SENATE, No. 1195



STATE OF NEW JERSEY

217th LEGISLATURE



INTRODUCED FEBRUARY 8, 2016

Sponsored by:

Senator JENNIFER BECK

District 11 (Monmouth)

SYNOPSIS

Revises “Contractors’ Registration Act.”

CURRENT VERSION OF TEXT

As introduced.



An Act concerning home improvement contractors and amending and supplementing P.L.2004, c.16.

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

1. Section 2 of P.L.2004, c.16 (C.56:8-137) is amended to read as follows:

2. As used in this act:

“Common interest community” means real estate, including, but not limited to, condominiums and cooperatives, with respect to which a person, by virtue of his ownership of a unit, is obligated to pay for real estate taxes, insurance premiums, maintenance, or improvement of other real estate described in the declaration. Ownership of a unit does not include holding a leasehold interest of less than 20 years in a unit, including renewal options.

"Contractor" means a person engaged in the business of making or selling home improvements and includes a corporation, partnership, association and any other form of business organization or entity, and its officers, representatives, agents and employees. A person who makes a home improvement without compensation shall not be deemed to be a contractor with respect to that home improvement.

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

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

“Full-time student” means an individual who was matriculated as a full-time student in a high school or an accredited college or university for the immediately preceding academic semester and will also be enrolled as a full-time student for the next academic semester, in the same or a similar school or accredited college or university.

"Home elevation" means any home improvement that involves raising an entire residential or non-commercial structure to a higher level above the ground.

"Home elevation contractor" means a contractor who engages in the practice of home elevation.

"Home improvement" means the remodeling, altering, renovating, repairing, restoring, modernizing, moving, demolishing, installing in, or otherwise improving or modifying of the whole or any part of any residential **[**or non-commercial**]** property. Home improvement shall also include insulation installation, and home elevation **[**, and the conversion of existing commercial structures into residential or non-commercial property**]**.

"Home improvement contract" means an oral or written agreement for the performance of a home improvement between a contractor and an owner, tenant or lessee, of a residential **[**or noncommercial**]** property, and includes all agreements under which the contractor is to perform labor or render services for home improvements, or furnish materials in connection therewith.

"Residential **[**or non-commercial**]** property" means any occupied or previously occupied single-unit or owner-occupied multi-unit structure of not more than six units used in whole or in part as a place of residence, and all structures appurtenant thereto, and any portion of the lot or site on which the structure is situated which is devoted to the residential use of the structure. Residential property includes an owner-occupied single dwelling unit within a multi-unit common interest community.

“Responsible supervisor” means the individual designated by an applicant or registered contractor to be in charge at the contractor’s job sites as required by subsection g. of section 6 of P.L.2004, c.16 (C.56:8-141).

“Substantial interest” means an interest as director, officer or partner or an economic interest of 10 percent or more in a home improvement contractor or any parent, subsidiary, or affiliate thereof.

(cf: P.L.2014, c.34, s.3)

2. Section 3 of P.L.2004, c.16 (C.56:8-138) is amended to read as follows:

3. a. **[**On or after December 31, 2005, no**]** No person shall offer to perform, or engage, or attempt to engage in the business of making or selling home improvements unless registered with the Division of Consumer Affairs in accordance with the provisions of this act.

b. Every contractor shall **[**annually**]** register with the director every two years. Prior to the end of each renewal period, the director shall send out renewal notices to all registered contractors. Registrants shall submit a completed renewal form and the renewal fee established by the director by regulation. A registration shall expire on the last day of the second year of the biennial registration period unless renewed. Application for registration shall be on a form provided by the division and shall be accompanied by a reasonable fee, set by the director in an amount sufficient to defray the division's expenses incurred in administering and enforcing this act.

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

d. Contractors not otherwise exempt under section 5 of P.L.2004, c.16 (C.56:8-140) who enter into a home improvement contract or contracts with any consumer in a registration period that obligates the consumer to pay, in the aggregate, an amount less than $500 in a registration period, or such other amount as the director may determine by regulation, shall be subject to the registration requirements of P.L.2004, c.16 (C.56:8-136 et seq.), but shall not be subject to the bonding requirements of section 7 of P.L.2004, c.16 (C.56:8-142). Those contractors shall be required to maintain a minimum amount of commercial general liability insurance that shall be set by the director by regulation and may be less than $500,000 per occurrence. The contract prices for contracts entered into by a contractor with a consumer for related, connected, or contemporaneous work shall be aggregated.

