SENATE, No. 1544

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 13, 2020

Sponsored by:
Senator NILSA CRUZ-PEREZ
District 5 (Camden and Gloucester)
Senator DAWN MARIE ADDIEGO
District 8 (Atlantic, Burlington and Camden)

SYNOPSIS

Concerning the "Contractor's 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:

"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.

"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, 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 single or multi-unit structure 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.

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

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

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**]** a person shall not 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. 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**]** A fee shall not be required for the filing of an amendment.

(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, 4, 6, 7, 8, and 9 of P.L.2004, c.16 (C.56:8-138 et al.) regarding registration, insurance, and bonding as a home improvement contractor shall not apply to:

a. Any person required to register pursuant to "The New Home Warranty and Builders' Registration Act," P.L.1977, c.467 (C.46:3B-1 et seq.);

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, 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, or by the owner or manager of any other residential property, while the 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); and

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

(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 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, 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: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, 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.

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:

(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**]** the 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;

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

(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.).

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] 20 calendar days of the change or addition.

f. Notwithstanding the provisions of [paragraph (6) of] subsection b. of this section, [no individual] an applicant shall not be disqualified from registration or [shall] have registration revoked on the basis of any conviction disclosed if the individual 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.

(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 registered contractor who is engaged in home improvements shall secure, maintain and file with the director proof of a certificate of

commercial general liability insurance in a minimum amount of $500,000 per occurrence.

b. Every registered contractor engaged in home improvements whose commercial general liability insurance policy is cancelled or nonrenewed 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. As of December 31, 2018, every registered contractor who is engaged in home improvements shall maintain:

(1) 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;

(2) maintain an irrevocable letter of credit, in a form prescribed by the director, issued by a bank; or

(3) maintain with the director securities, moneys or other security acceptable to the director to fulfill the requirements of this section.

The principal sum of the bond, letter of credit, or securities, moneys or other security shall be a minimum of $50,000. The contractor shall, from time to time, to the extent that claims are

paid, replenish the amount of bond, letter of credit, securities, moneys or other security maintained with the director to a minimum of $50,000.

f. The bond, letter of credit, or securities, moneys or other security shall be filed or deposited with the director and shall be executed to the State of New Jersey for the use or benefit of any consumer who, after entering into a home improvement contract, incurs damages or suffers any loss arising out of a violation of this act by the contractor.

g. The bond shall cover restitution and penalties.

(1) Any person claiming against the bond, letter of credit, or securities, moneys or other security may maintain an action at law against the contractor and the surety, bank, or director, as the case may be.

(2) The bond shall not be payable for treble damage claims pursuant to the consumer fraud act, P.L.1960, c.39 (C.56:8-1 et seq.).

(3) The director may make a claim against the bond, letter of credit, or securities, moneys or other security on behalf of a consumer, with notice to the registered contractor.

(4) The aggregate liability of the surety, bank, or the director to all persons for all breaches of the conditions of the bond, letter of credit or the securities, moneys or other security held by the director shall not exceed the amount of the bond, letter of credit, or the securities, moneys or other security held by the director.

h. Every bond required to be filed with the director shall provide that any consumer who may be claiming against the bond shall notify the director and the surety of the amount and nature of the claim prior to the initiation of any action at law against the contractor. The bond shall provide that the surety may not pay any claim against the bond unless and until it shall have received authorization from the director to pay the claim.

i. If the director determines that there is a substantial likelihood that the aggregate amount of claims against a bond will exceed the available principal amount of the bond, the director may apportion the proceeds of the bond among the claimants in an equitable manner.

j. Every bond required to be filed with the director shall provide that cancellation or nonrenewal of the bond shall not be effective unless and until at least 10 days' notice of intention to cancel or nonrenew has been received in writing by the director from the issuer.

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

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.) for a contractor to fail to complete

a home improvement in accordance with the home improvement contract or otherwise, or to violate any provision of this 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 loss as a result of a violation.

