S T A T E O F N E W Y O R K

3643

2009-2010 Regular Sessions

I N A S S E M B L Y

January 27, 2009

Introduced by M. of A. PHEFFER -- Multi-Sponsored by -- M. of A. FIELDS, GABRYSZAK -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to the registration of home improvement contractors; and to amend the state finance law, in relation to establishing the home improvement trust fund

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 770 of the general business law is amended by adding six new subdivisions 8, 9, 10, 11, 12 and 13 to read as follows:

8. "CERTIFICATE" MEANS A CERTIFICATE OF REGISTRATION ISSUED UNDER THIS ARTICLE.

9. "BOARD" MEANS THE NEW YORK STATE CONSUMER PROTECTION BOARD.

10. "DIRECTOR" MEANS THE EXECUTIVE DIRECTOR OF THE STATE CONSUMER PROTECTION BOARD.

11. "FUND" MEANS THE HOME IMPROVEMENT TRUST FUND ESTABLISHED PURSUANT TO SECTION NINETY-NINE-Q OF THE STATE FINANCE LAW.

12. "PRIVATE RESIDENCE" MEANS A SINGLE FAMILY DWELLING, A CONDOMINIUM, A COOPERATIVE APARTMENT OR A MULTIFAMILY DWELLING CONSISTING OF NOT MORE THAN TWELVE RENTAL UNITS.

13. "FINAL JUDGMENT" MEANS ANY FINAL JUDGMENT OBTAINED IN A COURT OF COMPETENT JURISDICTION, FINAL AWARD IN ARBITRATION OR FINAL DISPOSITION OF A BANKRUPT'S ESTATE.

S 2. The general business law is amended by adding eleven new sections 770-a, 770-b, 770-c, 770-d, 770-e, 770-f, 770-g, 770-h, 770-i, 770-j and 770-k to read as follows:

S 770-A. REGISTRATION REQUIRED. 1. ON OR AFTER MARCH FIRST, TWO THOUSAND TEN, NO PERSON, FIRM OR CORPORATION SHALL HOLD HIMSELF, HERSELF, OR ITSELF OUT TO BE A HOME IMPROVEMENT CONTRACTOR IN NEW YORK STATE WITHOUT FIRST REGISTERING WITH THE BOARD AS PROVIDED IN THIS ARTICLE.

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

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2. THE FOLLOWING PERSONS AND ORGANIZATIONS ARE NOT REQUIRED TO REGISTER AS HOME IMPROVEMENT CONTRACTORS:

(A) THE STATE, MUNICIPALITIES OF THE STATE, OR ANY DEPARTMENT OR AGENCY OF THE STATE OR SUCH MUNICIPALITIES;

(B) THE UNITED STATES OR ANY OF ITS DEPARTMENTS OR AGENCIES; AND

(C) ANY SCHOOL, PUBLIC OR PRIVATE, OFFERING AS PART OF A VOCATIONAL EDUCATION PROGRAM COURSES AND TRAINING IN ANY ASPECT OF HOME IMPROVEMENTS.

S 770-B. INITIAL APPLICATION FOR REGISTRATION. 1. ANY PERSON, FIRM OR CORPORATION SEEKING A CERTIFICATE OF REGISTRATION AS A HOME IMPROVEMENT CONTRACTOR SHALL FILE WITH THE BOARD AN APPLICATION FOR REGISTRATION IN SUCH FORM AND DETAIL AS THE BOARD SHALL PRESCRIBE, INCLUDING THE FOLLOWING:

(A) THE NAME AND RESIDENCE ADDRESS OF THE APPLICANT;

(B) THE BUSINESS NAME, IF OTHER THAN THAT OF THE APPLICANT;

(C) THE PLACE, INCLUDING THE CITY, TOWN OR VILLAGE, WITH THE STREET AND NUMBER, WHERE THE BUSINESS IS TO BE LOCATED;

(D) THE BUSINESS TELEPHONE OF THE APPLICANT;

(E) THE LENGTH OF TIME THAT THE APPLICANT HAS BEEN A HOME IMPROVEMENT CONTRACTOR; AND

(F) A SWORN STATEMENT BY THE APPLICANT THAT THE INFORMATION SET FORTH IN THE APPLICATION IS CURRENT AND ACCURATE.

2. SUCH APPLICATION SHALL INCLUDE A STATEMENT INDICATING WHETHER OR NOT THE APPLICANT HAS:

(A) BEEN CONVICTED OF ANY CRIME DEFINED IN ARTICLE ONE HUNDRED FIFTY-FIVE OF THE PENAL LAW OR ARTICLE TWENTY-TWO-A OF THIS CHAPTER OR IS A DEBTOR ON ANY UNPAID CIVIL JUDGMENT RELATING TO WORK AS A HOME IMPROVEMENT CONTRACTOR; AND

(B) AT ANY TIME IN THE PAST BEEN ISSUED A REGISTRATION PURSUANT TO THIS ARTICLE, AND IF SO, WHETHER SUCH REGISTRATION WAS EVER REVOKED OR SUSPENDED.