(cf: P.L.2004, c.155, s.1)

3. Section 5 of P.L.2004, c.16 (C.56:8-140) is amended to read as follows:

5. The provisions of **[**this act**]** sections 3 (C.56:8-138), 4 (C.56:8-139), 6 through 9 (C.56:8-141-144), and paragraphs (2) and (3) of subsection a. of section 16 (C.56:8-151) of P.L.2004, c.16 regarding registration, insurance, and bonding as a home improvement contractor shall not apply to:

a. Any person **[**required to register pursuant to**]** registered under "The New Home Warranty and Builders' Registration Act," P.L.1977, c.467 (C.46:3B-1 et seq.), but only in connection with the building of a new home as defined in section 2 of P.L.1977, c.467 (C.46:3B-2);

b. **[**Any person performing a home improvement upon a residential or non-commercial property he owns, or that is owned by a member of his family, a bona fide charity, or other non-profit organization**]** (Deleted by amendment, P.L. , c. ) (pending before the Legislature as this bill);

c. Any person regulated by the State as an architect, professional engineer, landscape architect, land surveyor, electrical contractor, master plumber, HVACR contractor, or any other person in any other related profession requiring registration, certification, or licensure by the State, who is acting within the scope of practice of his profession;

d. Any person who is employed by a **[**community association or cooperative corporation**]** common interest community, while such person is acting within the scope of that employment;

e. Any public utility as defined under R.S.48:2-13;

f. Any person licensed under the provisions of section 16 of P.L.1960, c.41 (C.17:16C-77), who is selling a home repair contract as defined in section 1 of P.L.1960, c.41 (C.17:16C-62) but is not performing the work; **[**and**]**

g. Any home improvement retailer with a net worth of more than $50,000,000, or employee of that retailer; and

h. Any contractor who is a full-time student, making or selling home improvements, provided that all of the employees of the contractor are also full-time students and that the contractor does not reasonably expect to earn and does not in fact earn more than $15,000 in annual net income as a contractor.

Any person exempted from the insurance or bonding requirements or the registration requirements of P.L.2004, c.16 (C.56:8-136 et seq.) shall disclose in the home improvement contract the requirements of that act from which the person is exempt and to which the home improvement will not be subject. The disclosure shall comply in form and substance with requirements established by the director by regulation. Any person exempted from the insurance or bonding or registration requirements of this act shall be subject to all other requirements of this act.

(cf: P.L.2004, c.16, s.5)

4. Section 6 of P.L.2004, c.16 (C.56:8-141) is amended to read as follows:

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

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

(1) Any crime of the first degree;

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

(3) Any other crime which is a violation of N.J.S.2C:5-1, 2C:5-2, 2C:11-2 through 2C:11-4, 2C:12-1, 2C:12-3, 2C:13-1, section 1 of P.L.1993, c.291 (C.2C:13-6), section 1 of P.L.2005, c.1 (2C:13-7), 2C:14-2, 2C:14-3, 2C:15-1, subsection a. or b. of 2C:17-1, subsection a. or b. of 2C:17-2, 2C:17-3, 2C:18-2, 2C:20-4, 2C:20-5, 2C:20-7, 2C:20-9, 2C:21-2 through 2C:21-4, 2C:21-6, 2C:21-7, 2C:21-12, 2C:21-14, 2C:21-15, or 2C:21-19, 2C:24-4, 2C:24-7, section 1 of P.L.1989, c.23 (C.2C:24-8), section 1 of P.L.1998, c.102 (C.2C:24-9), chapter 27 or 28 of Title 2C of the New Jersey Statutes, N.J.S.2C:30-2, 2C:30-3, 2C:35-5, 2C:35-10, 2C:37-1 through 2C:37-4, or any other crime for which the person is required to register as a sex offender pursuant to P.L.1994, c.133 (C.2C:7-1 et seq.) or the equivalent under the laws of any other jurisdiction or for which the person is sentenced to parole supervision for life.

