

595

2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

Introduced by M. of A. DINOWITZ -- Multi-Sponsored by -- M. of A. 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:

1 Section 1. Section 770 of the general business law is amended by
2 adding six new subdivisions 8, 9, 10, 11, 12 and 13 to read as follows:
3 8. "CERTIFICATE" MEANS A CERTIFICATE OF REGISTRATION ISSUED UNDER THIS
4 ARTICLE.
5 9. "BOARD" MEANS THE NEW YORK STATE CONSUMER PROTECTION BOARD.
6 10. "DIRECTOR" MEANS THE EXECUTIVE DIRECTOR OF THE STATE CONSUMER
7 PROTECTION BOARD.
8 11. "FUND" MEANS THE HOME IMPROVEMENT TRUST FUND ESTABLISHED PURSUANT
9 TO SECTION NINETY-NINE-U OF THE STATE FINANCE LAW.
10 12. "PRIVATE RESIDENCE" MEANS A SINGLE FAMILY DWELLING, A CONDOMINIUM,
11 A COOPERATIVE APARTMENT OR A MULTIFAMILY DWELLING CONSISTING OF NOT MORE
12 THAN TWELVE RENTAL UNITS.
13 13. "FINAL JUDGMENT" MEANS ANY FINAL JUDGMENT OBTAINED IN A COURT OF
14 COMPETENT JURISDICTION, FINAL AWARD IN ARBITRATION OR FINAL DISPOSITION
15 OF A BANKRUPT'S ESTATE.
16 S 2. The general business law is amended by adding eleven new sections
17 770-a, 770-b, 770-c, 770-d, 770-e, 770-f, 770-g, 770-h, 770-i, 770-j and
18 770-k to read as follows:
19 S 770-A. REGISTRATION REQUIRED. 1. ON OR AFTER MARCH FIRST, TWO THOU-
20 SAND FOURTEEN, NO PERSON, FIRM OR CORPORATION SHALL HOLD HIMSELF,
21 HERSELF, OR ITSELF OUT TO BE A HOME IMPROVEMENT CONTRACTOR IN NEW YORK

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

LBD03092-01-3

1 STATE WITHOUT FIRST REGISTERING WITH THE BOARD AS PROVIDED IN THIS ARTI-
2 CLE.

3 2. THE FOLLOWING PERSONS AND ORGANIZATIONS ARE NOT REQUIRED TO REGIS-
4 TER AS HOME IMPROVEMENT CONTRACTORS:

5 (A) THE STATE, MUNICIPALITIES OF THE STATE, OR ANY DEPARTMENT OR AGEN-
6 CY OF THE STATE OR SUCH MUNICIPALITIES;

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

8 (C) ANY SCHOOL, PUBLIC OR PRIVATE, OFFERING AS PART OF A VOCATIONAL
9 EDUCATION PROGRAM COURSES AND TRAINING IN ANY ASPECT OF HOME IMPROVE-
10 MENTS.

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

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

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

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

20 (D) THE BUSINESS TELEPHONE OF THE APPLICANT;

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

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

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

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

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

34 3. EXCEPT AS OTHERWISE PROVIDED IN OR INCONSISTENT WITH THE PROVISIONS
35 OF THIS ARTICLE, ALL OF THE PROVISIONS OF THE BUSINESS CORPORATION LAW
36 PERTAINING TO THE STATUTORY DESIGNATION OF THE SECRETARY OF STATE AS
37 AGENT FOR SERVICE OF PROCESS, THE DESIGNATION OF A REGISTERED AGENT FOR
38 SERVICE OF PROCESS, THE MANNER OF EFFECTUATION OF SERVICE OF PROCESS,
39 AND MATTERS INCIDENTAL OR RELATED THERETO SHALL APPLY TO THE REGISTRA-
40 TION REQUIRED BY THIS ARTICLE WITH SUCH MODIFICATIONS AS MAY BE NECES-
41 SARY TO ADAPT SUCH LANGUAGE TO THE REGISTRATION REQUIRED BY THIS ARTI-
42 CLE. SUCH PROVISIONS SHALL APPLY WITH THE SAME FORCE AND EFFECT AS IF
43 THOSE PROVISIONS HAD BEEN SET FORTH IN FULL IN THIS ARTICLE EXCEPT TO
44 THE EXTENT THAT ANY PROVISION IS EITHER INCONSISTENT WITH A PROVISION OF
45 THIS ARTICLE OR NOT RELEVANT TO THE REGISTRATION REQUIRED BY THIS ARTI-
46 CLE, UNLESS A DIFFERENT MEANING IS CLEARLY REQUIRED.

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

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

1 S 770-D. REGISTRATION RENEWAL. 1. ANY REGISTRATION GRANTED UNDER THIS
2 ARTICLE MAY BE RENEWED BY THE BOARD UPON APPLICATION AND PAYMENT OF THE
3 FEE FOR SUCH RENEWAL BY THE HOLDER THEREOF, IN SUCH FORM AS THE BOARD
4 MAY PRESCRIBE.

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

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

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

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

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

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

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

32 2. NO PERSON, FIRM OR CORPORATION SHALL:

33 (A) PRESENT OR ATTEMPT TO PRESENT, AS HIS, HER, OR ITS OWN, THE REGIS-
34 TRATION OF ANOTHER;

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

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

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

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

42 (F) REPRESENT IN ANY MANNER THAT HIS, HER, OR ITS REGISTRATION CONSTI-
43 TUTES AN ENDORSEMENT OF THE QUALITY OF WORKMANSHIP OR COMPETENCY OF THE
44 CONTRACTOR.