3. EXCEPT AS OTHERWISE PROVIDED IN OR INCONSISTENT WITH THE PROVISIONS OF THIS ARTICLE, ALL OF THE PROVISIONS OF THE BUSINESS CORPORATION LAW PERTAINING TO THE STATUTORY DESIGNATION OF THE SECRETARY OF STATE AS AGENT FOR SERVICE OF PROCESS, THE DESIGNATION OF A REGISTERED AGENT FOR SERVICE OF PROCESS, THE MANNER OF EFFECTUATION OF SERVICE OF PROCESS, AND MATTERS INCIDENTAL OR RELATED THERETO SHALL APPLY TO THE REGISTRATION REQUIRED BY THIS ARTICLE WITH SUCH MODIFICATIONS AS MAY BE NECESSARY TO ADAPT SUCH LANGUAGE TO THE REGISTRATION REQUIRED BY THIS ARTICLE. SUCH PROVISIONS SHALL APPLY WITH THE SAME FORCE AND EFFECT AS IF THOSE PROVISIONS HAD BEEN SET FORTH IN FULL IN THIS ARTICLE EXCEPT TO THE EXTENT THAT ANY PROVISION IS EITHER INCONSISTENT WITH A PROVISION OF THIS ARTICLE OR NOT RELEVANT TO THE REGISTRATION REQUIRED BY THIS ARTICLE, UNLESS A DIFFERENT MEANING IS CLEARLY REQUIRED.

4. THE BOARD MAY REFUSE TO ISSUE A REGISTRATION TO ANY PERSON WHOM IT FINDS HAS BEEN CONVICTED OF ANY CRIME DESCRIBED IN PARAGRAPH (A) OF SUBDIVISION TWO OF THIS SECTION, OR FAILED TO PAY ANY FINAL CIVIL JUDGMENT, RELATING TO WORK AS A HOME IMPROVEMENT CONTRACTOR, IF SUCH REFUSAL WILL, IN ITS JUDGMENT, BEST PROMOTE THE INTERESTS OF THE PEOPLE OF THIS STATE.

S 770-C. TERMS. A REGISTRATION ISSUED OR RENEWED UNDER THE PROVISIONS OF THIS ARTICLE SHALL ENTITLE A PERSON TO ACT AS A REGISTERED HOME IMPROVEMENT CONTRACTOR IN THE STATE OF NEW YORK FOR A PERIOD OF TWO YEARS FROM THE EFFECTIVE DATE OF THE REGISTRATION.

S 770-D. REGISTRATION RENEWAL. 1. ANY REGISTRATION GRANTED UNDER THIS ARTICLE MAY BE RENEWED BY THE BOARD UPON APPLICATION AND PAYMENT OF THE

FEE FOR SUCH RENEWAL BY THE HOLDER THEREOF, IN SUCH FORM AS THE BOARD MAY PRESCRIBE.

2. THE BOARD SHALL HAVE THE AUTHORITY TO ASSIGN STAGGERED EXPIRATION DATES FOR REGISTRATIONS AT THE TIME OF RENEWAL. IF THE ASSIGNED DATE RESULTS IN A TERM THAT EXCEEDS TWENTY-FOUR MONTHS, THE APPLICANT SHALL PAY AN ADDITIONAL PRO-RATED ADJUSTMENT TOGETHER WITH THE REGULAR RENEWAL FEE.

3. THE BOARD MAY REFUSE TO RENEW, OR MAY REVOKE OR SUSPEND, THE REGISTRATION OF ANY HOME IMPROVEMENT CONTRACTOR IF SUCH REFUSAL, SUSPENSION OR REVOCATION IS REASONABLY NECESSARY TO PROTECT THE INTERESTS OF THE PEOPLE OF THIS STATE. THE BOARD MAY REINSTATE SUCH REGISTRATION WHERE SUCH GROUNDS FOR REFUSAL, SUSPENSION, OR REVOCATION NO LONGER EXIST.

S 770-E. FEES. 1. EACH ORIGINAL APPLICATION OR APPLICATION FOR RENEWAL FOR REGISTRATION AS A HOME IMPROVEMENT CONTRACTOR SHALL BE ACCOMPANIED BY A FEE OF ONE HUNDRED FIFTY DOLLARS FOR EACH BIENNIAL REGISTRATION PERIOD.

2. NOTICE IN WRITING IN THE MANNER AND FORM PRESCRIBED BY THE BOARD SHALL BE GIVEN TO THE BOARD AT ITS OFFICES IN ALBANY WITHIN TEN DAYS OF CHANGES OF NAME OR ADDRESS BY REGISTERED HOME IMPROVEMENT CONTRACTORS, EXCEPT THOSE MADE ON A RENEWAL APPLICATION. THE FEE FOR FILING EACH CHANGE OF NAME OR ADDRESS NOTICE SHALL BE TEN DOLLARS.

3. IN THE CASE OF LOSS, DESTRUCTION OR DAMAGE, THE BOARD MAY, UPON SUBMISSION OF A REQUEST IN SUCH FORM AND MANNER AS THE BOARD MAY PRESCRIBE, ISSUE A DUPLICATE REGISTRATION UPON PAYMENT OF A FEE OF TEN DOLLARS.

4. THE FEES PROVIDED FOR BY THIS SECTION SHALL NOT BE REFUNDABLE.

S 770-F. PRACTICES OF REGISTRANTS. 1. EACH HOME IMPROVEMENT CONTRACTOR ENGAGED IN MAKING HOME IMPROVEMENT CONTRACTS SHALL EXHIBIT HIS, HER, OR ITS CERTIFICATE UPON THE REQUEST OF ANY INTERESTED PARTY.

