

STATE OF NEW YORK

8773

2019-2020 Regular Sessions

IN ASSEMBLY

November 25, 2019

Introduced by M. of A. CUSICK -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law and the penal law, in relation to the registration of home improvement contractors

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 "home
2 improvement fraud prevention act".

3 § 2. Subdivision 7 of section 770 of the general business law, as
4 added by chapter 32 of the laws of 1989, is amended to read as follows:

5 7. "Custom home" means a new single family residence or a two family
6 dwelling designed for and occupied exclusively by two families living
7 separately to be constructed on premises owned of record by the purchas-
8 er at the time of contract, provided that such residence is intended for
9 residential occupancy by such purchaser and the contract of sale is
10 entered into on or after the first day of March, nineteen hundred nine-
11 ty.

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

15 (a) The name, address, telephone number, registration number, and
16 license number, if applicable, of the contractor.

17 § 4. Section 771-a of the general business law, as added by chapter
18 626 of the laws of 2002, is amended to read as follows:

19 § 771-a. Responsibilities of home improvement contractors. No home
20 improvement contractor shall engage in any activity, transaction, or
21 course of business or pay or receive any fee, payment, money, or other
22 thing of value in connection with the financing of a home improvement
23 contract without fully disclosing such activity, transaction, or course
24 of business and any fees, payment, or other thing of value paid or to be
25 paid in connection therewith, [~~and~~] without having obtained the agree-

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

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1 ment in writing from all parties to the transaction to such activity and
2 the payment therefor, and without obtaining a certificate of registra-
3 tion.

4 § 5. The general business law is amended by adding two new sections
5 771-b and 771-c to read as follows:

6 § 771-b. Responsibilities of home improvement contractors to obtain
7 certificates of registration. 1. It shall be unlawful for a person to
8 solicit, canvass, sell, perform, or obtain a home improvement contract
9 as a contractor from an owner without first obtaining a certificate of
10 registration issued by the secretary under the provisions of this arti-
11 cle.

12 2. Any person desiring to be a home improvement contractor in this
13 state shall be registered biennially pursuant to this article. Such
14 person shall file with the secretary of state an application to be
15 registered as a home improvement contractor. The secretary shall examine
16 each application and issue a certificate of registration if the follow-
17 ing criteria are satisfied:

18 (a) the applicant is eighteen years of age or older;

19 (b) the applicant is of good moral character as determined by the
20 secretary. In consideration of good moral character, the secretary may
21 consider whether the applicant has: (i) been convicted of a crime that,
22 in this state, is considered to be a crime involving moral turpitude or
23 is a felony; (ii) been found guilty of fraud or deceit in the practice
24 of home improvement; (iii) made a materially false, misleading, decep-
25 tive or fraudulent representation in the application or as a home
26 improvement contractor in any county or state; (iv) a history of consum-
27 er complaints reasonably related to their work as a home improvement
28 contractor in any state; and (v) had a registration or licensure as a
29 home improvement contractor, or substantially equivalent registration or
30 licensure, suspended, revoked or denied, or been refused renewal of
31 registration or licensure as a home improvement contractor, in any coun-
32 ty or state; and

33 (c) the applicant has paid the appropriate fees according to the
34 provisions of this section.

35 3. An application for a certificate of registration as a home improve-
36 ment contractor shall be filed with the secretary in such form and
37 detail as the secretary shall prescribe, duly signed, and verified,
38 setting forth:

39 (a) the address of the business;

40 (b) the name and address of the owner or partner and if a corporation,
41 trade group or association, the names and addresses of the directors and
42 principal officers;

43 (c) the telephone number of the business;

44 (d) proof of liability and property damage insurance in an amount to
45 be set by the secretary; and

46 (e) any further information deemed necessary and prescribed by rule or
47 regulation by the secretary.

48 4. A certificate of registration shall expire two years from the date
49 issued by the secretary and the fee for a certificate of registration
50 shall be three hundred dollars.

51 § 771-c. Suspension, revocation or refusal to renew registration. 1.
52 The secretary may suspend, revoke or refuse to renew a registration for
53 violation of any of the provisions of this article, or violation of
54 rules made by the secretary pertaining thereto, or for any conduct that
55 would have justified denial of a registration under paragraph (b) of
56 subdivision two of section seven hundred seventy one-b of this article.

1 2. The secretary may deny, suspend, revoke or refuse to renew a
2 certificate of registration only after proper notice and an opportunity
3 for a hearing as provided pursuant to the provisions of the state admin-
4 istrative procedure act.

5 § 6. Section 772 of the general business law, as added by chapter 421
6 of the laws of 1987, is amended to read as follows:

7 § 772. Penalty for fraud. 1. Any owner who is induced to contract for
8 a home improvement, in reliance on false or fraudulent written represen-
9 tations or false written statements, may sue and recover from such
10 contractor a penalty of [~~five hundred~~] one thousand dollars plus reason-
11 able attorney's fees, in addition to any damages sustained by the owner
12 by reason of such statements or representations. In addition, if the
13 court finds that the suit by the owner was without arguable legal merit,
14 it may award reasonable attorney's fees to the contractor.

15 2. Nothing in this article shall impair, limit, or reduce the statuto-
16 ry, common law or contractual duties or liability of any contractor.

17 § 7. Paragraph (d) of subdivision 2 of section 155.05 of the penal law
18 is amended to read as follows:

19 (d) By false promise.

20 (i) A person obtains property by false promise when, pursuant to a
21 scheme to defraud, he obtains property of another by means of a repre-
22 sentation, express or implied, that he or a third person will in the
23 future engage in particular conduct, and when he does not intend to
24 engage in such conduct or, as the case may be, does not believe that the
25 third person intends to engage in such conduct.

26 In any prosecution for larceny based upon a false promise, the defend-
27 ant's intention or belief that the promise would not be performed may
28 not be established by or inferred from the fact alone that such promise
29 was not performed. Such a finding may be based only upon evidence estab-
30 lishing that the facts and circumstances of the case are wholly consist-
31 ent with guilty intent or belief and wholly inconsistent with innocent
32 intent or belief, and excluding to a moral certainty every hypothesis
33 except that of the defendant's intention or belief that the promise
34 would not be performed;

35 (ii) Subparagraph (i) of this paragraph shall not apply to any prose-
36 cution involving a disaster relief victim. A disaster relief victim
37 shall mean a person who has suffered harm, property damage, or economic
38 loss related to relief efforts for a disaster as defined in section
39 twenty of the executive law.

40 § 8. This act shall take effect one year after it shall have become a
41 law. Effective immediately, the addition, amendment, and/or repeal of
42 any rule or regulation necessary for the implementation of this act on
43 its effective date are authorized to be made and completed on or before
44 such effective date.