The disclosure statement filed with the director shall state whether any employee of the applicant who has been designated as its responsible supervisor has been convicted of a crime in violation of any of the following provisions of the “New Jersey Code of Criminal Justice,” Title 2C of the New Jersey Statutes, or the equivalent laws of any other jurisdiction: N.J.S.2C:5-1, 2C:5-2, 2C:11-2 through 2C:11-4, 2C:12-1, 2C:12-3, 2C:13-1, section 1 of P.L.1993, c.291 (C.2C:13-6), 2C:14-2, 2C:15-1, subsection a. or b. of 2C:17-1, subsection a. or b. of 2C:17-2, 2C:18-2, 2C:24-4, 2C:35-5, or 2C:35-10, or any other crime for which the person is required to register as a sex offender pursuant to P.L.1994, c.133 (C.2C:7-1 et seq.) or the equivalent under the laws of any other jurisdiction or for which the person is sentenced to parole supervision for life.

b. The director may refuse to issue or may suspend or revoke any registration issued by him upon proof that the applicant or holder of the registration or a person with a substantial interest in the applicant or holder:

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

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

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

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

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

(6) Has been convicted of any crime **[**involving moral turpitude**]** enumerated in subsection a. of this section or any other crime relating adversely to the activity regulated by this act. For the purpose of this subsection a plea of guilty, non vult, nolo contendere or any other such disposition of alleged criminal activity shall be deemed a conviction;

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

(8) **[**Has**]** Other than traffic violations, has violated or failed to comply with the provisions of any act or regulation administered , or any order issued, by the director or by any other State agency or the equivalent provisions of any act, regulation, or order under the laws of any other jurisdiction;

(9) **[**Is incapable, for medical or any other good cause, of discharging the functions of a licensee in a manner consistent with the public's health, safety and welfare**]** (Deleted by amendment, P.L. , c. ) (pending before the Legislature as this bill).

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

(1) The director may refuse to issue or may revoke any registration issued by him upon proof that:

(a) the applicant;

(b) the holder of the registration; or

(c) a person with a substantial interest in the application or holder;

held a substantial interest in any other home improvement contractor at the time that the other home improvement contractor was disqualified or was subject to disqualification from registration under paragraphs (1) through (8) of subsection b. of this section.

(2) The director may refuse to issue or may suspend or revoke any registration issued by him upon proof that the contractor’s responsible supervisor has been convicted of any crime for which disclosure is required for responsible supervisors pursuant to subsection a. of this section, provided that no applicant or registered contractor shall be disqualified from registration or shall have its registration revoked for failure to disclose any responsible supervisor’s conviction if the applicant or holder of a registration affirmatively demonstrates to the director clear and convincing evidence of the responsible supervisor’s rehabilitation in consideration of the factors set out in subsection f. of this section.

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

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

f. Notwithstanding the provisions of **[**paragraph (6) of**]** subsection b. of this section, no **[**individual**]** applicant or holder of a registration shall be disqualified from registration or shall have registration revoked on the basis of any conviction disclosed if the individual with the disqualifying conviction has affirmatively demonstrated to the director clear and convincing evidence of the individual's rehabilitation. In determining whether an individual has affirmatively demonstrated rehabilitation, the following factors shall be considered:

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

(2) The nature and seriousness of the offense;

(3) The circumstances under which the offense occurred;

(4) The date of the offense;

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

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

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

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

g. Every applicant and every registered contractor shall designate and maintain a responsible supervisor who may, but need not, be a person with a substantial interest in the applicant or contractor, and shall file with the director the name, residence, address, and telephone number of the responsible supervisor. The responsible supervisor shall be in charge at the contractor's job sites and shall ensure that the work and any employees comply with applicable laws and regulations.