2. NO PERSON, FIRM OR CORPORATION SHALL:

(A) PRESENT OR ATTEMPT TO PRESENT, AS HIS, HER, OR ITS OWN, THE REGISTRATION OF ANOTHER;

(B) KNOWINGLY GIVE FALSE EVIDENCE OF A MATERIAL NATURE TO THE BOARD FOR THE PURPOSE OF PROCURING A REGISTRATION;

(C) FALSELY REPRESENT HIMSELF, HERSELF, OR ITSELF AS A REGISTERED HOME IMPROVEMENT CONTRACTOR;

(D) USE OR ATTEMPT TO USE A REGISTRATION WHICH HAS EXPIRED;

(E) OFFER TO MAKE OR MAKE ANY HOME IMPROVEMENT WITHOUT HAVING A CURRENT REGISTRATION AS IS REQUIRED UNDER THIS ARTICLE;

(F) REPRESENT IN ANY MANNER THAT HIS, HER, OR ITS REGISTRATION CONSTITUTES AN ENDORSEMENT OF THE QUALITY OF WORKMANSHIP OR COMPETENCY OF THE CONTRACTOR.

3. REGISTRATIONS ISSUED TO HOME IMPROVEMENT CONTRACTORS SHALL NOT BE TRANSFERABLE OR ASSIGNABLE.

S 770-G. SURETY BONDING REQUIREMENT. 1. AS A CONDITION TO OBTAINING A REGISTRATION PURSUANT TO THIS ARTICLE, EVERY HOME IMPROVEMENT CONTRACTOR APPLICANT WHO IS APPLYING FOR A REGISTRATION AND FOR WHOM THE TOTAL CASH PRICE OF ALL OF HIS, HER, OR ITS HOME IMPROVEMENT CONTRACTS WITH ALL HIS, HER, OR ITS CUSTOMERS IS LESS THAN FIVE HUNDRED THOUSAND DOLLARS DURING THE PERIOD OF TWELVE CONSECUTIVE MONTHS PRIOR TO APPLYING FOR A REGISTRATION SHALL OBTAIN AND CONTINUE IN EFFECT A SURETY BOND IN THE AMOUNT OF TEN THOUSAND DOLLARS EXECUTED BY A SURETY COMPANY AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE.

2. AS A CONDITION OF OBTAINING A REGISTRATION PURSUANT TO THIS ARTICLE, EVERY HOME IMPROVEMENT CONTRACTOR APPLICANT WHO IS APPLYING FOR A REGISTRATION AND FOR WHOM THE TOTAL CASH PRICE OF ALL OF HIS, HER, OR

ITS HOME IMPROVEMENT CONTRACTS WITH ALL HIS, HER, OR ITS CUSTOMERS IS BETWEEN FIVE HUNDRED THOUSAND DOLLARS BUT LESS THAN ONE MILLION DOLLARS DURING THE PERIOD OF TWELVE CONSECUTIVE MONTHS PRIOR TO APPLYING FOR A REGISTRATION SHALL OBTAIN AND CONTINUE IN EFFECT A SURETY BOND IN AN AMOUNT OF TWENTY-FIVE THOUSAND DOLLARS EXECUTED BY A SURETY COMPANY AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE.

3. AS A CONDITION OF OBTAINING A REGISTRATION PURSUANT TO THIS ARTICLE, EVERY HOME IMPROVEMENT CONTRACTOR APPLICANT WHO IS APPLYING FOR A REGISTRATION AND FOR WHOM THE TOTAL CASH PRICE OF ALL OF HIS, HER, OR ITS HOME IMPROVEMENT CONTRACTS WITH ALL HIS, HER, OR ITS CUSTOMERS IS ONE MILLION DOLLARS OR GREATER DURING THE PERIOD OF TWELVE CONSECUTIVE MONTHS PRIOR TO APPLYING FOR A REGISTRATION SHALL OBTAIN AND CONTINUE IN EFFECT A SURETY BOND IN AN AMOUNT OF FIFTY THOUSAND DOLLARS EXECUTED BY A SURETY COMPANY AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE.

4. THE BOND SHALL BE CONDITIONED ON THE HOME IMPROVEMENT CONTRACTOR'S PAYMENT OF ANY FINAL JUDGMENT ENTERED AGAINST SUCH HOME IMPROVEMENT CONTRACTOR FOR LOSSES OR DAMAGES SUSTAINED BY THE OWNER AS A RESULT OF THE BREACH OF THE HOME IMPROVEMENT CONTRACT WITHIN THIS STATE, AND ANY CIVIL PENALTIES ASSESSED AGAINST A HOME IMPROVEMENT CONTRACTOR FOR VIOLATIONS OF THIS ARTICLE.

5. RECOVERY AGAINST ANY BOND SHALL BE MADE BY THE BOARD ON BEHALF OF AN OWNER OR OWNERS WHO OBTAIN A JUDGMENT AGAINST THE HOME IMPROVEMENT CONTRACTOR FOR AN ACT OR OMISSION ON WHICH THE BOND IS CONDITIONED, IF THE ACT OR OMISSION OCCURRED DURING THE TERM OF THE BOND. THE TOTAL LIABILITY IMPOSED ON THE SURETY BOND UNDER THIS SECTION FOR ALL BREACHES OF THE BOND CONDITION IS LIMITED TO THE FACE AMOUNT OF THE BOND. SUCH LIABILITY IS LIMITED TO THE AMOUNT OF THE JUDGMENT. IN NO EVENT SHALL THE SURETY ON A BOND BE LIABLE FOR TOTAL CLAIMS IN EXCESS OF THE BOND AMOUNT, REGARDLESS OF THE NUMBER OR NATURE OF CLAIMS MADE AGAINST THE BOND OR THE NUMBER OF YEARS THE BOND REMAINED IN FORCE.