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

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

1 RENEWAL OF THEIR REGISTRATION. ANY FUND PARTICIPANT WHO ELECTS NOT TO
2 CONTINUE TO PARTICIPATE IN THE FUND AT THE TIME OF RENEWAL SHALL FURNISH
3 A BOND IN ACCORDANCE WITH SECTION SEVEN HUNDRED SEVENTY-G OF THIS ARTI-
4 CLE BEFORE THE RENEWAL REGISTRATION SHALL BE ISSUED.

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

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

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

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

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

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

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

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

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

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

54 (I) A REGISTRANT WHO HAS FURNISHED A BOND, PURSUANT TO SECTION SEVEN
55 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.

1 4. THE BOARD SHALL, BEFORE DENYING AN APPLICATION FOR A REGISTRATION
2 OR BEFORE REVOKING OR SUSPENDING ANY REGISTRATION, OR IMPOSING ANY FINE
3 OR REPRIMAND, AND AT LEAST FIFTEEN DAYS PRIOR TO THE DATE SET FOR THE
4 HEARING, AND UPON DUE NOTICE TO THE COMPLAINANT OR OBJECTOR, NOTIFY IN
5 WRITING THE APPLICANT FOR, OR THE HOLDER OF SUCH REGISTRATION OF ANY
6 CHARGE MADE AND SHALL AFFORD SUCH APPLICANT OR REGISTRANT AN OPPORTUNITY
7 TO BE HEARD IN PERSON OR BY COUNSEL IN REFERENCE THERETO. SUCH WRITTEN
8 NOTICE MAY BE SERVED BY DELIVERY OF SAME PERSONALLY TO THE APPLICANT OR
9 REGISTRANT, OR BY MAILING SAME BY REGISTERED MAIL TO THE LAST KNOWN
10 BUSINESS ADDRESS OF SUCH APPLICANT OR REGISTRANT.

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

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

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

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

45 S 770-J. REGISTRY. THE BOARD SHALL MAINTAIN AND PUBLISH A REGISTRY OF
46 ALL REGISTERED HOME IMPROVEMENT CONTRACTORS, WHICH SHALL LIST AND IDEN-
47 TIFY, ON A COUNTY BY COUNTY BASIS, ALL REGISTERED HOME IMPROVEMENT
48 CONTRACTORS DOING BUSINESS IN THIS STATE. SUCH REGISTRY SHALL BE MADE
49 AVAILABLE ON THE BOARD'S INTERNET WEB SITE AND UPDATED AS FREQUENTLY AS
50 PRACTICABLE. THE BOARD SHALL ALSO MAINTAIN A TOLL-FREE STATEWIDE TELE-
51 PHONE NUMBER WHICH SHALL ALLOW THE PUBLIC TO ACCESS THE INFORMATION
52 CONTAINED ON SUCH REGISTRY. ANY INFORMATION REGARDING COMPLAINTS AND
53 CLAIMS FILED AGAINST A HOME IMPROVEMENT CONTRACTOR, INCLUDING THE RESOL-
54 UTION OF SUCH COMPLAINTS AND CLAIMS, SHALL BE MADE AVAILABLE TO THE
55 PUBLIC UPON REQUEST.

1 S 770-K. PENALTIES. 1. ANY PERSON WHO OPERATES AS A HOME IMPROVEMENT
2 CONTRACTOR WITHOUT BEING REGISTERED SHALL BE REQUIRED TO PAY A CIVIL
3 PENALTY IN THE SUM OF TWO THOUSAND DOLLARS PER HOME IMPROVEMENT CONTRACT
4 ENTERED INTO IN VIOLATION OF THE REGISTRATION REQUIREMENT. HOWEVER, ANY
5 SUCH PERSON AGAINST WHOM SUCH PENALTY HAS BEEN ASSESSED MAY AVOID ALL
6 BUT ONE THOUSAND DOLLARS OF SUCH PENALTY BY OBTAINING A REGISTRATION AS
7 REQUIRED BY THIS ARTICLE; PROVIDED THAT APPLICATION FOR SUCH REGISTRA-
8 TION IS MADE NOT MORE THAN TEN DAYS AFTER THE IMPOSITION OF SUCH PENAL-
9 TY. ALL CIVIL PENALTIES COLLECTED PURSUANT TO THIS SECTION SHALL BE
10 DEPOSITED TO THE CREDIT OF THE HOME IMPROVEMENT TRUST FUND ESTABLISHED
11 PURSUANT TO SECTION NINETY-NINE-U OF THE STATE FINANCE LAW.

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

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

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

22 S 4. Section 773 of the general business law, as amended by chapter
23 587 of the laws of 1990, is amended to read as follows:

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

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

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

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

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

3 S 775. Applicability. 1. This article shall not exempt any contractor
4 subject to its provisions from complying with any local law with respect
5 to the regulation of home improvement contractors, provided, however,
6 that after the effective date of this article, no political subdivision
7 may enact a local law inconsistent with the provisions of section seven
8 hundred seventy-one of this article.

9 2. SECTIONS SEVEN HUNDRED SEVENTY-A, SEVEN HUNDRED SEVENTY-B, SEVEN
10 HUNDRED SEVENTY-C, SEVEN HUNDRED SEVENTY-D, SEVEN HUNDRED SEVENTY-E,
11 SEVEN HUNDRED SEVENTY-F, SEVEN HUNDRED SEVENTY-G, SEVEN HUNDRED SEVEN-
12 TY-H, SEVEN HUNDRED SEVENTY-I, SEVEN HUNDRED SEVENTY-J AND SEVEN HUNDRED
13 SEVENTY-K OF THIS ARTICLE SHALL NOT APPLY TO HOME IMPROVEMENT CONTRAC-
14 TORS OPERATING WITHIN ANY CITY WITH A POPULATION OF ONE MILLION OR MORE.

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

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

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

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

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

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