(cf: P.L.2004, c.16, s.6)

5. Section 7 of P.L.2004, c.16 (C.56:8-142) is amended to read as follows:

7. a. **[**On or after December 31, 2005, every**]** Every registered contractor who is engaged in home improvements shall secure **[**,**]** and maintain, and file with the director **[**proof of a certificate**]** evidence of commercial general liability insurance in a minimum amount of $500,000 per occurrence, issued by an insurance carrier authorized by the Commissioner of Banking and Insurance to conduct business in this State, and file with the director a certificate issued by the insurance carrier or its agent evidencing that such insurance is in full force and effect.

b. (1) An insurance carrier that has issued a commercial general liability insurance policy to a contractor for the purpose of complying with this act shall give notice to the director, by regular United States mail, electronic mail, or facsimile transmission, of its intention to cancel or not renew that policy at least 10 days prior to cancellation or non-renewal.

(2) Every registered contractor engaged in home improvements whose commercial general liability insurance policy is cancelled or **[**nonrenewed**]** not renewed shall submit to the director a copy of the certificate of commercial general liability insurance for a new or replacement policy which meets the requirements of subsection a. of this section before the former policy is no longer effective.

c. Every home elevation contractor engaged in performing home elevations, in addition to the insurance required pursuant to subsection a. of this section, shall secure and maintain cargo or other insurance that specifically covers home elevation activities, in a minimum amount of $1,000,000 per occurrence to cover damages or other losses to the homeowner, lessee, tenant or other party resulting from a home elevation, except as otherwise provided in this subsection. The Director of the Division of Consumer Affairs in consultation with the Department of Banking and Insurance may promulgate rules and regulations to implement this subsection, which rules and regulations also may require that home elevation contractors secure and maintain additional insurance of such kind and in such amounts as the director may determine in consultation with the Department of Banking and Insurance. In addition to or as an alternative to the insurance required by this subsection, the director may also require the posting of a bond in favor of the owner, lessee, tenant or other party to the home improvement contract for home elevation. Every bond and insurance policy required to be maintained under this subsection shall provide that the issuer of that bond or policy shall give the director written notice of cancellation or non-renewal of the bond or policy within 10 days of the cancellation or non-renewal.

d. A home elevation contractor, prior to entering into an agreement to perform a home elevation, shall provide proof of insurance to the homeowner including the issuing insurer, policy number, type, and amount of insurance coverage maintained by the contractor in accordance with this section.

e. Every registered contractor who is engaged in home improvement shall maintain in effect during the entire period of the registration a bond, in the form prescribed by the director, issued by one or more sureties authorized to transact business in this State.

f. The penal sum of the bond for an applicant who is applying for a registration or renewal of a registration shall be $25,000 or such other amount as the director may determine by regulation.

g. The contractor shall, from time to time, to the extent that claims are paid, promptly replenish the bond maintained with the director to the amount required under subsection f. of this section or obtain a new bond that meets the requirements of subsection f. of this section. The director may suspend a contractor's registration until the contractor provides the director with valid proof that the bond has been replenished or a new bond has been obtained. As a condition of ending the suspension, the director may require a contractor requesting reinstatement to file a bond in a penal sum up to two times the amount specified in subsection f. of this section, in accordance with regulations to be adopted by the director.

h. The bond required under this section shall be filed or deposited with the director and shall be executed to the State of New Jersey for the benefit of consumers as provided in subsections i. and m. of this section.

i. A consumer may claim against the bond for actual losses incurred by the consumer as a result of conduct by a registered contractor in violation of P.L.1960, c.39 (C.56:8-1 et seq.) occurring during the term of the bond.

j. The bond shall not be payable for treble damages in claims brought under P.L.1960, c.39 (C.56:8-1 et seq.).

k. A consumer making a claim against a bond required under this section shall simultaneously notify the surety and the director of the amount and nature of the claim.

l. If a consumer's claim is not resolved by the contractor or the surety within 60 days after the consumer notifies the surety and the director of the consumer's claim, the consumer may bring a suit or action on the bond against the surety in any State court having jurisdiction. A suit or action against the surety must be brought by the consumer within two years after the expiration of the registration period during which the conduct giving rise to the claim occurred.

