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:

Section 1. This act shall be known and may be cited as the "home improvement fraud prevention act".

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

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

§ 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, registration number, and license number, if applicable, of the contractor.

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

§ 771-a. Responsibilities of home improvement contractors. No home improvement contractor shall engage in any activity, transaction, or course of business or pay or receive any fee, payment, money, or other thing of value in connection with the financing of a home improvement contract without fully disclosing such activity, transaction, or course of business and any fees, payment, or other thing of value paid or to be paid in connection therewith, without having obtained the agreement of the home improvement contractor shall engage in any activity, transaction, or course of business or pay or receive any fee, payment, money, or other thing of value in connection with the financing of a home improvement contract without fully disclosing such activity, transaction, or course of business and any fees, payment, or other thing of value paid or to be paid in connection therewith, without having obtained the agreement of the home improvement contractor.

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

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ment in writing from all parties to the transaction to such activity and the payment therefor, and without obtaining a certificate of registration.

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

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

2. Any person desiring to be a home improvement contractor in this state shall be registered biennially pursuant to this article. Such person shall file with the secretary of state an application to be registered as a home improvement contractor. The secretary shall examine each application and issue a certificate of registration if the following criteria are satisfied:
   (a) the applicant is eighteen years of age or older;
   (b) the applicant is of good moral character as determined by the secretary. In consideration of good moral character, the secretary may consider whether the applicant has: (i) been convicted of a crime that, in this state, is considered to be a crime involving moral turpitude or is a felony; (ii) been found guilty of fraud or deceit in the practice of home improvement; (iii) made a materially false, misleading, deceptive or fraudulent representation in the application or as a home improvement contractor in any county or state; (iv) a history of consumer complaints reasonably related to their work as a home improvement contractor in any state; and (v) had a registration or licensure as a home improvement contractor, or substantially equivalent registration or licensure, suspended, revoked or denied, or been refused renewal of registration or licensure as a home improvement contractor, in any county or state; and
   (c) the applicant has paid the appropriate fees according to the provisions of this section.

3. An application for a certificate of registration as a home improvement contractor shall be filed with the secretary in such form and detail as the secretary shall prescribe, duly signed, and verified, setting forth:
   (a) the address of the business;
   (b) the name and address of the owner or partner and if a corporation, trade group or association, the names and addresses of the directors and principal officers;
   (c) the telephone number of the business;
   (d) proof of liability and property damage insurance in an amount to be set by the secretary; and
   (e) any further information deemed necessary and prescribed by rule or regulation by the secretary.

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

§ 771-c. Suspension, revocation or refusal to renew registration. 1. The secretary may suspend, revoke or refuse to renew a registration for violation of any of the provisions of this article, or violation of rules made by the secretary pertaining thereto, or for any conduct that would have justified denial of a registration under paragraph (b) of subdivision two of section seven hundred seventy one-b of this article.
2. The secretary may deny, suspend, revoke or refuse to renew a certificate of registration only after proper notice and an opportunity for a hearing as provided pursuant to the provisions of the state administrative procedure act.

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

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

2. Nothing in this article shall impair, limit, or reduce the statutory, common law or contractual duties or liability of any contractor.

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

(d) By false promise.

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

In any prosecution for larceny based upon a false promise, the defendant's intention or belief that the promise would not be performed may not be established by or inferred from the fact alone that such promise was not performed. Such a finding may be based only upon evidence establishing that the facts and circumstances of the case are wholly consistent with guilty intent or belief and wholly inconsistent with innocent intent or belief, and excluding to a moral certainty every hypothesis except that of the defendant's intention or belief that the promise would not be performed;

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

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