

STATE OF NEW YORK

8773--A

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 -- recommitted to the Committee on Consumer Affairs and Protection in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law, the penal law, the general municipal law and the executive 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 from the
16 department of state, and license number, if applicable, of the contrac-
17 tor.

18 § 4. Section 771-a of the general business law, as added by chapter
19 626 of the laws of 2002, is amended to read as follows:

20 § 771-a. Responsibilities of home improvement contractors. No home
21 improvement contractor shall engage in any activity, transaction, or

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

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1 course of business or pay or receive any fee, payment, money, or other
2 thing of value in connection with the financing of a home improvement
3 contract without fully disclosing such activity, transaction, or course
4 of business and any fees, payment, or other thing of value paid or to be
5 paid in connection therewith, [and] without having obtained the agree-
6 ment in writing from all parties to the transaction to such activity and
7 the payment therefor, and without obtaining a certificate of registra-
8 tion from the department of state.

9 § 5. The general business law is amended by adding five new sections
10 771-c, 771-d, 771-e, 771-f and 771-g to read as follows:

11 § 771-c. Responsibilities of home improvement contractors to obtain
12 certificates of registration. 1. It shall be unlawful for a person to
13 solicit, canvass, sell, perform, or obtain a home improvement contract
14 as a contractor from an owner without first obtaining a certificate of
15 registration issued by the secretary under the provisions of this arti-
16 cle.

17 2. Any person desiring to be a home improvement contractor in this
18 state shall be registered biennially pursuant to this article. Such
19 person shall file with the secretary of state an application to be
20 registered as a home improvement contractor. The department of state
21 shall examine each application and issue a certificate of registration
22 if the following criteria are satisfied:

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

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

38 (c) in the case of a person either registered or licensed as a home
39 improvement contractor pursuant to a local law, the applicant shall
40 forward such registration or license to the secretary together with any
41 additional information required by the department of state. After
42 review of the registration or license, the secretary shall issue a
43 registration to such applicant. The fee for such registration shall be
44 fifteen dollars, which may be passed on to the registered or licensed
45 home improvement contractor, and shall be paid to the department of
46 state by the municipality which issued the registration or license to
47 such person; and

48 (d) the applicant has paid the appropriate fees according to the
49 provisions of this section.

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

54 (a) the address of the business;

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

4 (c) the telephone number of the business;

5 (d) proof of workers' compensation insurance, disability benefit
6 coverage and liability and property damage insurance in an amount to be
7 set by the home improvement contract board; and

8 (e) any further information deemed necessary and prescribed by rule or
9 regulation by the secretary, except as otherwise provided herein.

10 4. A certificate of registration shall expire two years from the date
11 issued by the secretary and the fee for a certificate of registration
12 shall be three hundred dollars, except as provided in paragraph (c) of
13 subdivision two of this section.

14 § 771-d. Suspension, revocation or refusal to renew registration. 1.
15 The secretary may suspend, revoke or refuse to renew a registration for
16 substantial violations of any of the provisions of this article or for
17 any conduct that would have justified denial of a registration under
18 paragraph (b) of subdivision two of section seven hundred seventy-one-c
19 of this article.

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

24 § 771-e. State home improvement contractor board. 1. There is hereby
25 established within the department of state a state home improvement
26 contractor board which shall consist of the secretary of state, super-
27 intendent of financial services, and thirteen additional members. At
28 least five members shall be home improvement contractors, at least two
29 of whom shall have more than fifty percent of their business volume
30 requiring the issuance of building permits, each of whom, at the time of
31 appointment, shall be licensed and qualified as a home improvement
32 contractor under the laws of New York state and shall have been engaged
33 in the home improvement business in this state for a period of not less
34 than ten years prior to appointment. The remaining members shall be
35 "public members" who shall not be home improvement contractors.

36 2. The thirteen members shall be appointed as follows: seven members
37 shall be appointed by the governor, three of whom shall be home improve-
38 ment contractors and four of whom shall be public members; two members
39 shall be appointed by the temporary president of the senate, one of whom
40 shall be a home improvement contractor and one of whom shall be a public
41 member; two members shall be appointed by the speaker of the assembly,
42 one of whom shall be a home improvement contractor and one of whom shall
43 be a public member; one member shall be appointed by the minority leader
44 of the senate, who shall be either a home improvement contractor or a
45 public member; and one member shall be appointed by the minority leader
46 of the assembly, who shall be either a home improvement contractor or a
47 public member.

48 3. Each appointed member shall serve for a term of two years; at any
49 point during such term the appointed member may be removed by the person
50 who appointed such member. In the event that any members shall die or
51 resign during the term of office, a successor shall be appointed in the
52 same way and with the same qualifications as set forth above. A member
53 may be reappointed for successive terms but no member shall serve more
54 than ten years in his or her lifetime.

55 4. A majority of members currently serving on the board shall be
56 required in order to pass any resolution or to approve any matter before

1 the board. The secretary of state shall be the chairperson of the board.
2 The vice-chairperson and a secretary shall be elected from among the
3 members. A board member who fails to attend three consecutive meetings
4 shall forfeit his or her seat unless the secretary of state, upon writ-
5 ten request from the member, finds that the member should have been
6 excused from a meeting because of illness or death of a family member.

7 5. Members of the board shall receive no compensation other than
8 reimbursement for actual and necessary expenses.