6. ANY SURETY ISSUING A BOND PURSUANT TO THIS SECTION SHALL BE REQUIRED TO PROVIDE THIRTY DAYS' NOTICE TO THE BOARD PRIOR TO THE EFFECTIVE DATE OF CANCELLATION OF THE BOND.

7. THE FAILURE OF A HOME IMPROVEMENT CONTRACTOR TO MAINTAIN SUCH A BOND AND SATISFY ALL CLAIMS AGAINST THE BOND, SHALL RESULT IN THE IMMEDIATE REVOCATION OF THE REGISTRATION OF SUCH HOME IMPROVEMENT CONTRACTOR.

S 770-H. HOME IMPROVEMENT TRUST FUND. 1. THE HOME IMPROVEMENT TRUST FUND ESTABLISHED PURSUANT TO SECTION NINETY-NINE-Q OF THE STATE FINANCE LAW SHALL PROVIDE FOR THE PAYMENT OF OUTSTANDING AWARDS TO AGGRIEVED CONSUMERS AND FINES OWED TO THE BOARD.

(A) HOME IMPROVEMENT CONTRACTORS MAY ELECT TO PARTICIPATE IN THE FUND IN LIEU OF FURNISHING A BOND AS REQUIRED BY SECTION SEVEN HUNDRED SEVENTY-G OF THIS ARTICLE.

(B) ANY HOME IMPROVEMENT CONTRACTOR APPLICANT WHO ELECTS TO PARTICIPATE IN THE FUND MUST SUBMIT TO THE BOARD A CHECK IN THE AMOUNT OF TWO HUNDRED DOLLARS, MADE PAYABLE TO THE BOARD, BEFORE A REGISTRATION SHALL BE ISSUED. ANY BONDED REGISTRANT MAY ELECT TO PARTICIPATE IN THE FUND IN LIEU OF CONTINUED COMPLIANCE WITH THE BOND REQUIREMENT BY CAUSING THE BOARD TO RECEIVE A CHECK IN THE AMOUNT OF TWO HUNDRED DOLLARS, MADE PAYABLE TO THE BOARD, PRIOR TO THE EXPIRATION OR CANCELLATION DATE OF THE REGISTRANT'S BOND. ALL FUND PARTICIPANTS WHO ELECT TO CONTINUE TO PARTICIPATE IN THE FUND SHALL CONTRIBUTE TWO HUNDRED DOLLARS UPON EACH RENEWAL OF THEIR REGISTRATION. ANY FUND PARTICIPANT WHO ELECTS NOT TO CONTINUE TO PARTICIPATE IN THE FUND AT THE TIME OF RENEWAL SHALL FURNISH

A BOND IN ACCORDANCE WITH SECTION SEVEN HUNDRED SEVENTY-G OF THIS ARTICLE BEFORE THE RENEWAL REGISTRATION SHALL BE ISSUED.

(C) FUND PARTICIPANTS MAY DISCONTINUE THEIR PARTICIPATION IN THE FUND AT ANY TIME BY FILING A BOND PURSUANT TO SECTION SEVEN HUNDRED SEVENTY-G OF THIS ARTICLE.

(D) PARTICIPATION IN THE FUND SHALL NOT RELIEVE A REGISTRANT OF ANY OBLIGATION TO PAY AWARDS OR FINES IMPOSED BY THE BOARD OR JUDGMENTS OR ARBITRATION AWARDS RENDERED AGAINST A REGISTRANT BY A COURT OF COMPETENT JURISDICTION. IN THE EVENT THAT A CONTRACTOR'S REGISTRATION IS REVOKED, SURRENDERED OR THE CONTRACTOR FAILS TO RENEW HIS, HER OR ITS REGISTRATION, AND THE FUND IS INVADED TO PAY AN AWARD, FINE OR JUDGMENT THAT WAS RENDERED AGAINST SUCH CONTRACTOR PURSUANT TO THE PROVISIONS HEREIN, NO REGISTRATION SHALL BE ISSUED OR REINSTATED TO SUCH CONTRACTOR OR TO ANY HOME IMPROVEMENT BUSINESS IN WHICH SUCH CONTRACTOR IS AN OFFICER, SHAREHOLDER, PARTNER OR PRINCIPAL, UNLESS THE AMOUNT OR AMOUNTS PAID OUT OF THE FUND ON BEHALF OF SUCH CONTRACTOR IS REIMBURSED BY SUCH CONTRACTOR IN FULL.

(E) IN THE EVENT THAT A HOME IMPROVEMENT CONTRACTOR'S REGISTRATION IS REVOKED, SURRENDERED OR THE CONTRACTOR FAILS TO RENEW HIS, HER OR ITS REGISTRATION AND THE FUND IS INVADED TO PAY AN AWARD, FINE OR JUDGMENT THAT WAS RENDERED AGAINST SUCH CONTRACTOR, PURSUANT TO THE PROVISIONS HEREIN, THE DIRECTOR OR HIS OR HER DESIGNEE SHALL HAVE DISCRETION TO EXCLUDE SUCH CONTRACTOR, OR ANY HOME IMPROVEMENT BUSINESS IN WHICH SUCH CONTRACTOR IS A PRINCIPAL, FROM FUTURE PARTICIPATION IN THE FUND. THE DIRECTOR OR HIS OR HER DESIGNEE MAY, IN HIS OR HER DISCRETION, REQUIRE SUCH HOME IMPROVEMENT CONTRACTOR TO OBTAIN A BOND PURSUANT TO SECTION SEVEN HUNDRED SEVENTY-G OF THIS ARTICLE.

