of fire-protection sprinkler systems; lawn, garden and
24 agricultural sprinkler systems; L.P. gas systems; HVAC systems; and
25 water well, treatment and pump systems, must be certified in accordance
26 with the provisions of this article.

27 2. Special regulations and requirements.

28 (a) Fire sprinkler system and lawn, garden and agricultural sprinkler
29 system certification.

30 (i) The applicant must submit proof of a minimum of four thousand
31 hours of experience working with sprinkler systems.

32 (ii) Upon certification, such certified mechanical tradesperson and/or
33 business entity, in addition to performing the work for which they are
34 certified, may make only incidental potable water connections as defined
35 herein. Any connection to a potable water source must be made by a
36 licensed master plumber.

37 (b) L.P. gas certification.

38 (i) The applicant must successfully complete the New York state L.P.
39 examination.

40 (ii) The applicant must submit proof of successful completion of a
41 certified employee training program and gas check to the board prior to
42 the issuance of an L.P. gas certification.

43 (iii) The applicant must submit proof of a minimum of four thousand
44 hours of experience working in the L.P. gas industry.

45 (iv) Any relocation of more than three feet of an L.P./natural gas
46 appliance connected to a potable water supply must be performed by a
47 licensed master plumber.

48 (v) L.P./natural gas filing requirement.

49 (A) All L.P./natural gas work performed in New York state must be
50 filed for inspection with the board.

51 (B) All L.P./natural gas hook-ups must be inspected before any gas
52 service can be turned on.

53 (C) A violation of this subdivision shall subject such person to civil
54 penalties as provided in this article.

55 (c) HVAC certification.

1 (i) Certification will be issued only upon submission to the board of
2 such proof as may be required to demonstrate the applicant's experience,
3 qualifications and skill to perform the work of an HVAC mechanical
4 tradesperson, including satisfactory proof of a minimum of fourteen
5 thousand hours of experience in the performance of HVAC installation,
6 maintenance and repair.

7 (ii) Work performed under the HVAC certification shall be limited to
8 oil heating and cooling systems.

9 (iii) Any HVAC alteration, modification or installation involving
10 relocation of any part of the HVAC system more than three feet from an
11 existing heating, ventilation or air-conditioning appliance which is
12 connected to a potable water source must be performed by a licensed
13 master plumber.

14 (d) Water well and pump certification.

15 (i) Certification is required for all persons and business entities
16 engaged in the drilling of water wells, installation of water pumps
17 and/or pumping systems, installation of filtration and/or water treat-
18 ment systems, and/or installation of cold water storage tanks. Separate
19 certifications are required for each related trade. No other work may be
20 performed, except for the work which certification is issued.

21 (ii) Certification will be issued only upon submission to the board of
22 such proof as may be required to demonstrate the applicant's experience,
23 qualifications and skill to perform such work.

24 (iii) Applicants for certification for well water drilling must:

25 (A) Be at least twenty-one years of age;

26 (B) Possess a minimum of four thousand hours' experience in the drill-
27 ing industry;

28 (C) Pass two exams given by a New York department of environmental
29 conservation recognized equivalent testing company with a grade of
30 seventy percent or better; and

31 (D) Be registered with the New York state department of environmental
32 conservation.

33 (iv) Applicants for certification in pump and/or plumbing systems
34 installation, must:

35 (A) Be at least twenty-one years of age;

36 (B) Possess a minimum of two years of experience in the pump industry;

37 (C) Pass two exams given by a New York state department of environ-
38 mental conservation recognized testing company with a grade of seventy
39 percent or better; and

40 (D) Be registered with the New York state department of environmental
41 conservation.

42 (v) Applicants for all other certifications in this field must present
43 the board with satisfactory proof of a minimum of two years of prior
44 experience in the field for which certification is sought.

45 (e) Water treatment certification.

46 (i) Certification is required for all persons and business entities
47 engaged in the installation, repair, replacement, alteration and mainte-
48 nance of water softeners, water treatment and/or purification systems.

49 (ii) Certification under this section does not authorize the certif-
50 icate holder to install initial connection to a potable water source or
51 to sanitary waste systems or lines. Such connections must be performed
52 by a licensed master plumber.

53 (iii) Certification will be issued only upon submission to the board
54 such proof as may be required to demonstrate the applicant's experience,
55 qualifications and skill to perform such work.

