

SENATE, No. 352

STATE OF NEW JERSEY
213th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2008 SESSION

Sponsored by:

Senator ANDREW R. CIESLA

District 10 (Monmouth and Ocean)

SYNOPSIS

Requires chimney sweeps to be registered.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT concerning chimney sweeps and supplementing Title 45 of
2 the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. As used in this act:

8 "Chimney sweep" means an individual engaged in the business
9 of chimney sweeping.

10 "Chimney sweeping" means: cleaning, sweeping, inspecting or
11 providing preventive maintenance of metal or masonry flues,
12 fireplaces, wood and gas fireplace stoves and stove inserts, free-
13 standing wood and gas burning stoves, masonry or metal smoke
14 chambers and vent connectors; repair or rebuilding, relining or
15 replacement of metal or masonry flues and vent connectors,
16 replacement or installation of fireplaces, wood and gas burning
17 stoves and stove inserts; and installation of metal or masonry flues
18 and vent connectors.

19 "Director" means the Director of the Division of Consumer
20 Affairs in the Department of Law and Public Safety.

21 "Division" means the Division of Consumer Affairs in the
22 Department of Law and Public Safety.

23

24 2. a. No person shall engage, or offer or attempt to engage in
25 the business of chimney sweeping unless registered with the
26 division in accordance with the provisions of this act.

27 b. Every applicant for registration as a chimney sweep shall file
28 an application with the director on a form provided by the division,
29 which form shall be accompanied by a reasonable fee, set by the
30 director in an amount sufficient to defray the division's expenses
31 incurred in administering and enforcing this act. Applications for
32 renewal registration shall be filed with the director biennially on a
33 form provided by the division and accompanied by a renewal fee,
34 set by the director.

35 c. Every chimney sweep required to register under this act shall
36 file an amended registration within 20 days after any change in the
37 information required to be included thereon. No fee shall be
38 required for the filing of an amendment.

39

40 3. The provisions of this act shall not apply to any person
41 engaged in a profession or occupation requiring registration,
42 certification or licensure by the State or federal government, who is
43 acting within the scope of his profession.

44

45 4. Any person who advertises in print or distributes any sign or
46 card or other device after the effective date of this act which would
47 indicate to the public that he is a chimney sweep in New Jersey, or
48 who causes his name or business name to be included in a classified

1 advertisement or directory in New Jersey after the effective date of
2 this act under a classification for chimney sweeping covered by this
3 act, is subject to the provisions of this act.

4

5 5. In addition to any other procedure, condition or information
6 required by this act:

7 a. Every applicant shall file a disclosure statement with the
8 director stating whether the applicant has been convicted of any
9 crime, which for the purposes of this act shall mean a violation of
10 any of the following provisions of the "New Jersey Code of
11 Criminal Justice," Title 2C of the New Jersey Statutes, or the
12 equivalent under the laws of any other jurisdiction:

13 (1) Any crime of the first degree;

14 (2) Any crime which is a second or third degree crime and is a
15 violation of chapter 20 or 21 of Title 2C of the New Jersey Statutes;
16 or

17 (3) Any other crime which is a violation of N.J.S.2C:5-1, 2C:5-
18 2, 2C:11-2 through 2C:11-4, 2C:12-1, 2C:12-3, 2C:13-1, 2C:14-2,
19 2C:15-1, subsection a. or b. of 2C:17-1, subsection a. or b. of
20 2C:17-2, 2C:18-2, 2C:20-4, 2C:20-5, 2C:20-7, 2C:20-9, 2C:21-2
21 through 2C:21-4, 2C:21-6, 2C:21-7, 2C:21-12, 2C:21-14, 2C:21-15,
22 or 2C:21-19, chapter 27 or 28 of Title 2C of the New Jersey
23 Statutes, N.J.S.2C:30-2, 2C:30-3, 2C:35-5, 2C:35-10, 2C:37-1
24 through 2C:37-4.