2. (A) THE DIRECTOR MAY REQUIRE THAT DISBURSEMENTS BE MADE FROM THE FUND TO PAY OUTSTANDING AWARDS TO CONSUMERS AND FINES OWED TO THE BOARD WHEN:

(I) THE BOARD HAS CONDUCTED AN ADMINISTRATIVE HEARING THAT RESULTS IN A FINDING THAT A HOME IMPROVEMENT CONTRACTOR IS IN VIOLATION OF A LAW OR REGULATION ENFORCED BY THE BOARD AND THE BOARD OR A COURT OF COMPETENT JURISDICTION HAS RENDERED A DECISION, JUDGMENT OR AN ARBITRATION AWARD AGAINST THE CONTRACTOR FOR DAMAGES SUFFERED BY A CONSUMER ARISING OUT OF A HOME IMPROVEMENT CONTRACT;

(II) THE CONTRACTOR IS ORDERED BY THE BOARD TO PAY AN AWARD TO A CONSUMER, A FINE OR TO SATISFY A JUDGMENT OR ARBITRATION AWARD;

(III) THE CONTRACTOR HAS FAILED TO PAY SUCH AWARD TO A CONSUMER, A FINE OR SATISFY A JUDGMENT OR ARBITRATION AWARD, WITHIN THIRTY DAYS OF THE DATE OF THE BOARD'S ORDER; AND

(IV) THE BOARD HAS REVOKED THE CONTRACTOR'S REGISTRATION OR THE CONTRACTOR HAS SURRENDERED OR FAILED TO RENEW SUCH REGISTRATION AFTER THE BOARD'S ORDER.

NOTWITHSTANDING THIS PARAGRAPH, IF A CONTRACTOR HAS FILED A PETITION FOR RELIEF UNDER ANY CHAPTER OF TITLE 11 OF THE UNITED STATES CODE, THE BOARD MAY WAIVE THE REQUIREMENTS SET FORTH IN SUBPARAGRAPHS (II), (III) AND (IV) OF THIS PARAGRAPH AND REQUIRE DISBURSEMENTS TO BE MADE FROM THE FUND.

(B) DISBURSEMENTS SHALL NOT BE MADE FROM THE FUND TO PAY AN AWARD, FINE OR JUDGEMENT THAT IS RENDERED AGAINST:

(I) A REGISTRANT WHO HAS FURNISHED A BOND, PURSUANT TO SECTION SEVEN HUNDRED SEVENTY-G OF THIS ARTICLE; OR

(II) A HOME IMPROVEMENT CONTRACTOR WHO WAS NEVER REGISTERED BY THE BOARD OR A PARTICIPANT IN THE FUND.

(C) DISBURSEMENTS FROM THE FUND WILL BE MADE AT THE DISCRETION OF THE DIRECTOR OR HIS OR HER DESIGNEE, PROVIDED, HOWEVER, THAT INVASION OF THE FUND SHALL BE LIMITED TO NO MORE THAN TWENTY THOUSAND DOLLARS FOR ALL AWARDS, FINES AND JUDGEMENTS ARISING OUT OF A SINGLE HOME IMPROVEMENT CONTRACT AND ONE HUNDRED THOUSAND DOLLARS FOR ALL AWARDS, CIVIL PENALTIES, AND JUDGEMENTS ATTRIBUTABLE TO ONE HOME IMPROVEMENT CONTRACTOR.

(D) THE DIRECTOR OR HIS OR HER DESIGNEE MAY ORDER THAT PARTIAL PAYMENT OF AWARDS, FINES OR JUDGMENTS BE MADE FROM THE FUND.

(E) NOTHING CONTAINED IN THIS SECTION SHALL BE CONSTRUED TO LIMIT THE RIGHTS AND REMEDIES OF ANY PARTY, INCLUDING THE BOARD, TO PURSUE A CAUSE OF ACTION AGAINST A HOME IMPROVEMENT CONTRACTOR WHO IS A PARTICIPANT IN THE FUND.

(F) NOTHING CONTAINED IN THIS SECTION SHALL BE CONSTRUED TO CREATE A RIGHT OF ANY PERSON TO A PORTION OF ANY OF THE FUND, EXCEPT IN THE CASE OF AN AWARD DULY MADE BY THE DIRECTOR PURSUANT TO THE PROVISIONS OF THIS SECTION.

(G) NOTHING CONTAINED IN THIS SECTION SHALL BE CONSTRUED TO PROVIDE FOR THE PAYMENT OF AWARDS OR JUDGMENTS RENDERED AGAINST FUND PARTICIPANTS IN PERSONAL INJURY ACTIONS.

3. THE DIRECTOR SHALL, BY JANUARY THIRTY-FIRST OF EACH YEAR, CAUSE AN ACCOUNTING TO BE MADE OF ALL OF THE FUND'S ACTIVITIES DURING THE PRECEDING CALENDAR YEAR.