9 6. The board shall meet no fewer than three times per year and at the
10 call of the secretary of state or a majority of the board. In addition
11 to regularly scheduled meetings of the board, there shall be at least
12 one public hearing each year in New York City and one public hearing
13 each year in Albany. At least fifteen days prior to the holding of any
14 public hearing pursuant to this subdivision, the board shall give public
15 notice of the hearing in a newspaper of general circulation in each area
16 where the public meeting is to be held. The purpose of these hearings
17 shall be to solicit from members of the public, suggestions, comments,
18 and observations about home improvement contractor regulation in New
19 York state.

20 § 771-f. Powers and duties of the state home improvement contractor
21 board. 1. The state home improvement contractor board shall have the
22 authority to prescribe the content for courses of study for the examina-
23 tion and education of persons registered under this article. The board
24 shall advise the secretary of state on policies governing the adminis-
25 tration of examinations pursuant to this article.

26 2. The board shall establish the rules and regulations governing the
27 approval by the secretary of state of providers to offer or conduct
28 courses required either for registration under this article or for the
29 satisfaction of the continuing education requirements. For purposes of
30 this section, a "provider" means a national, state or local trade asso-
31 ciation of homebuilders and/or remodelers or other relevant training
32 providers as approved by the board.

33 3. The board shall set the amount of workers' compensation and liabil-
34 ity and property insurance to be maintained by each specific type of
35 home improvement contractor based on their specific category of work.
36 Any workers' compensation insurance coverage rate shall be set in
37 compliance with any obligations imposed by the workers' compensation law
38 and the insurance law.

39 4. The board shall be authorized to develop a public education and
40 outreach campaign via written materials, brochures and the internet to
41 inform the general public of the home improvement fraud prevention act,
42 subject to approval by the secretary of state.

43 5. The board shall advise and assist the secretary of state in carry-
44 ing out the provisions and purposes of this article and make recommenda-
45 tions concerning the programs and activities of the department in
46 connection with the enforcement of this article.

47 6. The department of state shall have the power and duty to administer
48 and enforce the laws and regulations of the state relating to those
49 activities involving home improvement contractors for which registration
50 is required under this article and to instruct and require its agents to
51 refer prosecutions for unauthorized and unlawful practice.

52 § 771-g. Continuing education. 1. As a prerequisite to recertification
53 or renewal of a home improvement contractor registration in the case of
54 any contractor who applies for one or more building permits, a home
55 improvement contractor as previously described shall present evidence
56 satisfactory to the department of having met the continuing education

1 requirements approved by the home improvement contractor board pursuant
2 to this article.

3 2. The basic continuing education requirement for recertification or
4 renewal of a license shall be the completion by the applicant, during
5 the immediately preceding term of registration, of not less than ten
6 classroom hours of instruction in courses or seminars which have
7 received the approval of the home improvement contractor board. Computer
8 based courses may be approved by the board so long as providers demon-
9 strate the ability to monitor and verify participation by the home
10 improvement contractor for the specified time periods.

11 3. A registration as a home improvement contractor who applies for one
12 or more building permits that has been revoked as a result of discipli-
13 nary action by the department shall not be reinstated unless the appli-
14 cant presents evidence of completion of the continuing education
15 required by this article.

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

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

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

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

30 (d) By false promise.

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

37 In any prosecution for larceny based upon a false promise, the defend-
38 ant's intention or belief that the promise would not be performed may
39 not be established by or inferred from the fact alone that such promise
40 was not performed. Such a finding may be based only upon evidence estab-
41 lishing that the facts and circumstances of the case are wholly consist-
42 ent with guilty intent or belief and wholly inconsistent with innocent
43 intent or belief, and excluding to a moral certainty every hypothesis
44 except that of the defendant's intention or belief that the promise
45 would not be performed;

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

51 § 8. Section 125 of the general municipal law, as added by chapter
52 439 of the laws of 1998, is amended to read as follows:

53 § 125. Issuance of building permits. No city, town or village shall
54 issue a building permit without obtaining from the permit applicant
55 either:

1 1. proof [~~duly subscribed that workers' compensation insurance and~~
2 ~~disability benefits coverage issued by an insurance carrier in a form~~
3 ~~satisfactory to the chair of the workers' compensation board as provided~~
4 ~~for in section fifty-seven of the workers' compensation law is effec-~~
5 ~~tive]~~ of a valid registration pursuant to article thirty-six-A of the
6 general business law so long as such registration requires proof of
7 workers' compensation insurance and disability coverage, and proof of
8 liability and property damage insurance; or

9 2. an affidavit that such permit applicant has not engaged and does
10 not intend to engage an employer or any employees as those terms are
11 defined in section two of the workers' compensation law to perform any
12 work relating to such building permit.

13 § 9. The executive law is amended by adding a new section 99-a to read
14 as follows:

15 § 99-a. Central state registry of home improvement contractors. 1.
16 The department shall collect information from municipalities which
17 register and/or license home improvement contractors and also directly
18 from home improvement contractors, a registry of all home improvement
19 contractors and applicants for registration cards in the state. Such
20 registry shall include but not be limited to, with respect to each home
21 improvement contractor or applicant as the case may be, their name,
22 address, date of birth, telephone number, email address, and registra-
23 tion and/or license number if applicable, whether the foregoing has been
24 issued, denied, suspended or revoked or has expired, and such other
25 information as may in the discretion of the secretary be appropriate.

26 2. Any municipality which licenses or registers home improvement
27 contractors shall provide such information as requested by the depart-
28 ment of state for purposes of this section.

29 § 10. This act shall take effect one year after it shall have become
30 a law. Effective immediately, the addition, amendment, and/or repeal of
31 any rule or regulation necessary for the implementation of this act on
32 its effective date are authorized to be made and completed on or before
33 such effective date.