25 b. The director may refuse to issue or may suspend or revoke
26 any registration issued by him upon proof that the applicant or
27 holder of the registration:

28 (1) Has obtained a registration through fraud, deception or
29 misrepresentation;

30 (2) Has engaged in the use or employment of dishonesty, fraud,
31 deception, misrepresentation, false promise or false pretense;

32 (3) Has engaged in gross negligence, gross malpractice or gross
33 incompetence;

34 (4) Has engaged in repeated acts of negligence, malpractice or
35 incompetence;

36 (5) Has engaged in professional or occupational misconduct as
37 may be determined by the director;

38 (6) Has been convicted of any crime involving moral turpitude
39 or any crime relating adversely to the activity regulated by this act.
40 For the purpose of this paragraph a plea of guilty, non vult, nolo
41 contendere or any other such disposition of alleged criminal activity
42 shall be deemed a conviction;

43 (7) Has had his authority to engage in the activity regulated by
44 the director revoked or suspended by any other state, agency or
45 authority for reasons consistent with this section;

46 (8) Has violated or failed to comply with the provisions of any
47 act or regulation administered by the director;

48 (9) Is incapable, for medical or any other good cause, of

1 discharging the functions of a licensee in a manner consistent with
2 the public's health, safety and welfare.

3 c. An applicant whose registration is denied, suspended or
4 revoked pursuant to this section shall, upon a written request
5 transmitted to the director within 30 calendar days of that action, be
6 afforded an opportunity for a hearing in a manner provided for
7 contested cases pursuant to the "Administrative Procedure Act,"
8 P.L.1968, c.410 (C.52:14B-1 et seq.).

9 d. An applicant shall have the continuing duty to provide any
10 assistance or information requested by the director, and to cooperate
11 in any inquiry, investigation or hearing conducted by the director.

12 e. If any of the information required to be included in the
13 disclosure statement changes, or if additional information should be
14 added after the filing of the statement, the applicant shall provide
15 that information to the director, in writing, within 30 calendar days
16 of the change or addition.

17 f. Notwithstanding the provisions of paragraph (6) of subsection
18 b. of this section, no individual shall be disqualified from
19 registration or shall have registration revoked on the basis of any
20 conviction disclosed if the individual has affirmatively
21 demonstrated to the director clear and convincing evidence of the
22 individual's rehabilitation. In determining whether an individual
23 has affirmatively demonstrated rehabilitation, the following factors
24 shall be considered:

25 (1) The nature and responsibility of the position which the
26 convicted individual would hold;

27 (2) The nature and seriousness of the offense;

28 (3) The circumstances under which the offense occurred;

29 (4) The date of the offense;

30 (5) The age of the individual when the offense was committed;

31 (6) Whether the offense was an isolated or repeated incident;

32 (7) Any social conditions which may have contributed to the
33 offense; and

34 (8) Any evidence of rehabilitation, including good conduct in
35 prison or in the community, counseling or psychiatric treatment
36 received, acquisition of additional academic or vocational
37 schooling, successful participation in correctional work-release
38 programs or the recommendation of persons who have had the
39 individual under their supervision.

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41 6. Each applicant for registration as a chimney sweep shall
42 submit to being fingerprinted in accordance with applicable State
43 and federal laws, rules and regulations for the purposes of a
44 criminal history record background check to be performed by the
45 director. The director is authorized to exchange fingerprint data
46 with and receive criminal history record background information
47 from the Division of State Police and the Federal Bureau of
48 Investigation consistent with the provisions of applicable State and

1 federal laws, rules and regulations. No criminal history record
2 background check shall be performed pursuant to this act unless the
3 applicant has furnished his written consent to that check. An
4 applicant who refuses to consent to, or cooperate in, the securing of
5 a criminal history record background check shall not be considered
6 for registration pursuant to this act. The applicant shall bear the
7 cost for the criminal history record background check, including all
8 costs of administering and processing the check.

9

10 7. a. Every registered chimney sweep shall secure, maintain and
11 file with the director proof of a certificate of commercial general
12 liability insurance in a minimum amount of \$500,000 per
13 occurrence.

