STATE OF NEW YORK

1165--A

2021-2022 Regular Sessions

IN SENATE

January 7, 2021

Introduced by Sen. KAMINSKY -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- recommitted to the Committee on Consumer Protection in accordance with Senate Rule 6, sec. 8 -- 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:

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 and a new subdivision 9 is added 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~~].

9. "Subcontractor" means a person who enters into a contract with a home improvement contractor or with a subcontractor of a home improvement contractor to furnish home improvement services to the owner's real property and has no direct contract with the owner.

§ 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:

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

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(a) The name, address, telephone number**, registration number from the department of state,** 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, [**~~and~~**] without having obtained the agreement in writing from all parties to the transaction to such activity and the payment therefor**, and without obtaining a certificate of registration from the department of state**.

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

§ 771-c. 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 department of state 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 failure to complete 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;

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

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

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

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, except as provided in paragraph (c) of subdivision two of this section.

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

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

2. The thirteen members shall be appointed as follows: seven members shall be appointed by the governor, three of whom shall be home improvement contractors and four of whom shall be public members; two members shall be appointed by the temporary president of the senate, one of whom shall be a home improvement contractor and one of whom shall be a public member; two members shall be appointed by the speaker of the assembly, one of whom shall be a home improvement contractor and one of whom shall be a public member; one member shall be appointed by the minority leader of the senate, who shall be either a home improvement contractor or a public member; and one member shall be appointed by the minority leader of the assembly, who shall be either a home improvement contractor or a public member.

3. Each appointed member shall serve for a term of two years; at any point during such term the appointed member may be removed by the person who appointed such member. In the event that any members shall die or resign during the term of office, a successor shall be appointed in the

same way and with the same qualifications as set forth above. A member may be reappointed for successive terms but no member shall serve more than ten years in his or her lifetime.

4. A majority of members currently serving on the board shall be required in order to pass any resolution or to approve any matter before the board. The secretary of state shall be the chairperson of the board. The vice-chairperson and a secretary shall be elected from among the members. A board member who fails to attend three consecutive meetings shall forfeit his or her seat unless the secretary of state, upon written request from the member, finds that the member should have been excused from a meeting because of illness or death of a family member.

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

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

§ 771-f. Powers and duties of the state home improvement contractor board. 1. The state home improvement contractor board shall have the authority to prescribe the content for courses of study for the examination and education of persons registered under this article. The board shall advise the secretary of state on policies governing the administration of examinations pursuant to this article.

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

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

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

5. The board shall advise and assist the secretary of state in carrying out the provisions and purposes of this article and make recommendations concerning the programs and activities of the department in connection with the enforcement of this article.

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

§ 771-g. Continuing education. 1. As a prerequisite to recertification or renewal of a home improvement contractor registration in the case of any contractor who applies for one or more building permits, a home improvement contractor as previously described shall present evidence satisfactory to the department of having met the continuing education requirements approved by the home improvement contractor board pursuant to this article.

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

3. A registration as a home improvement contractor who applies for one or more building permits that has been revoked as a result of disciplinary action by the department shall not be reinstated unless the applicant presents evidence of completion of the continuing education required by this article.

§ 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 [~~five hundred~~] **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. Section 125 of the general municipal law, as added by chapter 439 of the laws of 1998, is amended to read as follows:

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

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

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

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

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

2. Any municipality which licenses or registers home improvement contractors shall provide such information as requested by the department of state for purposes of this section.

§ 10. 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.