m. A bond required under this section shall respond to a claim made by the director for any amounts awarded to a consumer in a binding arbitration proceeding conducted pursuant to a consent judgment or consent order obtained by the director arising out of conduct of the contractor in violation of P.L.1960, c.39 (C.56:8-1 et seq.) occurring during the term of the bond, and not paid by the contractor. The director shall notify the surety of the consent order or consent judgment entered against the contractor.

n. The aggregate liability of the surety for all breaches of the conditions of the bond required under this section shall not exceed the amount of the bond.

o. Where there is more than one claim pending against a contractor in an aggregate amount equal to 50 percent or more of the amount required by subsection f. of section 7 of P.L.2004, c.16 (C.56:8-142), the surety shall notify the director and shall not pay any amount under the bond without authorization from the director. If the director determines that there is a substantial likelihood that the aggregate amount of claims against a bond will exceed the face amount of the bond, the director may apportion the proceeds of the bond among the claimants in an equitable manner. The director may suspend a contractor's registration until any judgment or admitted or proven claim in excess of the amount of the bond is satisfied.

p. Every bond required under this section shall provide that cancellation or nonrenewal of the bond shall not be effective unless and until at least 30 days' notice of intention to cancel or not renew has been received in writing by the director from the issuer.

(cf: P.L.2004, c.155, s.3)

6. Section 11 of P.L.2004, c.16 (C.56:8-146) is amended to read as follows:

11. a. It is an unlawful practice and a violation of P.L.1960, c.39 (C.56:8-1 et seq.) **[**to violate any provision of this act**]** for a contractor, including a contractor exempt from the registration requirements under section 5 of P.L.2004, c.16 (C.56:8-140), to hire a subcontractor, or obtain or contract for the services of an independent contractor, that is not registered under P.L.2004, c.16 (C.56:8-136 et seq.), unless the subcontractor or independent contractor is exempt from the registration requirements of that act.

A contractor who violates any provision of P.L.2004, c.16 (C.56:8-136 et seq.) shall be liable for restitution to a consumer who is damaged or suffers any monetary loss as a result of such violation.

b. In addition to any other penalty provided by law, a **[**person**]** contractor who knowingly violates any of the provisions of this act is guilty of a crime of the fourth degree.

(P.L.2004, c.16, s.11)

7. Section 12 of P.L.2004, c.16 (C.56:8-147) is amended to read as follows:

12. a. This act shall supersede any municipal ordinance or regulation that provides for the licensing or registration of home improvement contractors or for the protection of homeowners by bonds or warranties required to be provided by home improvement contractors, exclusive of those required by water, sewer, utility, or land use ordinances or regulations.

b. No municipality shall issue a construction permit for any home improvement if any part of the home improvement is to be performed by any contractor who is required to but is not registered pursuant to the provisions of this act.

c. A municipality may issue a construction permit for a home improvement only to:

(1) a contractor who is performing the home improvement and who is registered under this act;

(2) a person who is performing the home improvement and is not required to be registered under this act; or

(3) the owner of the property, provided that the person who is performing the home improvement is the owner of the property or is eligible to obtain a construction permit pursuant to paragraph (1) or (2) of this subsection.

d. It is an unlawful practice and a violation of P.L.1960, c.39 (C.56:8-1 et seq.) to induce a consumer to obtain a permit for work to be performed by an unregistered person who is required to be registered under this act.

e. A contractor shall be liable for any fines or penalties imposed in connection with a home improvement that the contractor is making as a result of any failure to obtain necessary construction permits.

f. A contractor shall notify the municipal construction officer, tax assessor, or other appropriate official in writing of the completion of home improvement work for which a construction permit was required to be issued within 30 days of completion of the work.