56 (iv) Applicants for water treatment certification must:

1 (A) Be at least twenty-one years of age;
2 (B) Possess a minimum of four thousand hours of experience in the
3 water treatment industry; and
4 (C) Pass two exams given by the water quality association with a pass-
5 ing grade of seventy percent or better.
6 (f) Sheet metal certification.
7 (i) Certification is required for all persons and business entities
8 engaged in the installation of sheet metal and duct work used in HVAC
9 systems.
10 (ii) Certification will be issued only upon submission to the board of
11 such proof as may be required to demonstrate the applicant's experience,
12 qualifications and skill to perform such work including satisfactory
13 proof of a minimum of fourteen thousand hours of experience working in
14 the sheet metal industry.
15 (iii) Applicants for certification for sheet metal certification must:
16 (A) Be at least twenty-one years of age;
17 (B) Possess a minimum of seven years' experience working with sheet
18 metal; and
19 (C) Pass the sheet metal examination with a grade of seventy percent
20 or better.
21 § 7536. Special provisions. 1. Notwithstanding any other provision of
22 this article, a master plumber license shall not be required to make
23 incidental potable water connections to existing potable water piping
24 systems, provided such connection is made by a person who has been duly
25 certified under the provisions of this article in the related and appli-
26 cable mechanical trade.
27 2. Exception. In a new construction, defined herein to mean a struc-
28 ture that does not have a present existing potable water system, all
29 final potable water supply connections to and from and appliances
30 located within the structure must be made by a licensed master plumber.
31 Further, all L.P. gas piping and natural gas piping connections within
32 such structures must be installed by a licensed master plumber or duly
33 certified mechanical tradesperson.
34 3. (a) Each person issued a license or certification under this arti-
35 cle will be issued a written certificate of license or certification, a
36 personal identification card and a vehicle bumper decal, each of which
37 will contain the holder's name, New York state license or certification
38 number, and the expiration date thereof. All items so issued shall be
39 and remain the property of New York state.
40 (b) The certificate of license or certification must be conspicuously
41 displayed at the holder's place of business at all times.
42 (c) The personal identification card must be in the holder's
43 possession at all times while on a job site, and available for
44 inspection.
45 (d) The vehicle's bumper decal must be affixed to the left rear bumper
46 of all vehicles owned, leased or used by the license or certification
47 holder in the performance of his or her trade or business.
48 (e) All vehicles which are owned, leased or used in the name of a
49 business entity, the owners, principals and/or employees of which are
50 subject to the provisions of this article, must prominently display the
51 business name and New York state license or certification.
52 (f) All vehicles which are owned, leased or used in the name of a
53 business entity, the owners, principals and/or employees of which are
54 subject to the provisions of this article, must be duly registered with
55 the board by providing proof of vehicle registration.

1 (g) Failure to comply in any manner with the provisions of this subdi-
2 vision shall be a violation of this article and shall subject the
3 license/certification holder to the sanctions provided for in this arti-
4 cle.

5 § 7537. Prohibited acts and enforcement. 1. The following acts are
6 strictly prohibited:

7 (a) abandonment or failure to perform, without justification, any
8 contract for plumbing or mechanical trades work or project engaged in or
9 undertaken by the contractor.

10 (b) making any substantial misrepresentation in the procurement of a
11 contract for plumbing or mechanical trades work, or making any false
12 promise likely to influence, persuade or induce.

13 (c) any fraud in the execution of or in the material alteration of any
14 contract, promissory note or other document incident to a contract for
15 plumbing or mechanical trades work.

16 (d) making a false statement or providing false information in making
17 an application for registration, including duplicate or renewal.

18 (e) preparing or accepting any mortgage, promissory note or other
19 evidence of indebtedness upon the obligation of a contract for plumbing
20 or mechanical trades work with knowledge that it represents a greater
21 monetary obligation than the agreed-upon consideration for the contract.

22 (f) demanding or receiving any payments prior to the signing of a
23 contract for plumbing or mechanical trades work.

24 (g) receiving at or before the time of execution of a contract a
25 deposit of more than one third of the contract price.

26 (h) directly or indirectly publishing any advertisement relating to
27 plumbing or mechanical trades work which contains an assertion, repre-
28 sentation or statement of fact which is false, deceptive or misleading,
29 provided that any advertisement which is subject to and complies with
30 then existing rules, regulations or guidelines of the federal trade
31 commission shall not be deemed false, deceptive or misleading; or by any
32 means or advertising or purporting to offer the general public any
33 plumbing or mechanical trade work with the intent not to accept
34 contracts for the particular work or at the price which is advertised or
35 offered to the public.

36 (i) disregard and violation of the building, sanitary and health laws
37 of the state of New York or of any political or municipal subdivision
38 thereof.

39 (j) failure to notify the board, in writing, of any changes of control
40 in ownership, management or business name or location.

41 (k) failure to adhere to any of the requirements as set forth in this
42 article.

43 (l) conducting a plumbing or mechanical trades business in any name
44 other than the one in which the contractor is registered.