14 b. Every proof of a commercial general liability insurance policy
15 required to be filed with the director shall provide that cancellation
16 or nonrenewal of the policy shall not be effective unless and until at
17 least 10 days' notice of intention to cancel or nonrenew has been
18 received in writing by the director.

19

20 8. a. The director shall require each chimney sweep, as a
21 condition of biennial registration renewal pursuant to section 2 of
22 this act, to complete any continuing education requirements
23 imposed pursuant to this section.

24 b. The director shall:

25 (1) Promulgate rules and regulations for implementing
26 continuing education requirements as a condition of registration
27 renewal for chimney sweeps.

28 (2) Establish standards for continuing education, including the
29 subject matter and contents of courses of study, and the number and
30 type of continuing education credits required of a registrant as a
31 condition of biennial registration renewal.

32 c. The director may, in his discretion, waive requirements for
33 continuing education under this act on an individual basis for
34 reasons of hardship, such as health or other good cause.

35 d. The director may by rule or regulation establish fees for the
36 administration of continuing education requirements.

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38 9. All registrants shall prominently display their registration
39 numbers within their places of business, in all advertisements
40 distributed within this State, on business documents, contracts and
41 correspondence with consumers of home improvement services in
42 this State, and on all commercial vehicles registered in this State
43 and leased or owned by registrants and used by registrants for the
44 purpose of providing home improvements, except for vehicles
45 leased or rented to customers of registrants by a registrant or any
46 agent or representative thereof.

47

48 10. a. It is an unlawful practice and a violation of P.L.1960,

1 c.39 (C.56:8-1 et seq.) to violate any provision of this act.

2 b. In addition to any other penalty provided by law, a person
3 who knowingly violates any of the provisions of this act is guilty of
4 a crime of the fourth degree.

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6 11. The director, pursuant to the provisions of the
7 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
8 seq.), shall promulgate rules and regulations to effectuate the
9 purposes of this act.

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11 12. This act shall take effect on the 180th day following
12 enactment.

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STATEMENT

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17 This bill provides for the biennial registration of chimney sweeps
18 with the Director of the Division of Consumer Affairs in the
19 Department of Law and Public Safety. As defined in the bill,
20 "chimney sweep" means an individual engaged in the business of
21 chimney sweeping and "chimney sweeping" means: cleaning,
22 sweeping, inspecting or providing preventive maintenance of metal
23 or masonry flues, fireplaces, wood and gas fireplace stoves and
24 stove inserts, free-standing wood and gas burning stoves, masonry
25 or metal smoke chambers and vent connectors; repair or rebuilding,
26 relining or replacement of metal or masonry flues and vent
27 connectors, replacement or installation of fireplaces, wood and gas
28 burning stoves and stove inserts; and installation of metal or
29 masonry flues and vent connectors.

30 The bill makes violators subject to the provisions of the
31 consumer fraud law, P.L.1960, c.39 (C.56:8-1 et seq.) and provides
32 that a person who knowingly violates the provisions of the bill is
33 guilty of a crime of the fourth degree. The bill authorizes the
34 Director of the Division of Consumer Affairs to refuse to issue or
35 renew, or to suspend or revoke, the registration of any person who
36 violates its provisions.

37 The bill requires every registered chimney sweep to secure and
38 maintain commercial general liability insurance in a minimum
39 amount of \$500,000 per occurrence.

40 In addition, every applicant for registration must file a disclosure
41 statement with the director, stating whether the applicant has been
42 convicted of certain crimes enumerated in the bill. An applicant for
43 registration as a chimney sweep is also required to undergo a
44 criminal history record background check. The costs for the
45 background check shall be borne by the applicant.

46 This bill also requires chimney sweeps to complete continuing
47 education requirements as a condition of biennial registration
48 renewal. The bill provides that the Director of the Division of

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1 Consumer Affairs shall establish, by regulation, standards for
2 continuing education, including the subject matter and content of
3 courses of study, and the number and type of continuing education
4 credits required of a registrant as a condition of biennial registration
5 renewal. Waivers of these continuing education requirements may
6 be granted by the director on an individual basis due to hardship.
7 The bill also gives the director authority to establish fees for the
8 administration of continuing education requirements.