(cf: P.L.2014, c.34, s.4)

8. Section 16 of P.L.2004, c.16 (C.56:8-151) is amended to read as follows:

16. a. **[**On or after December 31, 2005, every**]** Every home improvement contract for a purchase price in excess of $500, and all changes in the terms and conditions of the contract, shall be in writing. The contract shall be signed by all parties thereto and shall not contain any blank spaces for information including, but not limited to, terms and conditions, to be added after the contract is signed by the consumer, and shall clearly and accurately set forth in legible form and in understandable language all terms and conditions of the contract, including but not limited to:

(1) The legal name, business address, street address and, if different, mailing address, and registration number of the contractor;

(2) **[**A**]** If applicable, a copy of the certificate of commercial general liability insurance required of a contractor pursuant to section 7 of this act and the telephone number of the insurance company issuing the certificate; **[**and**]**

(3) If applicable, a copy of the certificate of surety bond issued by the surety in favor of the State of New Jersey under section 7 of P.L.2004, c.16 (C.56:8-142) and the street address and, if different, the mailing address of the surety at which a claim may be filed, and the telephone number of the surety; and

(4) The total price or other consideration to be paid by the owner, including the finance charges.

b. **[**On or after December 31, 2005, a home improvement contract may be cancelled by a consumer for any reason at any time before midnight of the third business day after the consumer receives a copy of it. In order to cancel a contract the consumer shall notify the contractor of the cancellation in writing, by registered or certified mail, return receipt requested, or by personal delivery, to the address specified in the contract. All moneys paid pursuant to the cancelled contract shall be fully refunded within 30 days of receipt of the notice of cancellation. If the consumer has executed any credit or loan agreement through the contractor to pay all or part of the contract, the agreement or note shall be cancelled without penalty to the consumer and written notice of that cancellation shall be mailed to the consumer within 30 days of receipt of the notice of cancellation. The contract shall contain a conspicuous notice printed in at least 10-point bold-faced type as follows:

"NOTICE TO CONSUMER

YOU MAY CANCEL THIS CONTRACT AT ANY TIME BEFORE MIDNIGHT OF THE THIRD BUSINESS DAY AFTER RECEIVING A COPY OF THIS CONTRACT. IF YOU WISH TO CANCEL THIS CONTRACT, YOU MUST EITHER:

1. SEND A SIGNED AND DATED WRITTEN NOTICE OF CANCELLATION BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED; OR

2. PERSONALLY DELIVER A SIGNED AND DATED WRITTEN NOTICE OF CANCELLATION TO:

(Name of Contractor)

(Address of Contractor)

(Phone Number of Contractor)

If you cancel this contract within the three-day period, you are entitled to a full refund of your money. Refunds must be made within 30 days of the contractor's receipt of the cancellation notice."**]**

The contract shall include the following notice in 10-point bold type or larger, directly above the space provided for the signature of the consumer:

"NOTICE TO CONSUMER

Do not sign this contract if any of the spaces for information have been left blank. You are entitled to a copy of the contract at the time you sign. Keep it to protect your legal rights.

Do not sign any completion certificate or agreement stating that you are satisfied with the entire project before this project is complete. Home improvement contractors are prohibited by law from requesting or accepting a certificate of completion signed by the consumer prior to the actual completion of the work to be performed under the home improvement contract."

c. Any home improvement contract may be rescinded by the consumer, except as provided in subsection j. of this section, if the consumer:

(1) Furnishes to the contractor a notice of intent to rescind the home improvement contract by certified mail, return receipt requested, postmarked not later than 5:00 PM of the third business day following the day on which the home improvement contract is executed; and

(2) Gives up possession of any goods subject to such home improvement contract delivered to the consumer prior to receipt by the contractor of such notice of intent to rescind.

d. Within 10 business days after receipt of such notice of intent to rescind the home improvement contract, a contractor shall:

(1) Pick up, at his own expense, any goods subject to such contract delivered to the consumer prior to receipt by the contractor of such notice;

(2) Refund to the consumer all amounts of money paid by the consumer, less reasonable charges for any damages to such goods which occurred while in the possession of the consumer; and

(3) Redeliver to the consumer any goods traded-in to the contractor on account or of in contemplation of the home improvement contract, less any reasonable charges actually incurred in making the goods ready for sale.

e. Each home improvement contractor shall maintain a record of the receipt of any consumer's notice of intent to rescind a sale under this act for at least 18 months after the receipt of such notice of intent to rescind.

f. At the time of executing every home improvement contract subject to the provisions of this act, the contractor shall deliver to the consumer two copies of a receipt which clearly and conspicuously set forth:

(1) The home improvement contractor's name, street address or its place of business, and registration number;

(2) A description of the goods and services sold; and

(3) The amount of money paid by the consumer or the cash value of any goods delivered to the contractor at the time the home improvement contract was entered into.

g. The receipt required to be delivered to the consumer shall also clearly and conspicuously bear, in at least 10-point bold type, the following statement:

"NOTICE TO CONSUMER: YOU MAY RESCIND THIS SALE PROVIDED THAT YOU NOTIFY THE HOME IMPROVEMENT CONTRACTOR OF YOUR INTENT TO DO SO BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, POSTMARKED NOT LATER THAN 5:00 PM OF THE THIRD BUSINESS DAY FOLLOWING THE SALE. FAILURE TO EXERCISE THIS OPTION, HOWEVER, WILL NOT INTERFERE WITH ANY OTHER REMEDIES AGAINST THE HOME IMPROVEMENT CONTRACTOR YOU MAY POSSESS. IF YOU WISH YOU MAY USE THIS PAGE AS NOTIFICATION BY WRITING "I HEREBY RESCIND" AND ADDING YOUR NAME AND ADDRESS. A DUPLICATE OF THIS RECEIPT IS PROVIDED BY THE HOME IMPROVEMENT CONTRACTOR FOR YOUR RECORDS."

h. Except as provided in subsection j. of this section, no receipt required to be delivered by the consumer shall contain, or be accompanied by any document which contains provisions by which the consumer waives his rights under this act.

i. A contractor who in the ordinary course of business regularly uses a language other than English in any advertising or other solicitation of consumers, or in any printed forms for use by consumers, or in any face-to-face negotiations with consumers shall deliver the two copies of the receipt to a consumer whose principal language is such other language, one in English and one in the other language.

j. A home improvement contract for home improvement work needed by the consumer to meet a bona fide emergency, where the contract with the contractor was initiated by the consumer, shall not be subject to the cancellation provisions of subsection d. of this section, if the consumer furnishes the contractor with a statement separate from the contract, in a form approved by the Division of Consumer Affairs, dated and signed by the consumer, describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the contract within three business days.

(P.L.2004, c.155, s.4)

9. (New section) a. There is established in the General Fund a non-lapsing fund to be known as the "Home Improvement Consumer Protection Fund" which shall be administered by the State Treasurer. The State Treasurer shall deposit into the "Home Improvement Consumer Protection Fund" all fees and penalties collected by the director pursuant to this act.

b. The Legislature shall annually appropriate monies from the fund to the division for the payment of the division's expenses incurred in administering and enforcing the “Contractors' Registration Act,” P.L.2004, c.16 (C.56:8-136 et seq.).

10. This act shall take effect on January 1, 2017, but the Division of Consumer Affairs may take such anticipatory acts in advance of that date as may be necessary for the timely implementation of this act upon its effective date.

STATEMENT

This bill revises the “Contractors’ Registration Act,” P.L.2004, c.16 (C.56:8-136 et seq.) (“the act”), to strengthen the protections afforded New Jersey consumers who engage the services of home improvement contractors. The bill is based on the recommendations of the Division of Consumer Affairs in the New Jersey Office of the Attorney General, in the Department of Law and Public Safety, which is the agency that enforces the provisions of the act under current law.

Specifically, the bill requires an applicant for registration to disclose any person connected to a home improvement business who has a substantial interest in the entity or any parent, subsidiary, or affiliate of the entity. This addresses an ongoing problem that the division has encountered concerning individuals who reincorporate and apply for registration as a new business entity in order to circumvent disclosing to consumers the existence of division disciplinary actions against their previously registered home improvement contracting business. In such cases, the new business entity is purportedly run by individuals who have no connection to the previously disciplined company, but the owner of a previously disciplined company has a significant financial interest in the new business. The bill requires an applicant for registration to disclose any person connected to a home improvement business who has a substantial interest in the entity or any parent, subsidiary, or affiliate of the entity. As defined in the bill, “substantial interest” means an interest as director, officer or partner or an economic interest of 10 percent or more in a home improvement contractor or any parent, subsidiary, or affiliate thereof.