45 (m) failure to comply with any order, demand or requirement made by
46 the board pursuant to the various provisions of this article.

47 (n) failure to list registration number in any and all advertisements
48 for the registered plumbing or mechanical trade business.

49 (o) failure to establish or maintain financial solvency, taking into
50 account the scope and size of a person's business in relation to the
51 person's current assets, liabilities, credit rating, net worth and
52 circumstances affecting solvency. Such financial information shall be
53 confidential and not a public record but, where relevant, shall be
54 admissible as evidence in any administrative hearing or judicial action
55 proceeding.

1 (p) failure to maintain the proper insurance, surety license and
2 permit bond, as required.

3 (q) any fraud in recommending the installation, repair or replacement
4 of any item the tradesmen knew or should have known was not required.

5 (r) work which is not consistent with New York state building codes,
6 local codes, contemporary industry standards or any other applicable
7 codes.

8 2. Suspension, revocation and civil fines. Following a hearing as
9 provided for herein, the board shall have the power to revoke or suspend
10 for such period as the board may deem appropriate any license or certif-
11 ication issued under the provisions of this article, and/or assess and
12 impose civil fines as provided for herein, provided a majority of the
13 board is satisfied by substantial evidence that a person or the holder
14 of such license or certification has violated a provision of this arti-
15 cle, the rules and regulations of the board, or any other law, regu-
16 lation or ordinance applicable to plumbing or related mechanical trades.

17 3. Procedure for suspension, revocation and/or imposition of civil
18 fines. (a) Notice of charges. Prior to revocation or suspension of a
19 license or certification, and/or the assessment of any civil penalties
20 as provided for herein, the holder thereof shall receive in writing, in
21 the form of an appearance ticket, all of the particulars of the alleged
22 violation. Such notice shall be forwarded to the alleged violator by the
23 code enforcement officer via registered or certified mail, return
24 receipt requested, and shall contain the following information:

25 (i) the name and address of the alleged violator.

26 (ii) the specific section or sections of this article alleged to have
27 been violated.

28 (iii) a statement of the facts and circumstances supporting the charge
29 or charges.

30 (iv) the date, time and place where the alleged violator is summoned
31 to appear before the board for a hearing on the alleged violation.

32 (v) a statement advising the alleged violator that any answer to the
33 charges must be filed with the board within fifteen days of his or her
34 receipt thereof, as evidenced by the returned receipt of mailing.

35 (vi) a statement of the possible penalties to be imposed in the event
36 the charges are proven to the board by substantial evidence.

37 (vii) a statement advising the alleged violator that a default judg-
38 ment will be entered against him or her in the event he or she fails to
39 appear as directed.

40 (viii) a statement advising the alleged violator that he or she has
41 the right:

42 (A) to be represented by legal counsel (at his or her own expense);

43 (B) to testify, call witnesses and/or present evidence in his or her
44 defense at the hearing.

45 (b) Hearing. (i) Timing. The hearing on any alleged violation of this
46 article shall be held before the board within sixty days of the date of
47 the written notice provided for in paragraph (a) of this subdivision.

48 (ii) Adjournments. Any request for an adjournment must be made in
49 writing and may be granted at the sole discretion of the board.

50 (iii) Record. A stenographic record or record of the hearing shall be
51 created by the board.

52 (iv) Rules of evidence. Compliance with the technical rules of
53 evidence shall not be required, but all evidence presented must be mate-
54 rial and relevant as determined by the hearing officer (or presiding
55 board member).

1 (v) Presiding officer. The hearing shall be conducted by the board and
2 shall be presided over by the chairman of the board or, in his or her
3 absence, the vice-chairman.

4 (vi) Presentation of evidence in support of the charges. Evidence of
5 alleged violation shall be presented to the board by the code enforce-
6 ment officer or officers, or such officer's designee, who shall be
7 subject to cross-examination by the alleged violator or his or her legal
8 representative.

9 (vii) Burden of proof. The charges contained in the notice shall be
10 proved by substantial evidence.

11 (viii) Findings of fact decision. Within thirty days from submission
12 of all evidence and the close of the hearing, the board shall issue a
13 written decision on the charges, setting forth therein:

14 (A) its findings of fact as determined by the evidence presented at
15 the hearing;

16 (B) its decision regarding the alleged violator's guilt or innocence
17 of the charges set forth in the notice of charges;

18 (C) a statement of the reasons supporting its decision;

19 (D) the penalty, if any, to be imposed, including any relevant effec-
20 tive date or periods of duration as determined by the board; and

21 (E) a statement regarding the right to challenge the board's decision
22 pursuant to article seventy-eight of the civil practice law and rules.

23 (ix) Notice of decision. The board shall immediately cause a written
24 copy of its findings of fact and decision to be delivered to the alleged
25 violator via registered or certified mail, return receipt requested.