S 770-I. POWERS OF THE BOARD. 1. THE BOARD SHALL PROMULGATE SUCH RULES AND REGULATIONS AS ARE DEEMED NECESSARY TO EFFECTUATE THE PURPOSES OF THIS ARTICLE, AND SHALL PROVIDE WRITTEN NOTIFICATION OF THE PROVISIONS OF THIS ARTICLE TO ALL HOME IMPROVEMENT CONTRACTORS REGISTERED PURSUANT TO THIS ARTICLE.

2. THE BOARD SHALL HAVE THE POWER TO ENFORCE THE PROVISIONS OF THIS ARTICLE AND UPON COMPLAINT OF ANY PERSON, OR UPON THE DIRECTOR'S INITIATIVE, TO INVESTIGATE ANY VIOLATION THEREOF OR TO INVESTIGATE THE BUSINESS, BUSINESS PRACTICES AND BUSINESS METHODS OF ANY PERSON, FIRM, LIMITED LIABILITY COMPANY, PARTNERSHIP OR CORPORATION APPLYING FOR OR HOLDING A REGISTRATION AS A DOCUMENT DESTRUCTION CONTRACTOR, IF IN THE OPINION OF THE DIRECTOR SUCH INVESTIGATION IS WARRANTED. EACH SUCH APPLICANT OR REGISTRANT SHALL BE OBLIGED, ON REQUEST OF THE DIRECTOR, TO SUPPLY SUCH INFORMATION, BOOKS, PAPERS OR RECORDS AS MAY BE REQUIRED CONCERNING HIS, HER OR ITS BUSINESS, BUSINESS PRACTICES OR BUSINESS METHODS, OR PROPOSED BUSINESS PRACTICES OR METHODS. FAILURE TO COMPLY WITH A LAWFUL REQUEST OF THE DIRECTOR SHALL BE A GROUND FOR DENYING AN APPLICATION FOR A REGISTRATION, OR FOR REVOKING, SUSPENDING, OR FAILING TO RENEW A REGISTRATION ISSUED UNDER THIS ARTICLE.

3. THE BOARD SHALL HAVE THE POWER TO REVOKE OR SUSPEND ANY REGISTRATION, OR IN LIEU THEREOF TO IMPOSE A FINE NOT EXCEEDING ONE THOUSAND DOLLARS PAYABLE TO THE BOARD, OR REPRIMAND ANY REGISTRANT OR DENY AN APPLICATION FOR A REGISTRATION OR RENEWAL THEREOF UPON PROOF THAT THE APPLICANT OR REGISTRANT HAS:

(A) VIOLATED ANY OF THE PROVISIONS OF THIS ARTICLE OR THE RULES AND REGULATIONS PROMULGATED PURSUANT TO THIS ARTICLE;

(B) PRACTICED FRAUD, DECEIT OR MISREPRESENTATION;

(C) MADE A MATERIAL MISSTATEMENT IN THE APPLICATION FOR OR RENEWAL OF HIS OR HER REGISTRATION;

(D) DEMONSTRATED INCOMPETENCE OR UNTRUSTWORTHINESS IN HIS OR HER ACTIONS.

4. THE BOARD SHALL, BEFORE DENYING AN APPLICATION FOR A REGISTRATION OR BEFORE REVOKING OR SUSPENDING ANY REGISTRATION, OR IMPOSING ANY FINE OR REPRIMAND, AND AT LEAST FIFTEEN DAYS PRIOR TO THE DATE SET FOR THE

HEARING, AND UPON DUE NOTICE TO THE COMPLAINANT OR OBJECTOR, NOTIFY IN WRITING THE APPLICANT FOR, OR THE HOLDER OF SUCH REGISTRATION OF ANY CHARGE MADE AND SHALL AFFORD SUCH APPLICANT OR REGISTRANT AN OPPORTUNITY TO BE HEARD IN PERSON OR BY COUNSEL IN REFERENCE THERETO. SUCH WRITTEN NOTICE MAY BE SERVED BY DELIVERY OF SAME PERSONALLY TO THE APPLICANT OR REGISTRANT, OR BY MAILING SAME BY REGISTERED MAIL TO THE LAST KNOWN BUSINESS ADDRESS OF SUCH APPLICANT OR REGISTRANT.

5. THE HEARING ON SUCH CHARGES SHALL BE AT SUCH TIME AND PLACE AS THE BOARD SHALL PRESCRIBE AND SHALL BE CONDUCTED BY SUCH OFFICER OR PERSON IN THE BOARD AS THE SECRETARY OF STATE MAY DESIGNATE, WHO SHALL HAVE THE POWER TO SUBPOENA AND BRING BEFORE THE OFFICER OR PERSON SO DESIGNATED ANY PERSON IN THIS STATE, AND ADMINISTER AN OATH TO AND TAKE TESTIMONY OF ANY PERSON OR CAUSE HIS OR HER DEPOSITION TO BE TAKEN. A SUBPOENA ISSUED UNDER THIS SECTION SHALL BE REGULATED BY THE CIVIL PRACTICE LAW AND RULES. SUCH OFFICER OR PERSON IN THE BOARD DESIGNATED TO TAKE SUCH TESTIMONY SHALL NOT BE BOUND BY COMMON LAW OR STATUTORY RULES OF EVIDENCE OR BY TECHNICAL OR FORMAL RULES OF PROCEDURE.