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

(cf: 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**]** A municipality shall not issue a construction permit for any home improvement **[**to any**]** if any part of the home improvement is to be performed by a contractor who is required to be 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; or

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

(cf: P.L.2004, c.16, s.12)

8. Section 13 of P.L.2004, c.16 (C.56:8-148) is amended to read as follows:

13. a. This act shall not deny to any municipality the power to inspect a contractor's work or equipment, the work of a contractor who performs improvements to commercial property, or the power to regulate the standards and manners in which the contractor's work shall be done.

b. A municipality shall have the authority to bring a proceeding in accordance with "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.), in the municipal court or in Superior Court to recover fines and penalties for violations of P.L.2004, c.16 (C.56:8-136 et seq.), committed by a contractor in connection with home improvements located within the municipality. Fines and penalties recovered from a contractor in a proceeding may be retained by the municipality.

(cf: P.L.2004, c.16, s.13)

9. 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 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, and registration number of the contractor;

(2) A copy of the certificate of commercial general liability insurance required of a contractor pursuant to section 7 of **[**this act**]** P.L.2004, c.16 (C.56:8-142) and the telephone number of the insurance company issuing the certificate; and

(3) 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."**]** (Deleted by amendment, P.L. , c.) (pending before the Legislature as this bill).

c. 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 repair 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 repair contract."

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

(1) Furnishes to the contractor a notice of intent to rescind the home repair contract by certified mail, return receipt requested, postmarked not later than 5 p.m. 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 a home repair contract, delivered to the consumer prior to receipt by the contractor of the notice of intent to rescind.

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

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

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

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

f. Each home repair 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 a notice of intent to rescind.

g. 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 sets forth:

(1) The home repair contractor's name and place of business;

(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.

h. The receipt required to be delivered to the consumer shall also clearly and conspicuously include, 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 P.M. 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."

i. Except as provided in subsection k. of this section, a receipt required to be delivered by the consumer shall not contain, or be accompanied by, any document which contains provisions by which the consumer waives any rights under this act.

j. 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 two copies of the receipt to a consumer whose principal language is not English, one in English and one in the other language.

k. A home improvement contract for home improvement work needed by the consumer to meet a bona fide emergency, where the contact 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.

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

10. (New section) A county or municipal office of consumer affairs established pursuant to P.L.1975, c.376 (C.40:23-6.47 et seq.), that enters into a written agreement with the director in the form specified by the director to accept consumer complaints, directly or on a referral basis, and enforce this act against contractors whose principal place of business is in the county or municipality, shall be entitled to a share of registration fees paid by contractors having their principal place of business in the county or municipality as determined by the director by regulation.

11. (New section) The Director of Consumer Affairs, pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall promulgate rules and regulations to effectuate the purposes of this act.

12. This act shall take effect on the first day of the second month next following enactment, but the Director of Consumer Affairs may take any anticipatory action in advance of that date as may be necessary for the timely implementation of this act.

STATEMENT

This bill clarifies that the exemption from certain requirements of the "Contractor's Registration Act," afforded to the persons listed in section 5 of P.L.2004, c.16 (C.56:8-140), applies only to the registration, insurance, and bonding requirement for home improvement contractors. All home improvement contractors would continue to be subject to the other requirements of the act.

Under the bill, a consumer would be permitted to waive the three day waiting period during which the consumer would otherwise have the right cancel a contract for home improvements in the event that the work is necessary to meet a bona fide emergency.

The bill would provide a funding source for restitution to consumers who have been damaged by a contractor’s violation of the "Contractor's Registration Act," by requiring registered contractors to post a bond.

The bill establishes that a contractor would be liable for fines or penalties imposed on a consumer as a result of a contractor’s failure to obtain construction permits. Work performed without a required permit, and thus not inspected by local building code officials, often violates building codes and zoning ordinances designed to protect the health and safety of residents.

Finally, the bill makes it an unlawful practice under the consumer fraud act for a contractor to fail to complete a home improvement in accordance with the home improvement contract,

and provides a consumer who suffers damage as a result of a violation of the "Contractor's Registration Act" with the remedy of restitution. An unlawful practice is punishable by a monetary penalty of not more than $10,000 for a first offense and not more than $20,000 for any subsequent offense. Additionally, violations can result in cease and desist orders issued by the Attorney General, the assessment of punitive damages, and the awarding of treble damages and costs to the injured party.