26 (x) Judicial review. The decision of the board shall be subject to
27 judicial review in accordance with article seventy-eight of the civil
28 practice law and rules.

29 4. Permissible penalties. In addition to its power to suspend or
30 revoke a license or certification issued hereunder, or in lieu thereof,
31 the board, following a determination that the charges have been proven
32 by substantial evidence, may impose the following additional penalties:

33 (a) issuance of an official reprimand and warning letter, a copy of
34 which shall be retained by the board and considered in connection with
35 future applications for licensure, certification and/or renewal.

36 (b) a civil penalty in an amount authorized by resolution of the New
37 York state legislature, but not to exceed five thousand dollars for each
38 violation of this article.

39 (c) to the extent a consumer has been materially damaged as a direct
40 result of a violation of this article, the board may issue an order of
41 restitution, the amount of which shall be based upon sufficient and
42 satisfactory evidence of such damage as presented to the board by the
43 aggrieved consumer.

44 5. Litigation costs. In the event the state is required to institute
45 legal proceedings to collect any portion of a fine or penalty imposed
46 upon a person under this article, the state shall be entitled to recover
47 from the person any and all associated costs thereof, including attor-
48 neys' fees and interest on any unpaid fine or penalty calculated at the
49 statutory rate.

50 6. To investigate alleged violations of this section, the director, or
51 his or her duly authorized designee, shall be entitled to request and
52 review records maintained by the holder of a license and/or certif-
53 ication which demonstrates their compliance with said section. Upon
54 completion of an investigation, the director shall have the power to
55 forward his or her findings to the board for the institution of
56 proceedings pursuant to this section. The determination of the board

1 shall be subject to judicial review in any court of competent jurisdic-
2 tion.

3 7. In addition to any civil penalties that may be imposed it shall be
4 a class A misdemeanor, as defined in the penal law, punishable by a term
5 of imprisonment not exceeding one year and a fine not exceeding one
6 thousand dollars, to directly or indirectly engage in or work at the
7 business of a master plumber or licensed or certified mechanical trades-
8 person, as provided herein, in the state of New York, without applicable
9 license or certificate while his or her license or certificate is
10 suspended or revoked.

11 8. This section shall be enforced by the New York state police.
12 Arrests made pursuant to this section shall be made by a police officer
13 or a peace officer acting under his or her special duties.

14 § 7538. Insurance. 1. Prior to the issuance of a master plumber
15 license or mechanical trades certification, or renewal thereof, the
16 applicant must provide the board with the following proofs of insurance
17 and/or bonding:

18 (a) a license/permit bond in the amount of twenty-five thousand
19 dollars.

20 (b) workers' compensation insurance for all employees.

21 (c) general liability of at least five hundred thousand dollars per
22 occurrence.

23 2. All bonds and insurance policies shall contain a provision of
24 continued liability and name New York state as an additional insured.

25 3. Any licensed or certified contractor who has completed the appro-
26 priate "no employee" affidavit and is found in violation of the workers'
27 compensation waiver shall be subjected to a civil penalty as provided
28 for in this article.

29 § 7539. Waiver. The provisions of this article are intended for the
30 protection of an owner and shall not be subject to waiver by an owner in
31 a contract for plumbing or mechanical trades work or otherwise.

32 § 7540. Repealer. All ordinances, local laws and parts thereof incon-
33 sistent with this article are hereby repealed; provided, however, that
34 such repeal shall not affect or impair any act done or right accruing,
35 accrued or acquired, or penalty, charge, liability, forfeiture or
36 punishment incurred or owing prior to the time such repeal takes effect,
37 but the same may be enjoined, asserted, collected, enforced, prosecuted
38 or inflicted as fully and to the same extent as if such repeal had not
39 been effected. All actions and proceedings, civil or criminal, commenced
40 under or by virtue of any provision of state law, ordinance or resol-
41 ution so repealed, and pending immediately prior to the taking effect
42 of such repeal, may be prosecuted and defended to final effect in the
43 same manner as they might if such provisions were not so repealed.

44 § 7541. Severability. If any part or provision of this article or the
45 application thereof to any person or circumstance be adjudged invalid by
46 any court of competent jurisdiction, such judgment shall be confined in
47 its operation to the part or provision or application directly involved
48 in the controversy in which such judgment shall have been rendered and
49 shall not affect or impair the validity of the remainder of this article
50 or the application thereof to other persons or circumstances. The state
51 of New York hereby declares that it would have passed this article or
52 the remainder thereof had such invalid application or invalid provision
53 been apparent.

54 § 4. This act shall take effect the ninetieth day after it shall have
55 become a law.