6. IN THE EVENT THAT THE BOARD SHALL DENY THE APPLICATION FOR, OR REVOKE OR SUSPEND ANY SUCH REGISTRATION, OR IMPOSE ANY FINE OR REPRIMAND, ITS DETERMINATION SHALL BE IN WRITING AND OFFICIALLY SIGNED. THE ORIGINAL OF SUCH DETERMINATIONS, WHEN SO SIGNED, SHALL BE FILED IN THE OFFICE OF THE BOARD AND COPIES THEREOF SHALL BE MAILED TO THE APPLICANT OR REGISTRANT AND TO THE COMPLAINANT WITHIN TWO DAYS AFTER SUCH FILING.

7. THE BOARD, ACTING BY THE OFFICE OR PERSON DESIGNATED TO CONDUCT THE HEARING PURSUANT TO SUBDIVISION FIVE OF THIS SECTION OR BY SUCH OTHER OFFICER OR PERSON IN THE BOARD AS THE DIRECTOR MAY DESIGNATE, SHALL HAVE THE POWER TO SUSPEND THE REGISTRATION OF ANY REGISTRANT WHO HAS BEEN CONVICTED IN THIS STATE OR ANY OTHER STATE OR TERRITORY OF A FELONY OR OF ANY MISDEMEANOR FOR A PERIOD NOT EXCEEDING THIRTY DAYS PENDING A HEARING AND A DETERMINATION OF CHARGES MADE AGAINST HIM OR HER. IF SUCH HEARING IS ADJOURNED AT THE REQUEST OF THE REGISTRANT, OR BY REASON OF ANY ACT OR OMISSION BY HIM OR HER OR ON HIS OR HER BEHALF, SUCH SUSPENSION MAY BE CONTINUED FOR THE ADDITIONAL PERIOD OF SUCH ADJOURNMENT.

8. THE ACTION OF THE BOARD IN GRANTING OR REFUSING TO GRANT OR TO RENEW A REGISTRATION UNDER THIS ARTICLE OR IN REVOKING OR SUSPENDING OR REFUSING TO REVOKE OR SUSPEND SUCH A REGISTRATION OR IMPOSING ANY FINE OR REPRIMAND SHALL BE SUBJECT TO REVIEW BY A PROCEEDING INSTITUTED UNDER ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES AT THE INSTANCE OF THE APPLICANT FOR SUCH REGISTRATION, THE HOLDER OF A REGISTRATION SO REVOKED, SUSPENDED, FINED OR REPRIMANDED OR THE PERSON AGGRIEVED.

S 770-J. REGISTRY. THE BOARD SHALL MAINTAIN AND PUBLISH A REGISTRY OF ALL REGISTERED HOME IMPROVEMENT CONTRACTORS, WHICH SHALL LIST AND IDENTIFY, ON A COUNTY BY COUNTY BASIS, ALL REGISTERED HOME IMPROVEMENT CONTRACTORS DOING BUSINESS IN THIS STATE. SUCH REGISTRY SHALL BE MADE AVAILABLE ON THE BOARD'S INTERNET WEB SITE AND UPDATED AS FREQUENTLY AS PRACTICABLE. THE BOARD SHALL ALSO MAINTAIN A TOLL-FREE STATEWIDE TELEPHONE NUMBER WHICH SHALL ALLOW THE PUBLIC TO ACCESS THE INFORMATION CONTAINED ON SUCH REGISTRY. ANY INFORMATION REGARDING COMPLAINTS AND CLAIMS FILED AGAINST A HOME IMPROVEMENT CONTRACTOR, INCLUDING THE RESOLUTION OF SUCH COMPLAINTS AND CLAIMS, SHALL BE MADE AVAILABLE TO THE PUBLIC UPON REQUEST.

S 770-K. PENALTIES. 1. ANY PERSON WHO OPERATES AS A HOME IMPROVEMENT CONTRACTOR WITHOUT BEING REGISTERED SHALL BE REQUIRED TO PAY A CIVIL PENALTY IN THE SUM OF TWO THOUSAND DOLLARS PER HOME IMPROVEMENT CONTRACT ENTERED INTO IN VIOLATION OF THE REGISTRATION REQUIREMENT. HOWEVER, ANY

SUCH PERSON AGAINST WHOM SUCH PENALTY HAS BEEN ASSESSED MAY AVOID ALL BUT ONE THOUSAND DOLLARS OF SUCH PENALTY BY OBTAINING A REGISTRATION AS REQUIRED BY THIS ARTICLE; PROVIDED THAT APPLICATION FOR SUCH REGISTRATION IS MADE NOT MORE THAN TEN DAYS AFTER THE IMPOSITION OF SUCH PENALTY. ALL CIVIL PENALTIES COLLECTED PURSUANT TO THIS SECTION SHALL BE DEPOSITED TO THE CREDIT OF THE HOME IMPROVEMENT TRUST FUND ESTABLISHED PURSUANT TO SECTION NINETY-NINE-Q OF THE STATE FINANCE LAW.

2. A HOME IMPROVEMENT CONTRACTOR MAY NOT MAINTAIN A CIVIL ACTION TO RECOVER PAYMENT FOR WORK UNDER A HOME IMPROVEMENT CONTRACT PERFORMED IF SUCH CONTRACTOR IS NOT REGISTERED AS REQUIRED UNDER THIS ARTICLE.