The bill helps facilitate consumer restitution when a home improvement contractor provides substandard work or engages in misconduct. The bill clarifies the commercial general liability insurance provisions of the act. Many consumers and others were of the mistaken belief that the requirement under current law for commercial general liability insurance provided security for claims against contractors; no such protection currently exists. Under the bill, contractors would be required to maintain a surety bond in the amount of $25,000, or such other amount as the director may determine by regulation.

The bill makes it a violation of the consumer fraud act for a contractor to fail to complete a home improvement in accordance with the contract, or for an exempt contractor to hire an unregistered contractor. This provision seeks to address a recent enforcement action, where the division sought to include a count charging that a contractor engaged unregistered subcontractors, which was successfully challenged by the contractor. The proposed change to the law would provide the necessary statutory authority to support the division’s position. The bill also makes a contractor who violates the act liable for restitution to consumers.

The bill provides that a person who performs home improvement work without compensation is not required to register under the act. Under current law, an individual who performs home improvement contracting for a family member or not-profit entity is not required to register. The division has found some confusion exists as to who qualifies as a “family member” for purposes of the exemption. Additionally, a charity can currently be taken advantage of by a contractor who takes a deposit and does not perform the contracted work. The Division of Consumer Affairs believes removing the current exemption, and providing an exemption for work done without compensation will address these concerns.

The bill limits the scope of the act to residential property and eliminates non-commercial property from the scope of the act. Additionally, the bill eliminates from the scope of the act contracts between contractors and owners for converting existing commercial structures into residential property. The Division of Consumer Affairs believes that the purpose of registration of home improvement contractors is to protect consumers, and that an individual or business that operates a multi-unit structure or converts a commercial structure into residential property is better able to take steps to protect itself from unscrupulous contractors.

The bill provides for biennial registration instead of the annual registration provided for in current law, in order to ease administrative burdens on contractors and the division and to allow for a more efficient registration process.

Under the bill, contractors who perform only small home improvements of less than $500 in aggregate cost are subject only to the registration and insurance requirements and not the bonding requirements. These contractors pose a small risk for consumers due to the small projects they perform, and eliminating the bond requirement will allow them to avoid unnecessary expenses, which are ultimately passed along to consumers. Additionally, the bill exempts full-time students who perform home improvement work between semesters, which falls below a certain dollar threshold.

Under the bill, any person who is exempt from the act or parts of the act is required to disclose in the home improvement contract the requirements of the act from which the person is exempt. The bill also clarifies the enumerated classes of persons and situations in which certain contractors are exempt from the registration, insurance, and bonding requirements of the act.

The bill requires contractors to designate responsible supervisors to be responsible for employees performing work at job sites. Under current law, only owners, officers, and directors of home improvement contracting businesses must disclose convictions for disqualifying crimes, but, in many cases, it is an employee who is working in the consumer’s home. While it may not be practical or fair to require background checks on every employee, the bill requires responsible supervisors to disclose any disqualifying crimes and to be in charge of the business’s job sites. The bill also expands the list of disqualifying crimes to include crimes against children.

The bill also revises the act to:

* align the due process provisions of the act to require the director to afford “an opportunity to be heard” before refusing to issue or revoking a registration;
* clarify certain disqualifying conditions;
* prevent an unregistered person who is required to register from inducing a home owner into obtaining a permit for work to be performed by the unregistered person;
* align the three-day cooling off period provided in the act with the “Door-to-Door Home Repair Sales Act of 1968,” and provides an exception to the three-day cancellation provisions for a bona fide emergency; and
* create a non-lapsing fund in the Department of the Treasury for the deposit of fees and penalties, consistent with the change to biennial registration.

In order to permit contractors time to make arrangements to meet the new requirements of the bill, the effective date of the bill is January 1, 2014.

The Division of Consumer Affairs recommends the bill and believes it will address a variety of problems and dramatically improve the New Jersey home improvement “Contractors’ Registration Act,” both from the perspective of the industry and the division’s ability to regulate it and protect New Jersey consumers.