S 3. Paragraph (a) of subdivision 1 of section 771 of the general business law, as added by chapter 421 of the laws of 1987, is amended to read as follows:

(a) The name, address, telephone number, STATE REGISTRATION NUMBER, and license number, if applicable, of the contractor AND THE TOLL-FREE TELEPHONE NUMBER AND INTERNET WEB SITE ADDRESS MAINTAINED BY THE BOARD PURSUANT TO SECTION SEVEN HUNDRED SEVENTY-J OF THIS ARTICLE.

S 4. Section 773 of the general business law, as amended by chapter 587 of the laws of 1990, is amended to read as follows:

S 773. Violations. 1. Technical violations. Every home improvement contractor who violates any of the provisions of this article shall be subject to a civil penalty not to exceed [one] TWO hundred FIFTY dollars FOR EACH VIOLATION.

2. Substantial violations. Every home improvement contractor who fails to deposit funds in an escrow account or provide a bond or contract of indemnity or irrevocable letter of credit in compliance with the requirements of section seventy-one-a of the lien law, or who fails to provide a written contract substantially in compliance with the requirements of this article, shall be subject to a civil penalty not to exceed [the greater of two hundred fifty] FIFTEEN HUNDRED dollars for each violation or five percent of the aggregate contract price specified in the home improvement contract; provided, however, that in no event shall the total penalty exceed twenty-five hundred dollars for each contract.

3. Mitigating factors; defenses. In an instance where the contractor has been shown to have committed multiple violations of this article or the provisions of section seventy-one-a of the lien law, the court shall consider the following factors in assessing a civil penalty pursuant to subdivision two of this section: the volume of business which the home improvement contractor performs on an annual basis, the number of contracts in violation, the actual financial loss or exposure to financial loss suffered by any owner as a result of the violations, and whether the home improvement contractor acted in good faith or willfully with respect to such violations. No home improvement contractor shall be subject to the increased penalties provided by subdivision two of this section if such contractor shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error made notwithstanding the maintenance of procedures reasonably adopted to avoid such a violation.

4. ALL CIVIL PENALTIES COLLECTED PURSUANT TO THIS SECTION SHALL BE DEPOSITED TO THE CREDIT OF THE HOME IMPROVEMENT TRUST FUND ESTABLISHED PURSUANT TO SECTION NINETY-NINE-Q OF THE STATE FINANCE LAW.

S 5. Section 775 of the general business law, as added by chapter 421 of the laws of 1987, is amended to read as follows:

S 775. Applicability. 1. This article shall not exempt any contractor subject to its provisions from complying with any local law with respect to the regulation of home improvement contractors, provided, however,

that after the effective date of this article, no political subdivision may enact a local law inconsistent with the provisions of section seven hundred seventy-one of this article.

2. SECTIONS SEVEN HUNDRED SEVENTY-A, SEVEN HUNDRED SEVENTY-B, SEVEN HUNDRED SEVENTY-C, SEVEN HUNDRED SEVENTY-D, SEVEN HUNDRED SEVENTY-E, SEVEN HUNDRED SEVENTY-F, SEVEN HUNDRED SEVENTY-G, SEVEN HUNDRED SEVENTY-H, SEVEN HUNDRED SEVENTY-I, SEVEN HUNDRED SEVENTY-J AND SEVEN HUNDRED SEVENTY-K OF THIS ARTICLE SHALL NOT APPLY TO HOME IMPROVEMENT CONTRACTORS OPERATING WITHIN ANY CITY WITH A POPULATION OF ONE MILLION OR MORE.

3. ANY LOCAL LAW REGULATING HOME IMPROVEMENT CONTRACTORS THAT IS AT LEAST AS STRICT AS THE PROVISIONS OF THIS ARTICLE SHALL NOT BE DEEMED TO BE PREEMPTED BY THE PROVISIONS OF THIS ARTICLE.

S 6. The state finance law is amended by adding a new section 99-q to read as follows:

S 99-Q. HOME IMPROVEMENT TRUST FUND. 1. THERE IS HEREBY ESTABLISHED IN THE JOINT CUSTODY OF THE STATE COMPTROLLER AND THE COMMISSIONER OF THE DEPARTMENT OF TAXATION AND FINANCE A SPECIAL REVENUE FUND TO BE KNOWN AS THE "HOME IMPROVEMENT TRUST FUND". SUCH FUND SHALL CONSIST OF ALL MONIES COLLECTED PURSUANT TO PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION SEVEN HUNDRED SEVENTY-H, SECTION SEVEN HUNDRED SEVENTY-K, AND SECTION SEVEN HUNDRED SEVENTY-THREE OF THE GENERAL BUSINESS LAW.

2. MONIES OF THE FUND SHALL BE AVAILABLE FOR THE PAYMENT OF OUTSTANDING AWARDS TO AGGRIEVED CONSUMERS PURSUANT TO SECTION SEVEN HUNDRED SEVENTY-H OF THE GENERAL BUSINESS LAW.

3. THE STATE CONSUMER PROTECTION BOARD SHALL ADOPT SUCH RULES AND REGULATIONS AS MAY BE NECESSARY FOR THE ADMINISTRATION OF THE FUND.

S 7. This act shall take effect on the one hundred twentieth day after it shall have become a law; provided that the state consumer protection board and the department of state are authorized to promulgate any and all rules and regulations and take any other measures necessary to implement this act on its effective date on or before such date.