

SENATE, No. 214

STATE OF NEW JERSEY

218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

Sponsored by:

Senator DECLAN J. O'SCANLON, JR.

District 13 (Monmouth)

SYNOPSIS

Revises “Contractors’ Registration Act.”

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** concerning home improvement contractors and amending
2 and supplementing P.L.2004, c.16.

3

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

6

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

9 2. As used in this act:

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

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

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

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

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

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

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

39 "Home improvement" means the remodeling, altering,
40 renovating, repairing, restoring, modernizing, moving, demolishing,
41 installing in, or otherwise improving or modifying of the whole or
42 any part of any residential **【or non-commercial】** property. Home
43 improvement shall also include insulation installation, and home
44 elevation **【**, and the conversion of existing commercial structures
45 into residential or non-commercial property**】**.

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.

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

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

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

19 "Substantial interest" means an interest as director, officer or
20 partner or an economic interest of 10 percent or more in a home
21 improvement contractor or any parent, subsidiary, or affiliate
22 thereof.

23 (cf: P.L.2014, c.34, s.3)
24

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

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

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

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

1 d. Contractors not otherwise exempt under section 5 of
2 P.L.2004, c.16 (C.56:8-140) who enter into a home improvement
3 contract or contracts with any consumer in a registration period that
4 obligates the consumer to pay, in the aggregate, an amount less than
5 \$500 in a registration period, or such other amount as the director
6 may determine by regulation, shall be subject to the registration
7 requirements of P.L.2004, c.16 (C.56:8-136 et seq.), but shall not be
8 subject to the bonding requirements of section 7 of P.L.2004, c.16
9 (C.56:8-142). Those contractors shall be required to maintain a
10 minimum amount of commercial general liability insurance that
11 shall be set by the director by regulation and may be less than
12 \$500,000 per occurrence. The contract prices for contracts entered
13 into by a contractor with a consumer for related, connected, or
14 contemporaneous work shall be aggregated.
15 (cf: P.L.2004, c.155, s.1)

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

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

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

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

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

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

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

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

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

3 h. Any contractor who is a full-time student, making or selling
4 home improvements, provided that all of the employees of the
5 contractor are also full-time students and that the contractor does
6 not reasonably expect to earn and does not in fact earn more than
7 \$15,000 in annual net income as a contractor.

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

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

19
20 4. Section 6 of P.L.2004, c.16 (C.56:8-141) is amended to read
21 as follows:

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

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

31 (1) Any crime of the first degree;

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

35 (3) Any other crime which is a violation of N.J.S.2C:5-1, 2C:5-
36 2, 2C:11-2 through 2C:11-4, 2C:12-1, 2C:12-3, 2C:13-1, section 1
37 of P.L.1993, c.291 (C.2C:13-6), section 1 of P.L.2005, c.1 (2C:13-
38 7), 2C:14-2, 2C:14-3, 2C:15-1, subsection a. or b. of 2C:17-1,
39 subsection a. or b. of 2C:17-2, 2C:17-3, 2C:18-2, 2C:20-4, 2C:20-5,
40 2C:20-7, 2C:20-9, 2C:21-2 through 2C:21-4, 2C:21-6, 2C:21-7,
41 2C:21-12, 2C:21-14, 2C:21-15, or 2C:21-19, 2C:24-4, 2C:24-7,
42 section 1 of P.L.1989, c.23 (C.2C:24-8), section 1 of P.L.1998,
43 c.102 (C.2C:24-9), chapter 27 or 28 of Title 2C of the New Jersey
44 Statutes, N.J.S.2C:30-2, 2C:30-3, 2C:35-5, 2C:35-10, 2C:37-1
45 through 2C:37-4, or any other crime for which the person is
46 required to register as a sex offender pursuant to P.L.1994, c.133
47 (C.2C:7-1 et seq.) or the equivalent under the laws of any other

1 jurisdiction or for which the person is sentenced to parole
2 supervision for life.

3 The disclosure statement filed with the director shall state
4 whether any employee of the applicant who has been designated as
5 its responsible supervisor has been convicted of a crime in violation
6 of any of the following provisions of the "New Jersey Code of
7 Criminal Justice," Title 2C of the New Jersey Statutes, or the
8 equivalent laws of any other jurisdiction: N.J.S.2C:5-1, 2C:5-2,
9 2C:11-2 through 2C:11-4, 2C:12-1, 2C:12-3, 2C:13-1, section 1 of
10 P.L.1993, c.291 (C.2C:13-6), 2C:14-2, 2C:15-1, subsection a. or b.
11 of 2C:17-1, subsection a. or b. of 2C:17-2, 2C:18-2, 2C:24-4,
12 2C:35-5, or 2C:35-10, or any other crime for which the person is
13 required to register as a sex offender pursuant to P.L.1994, c.133
14 (C.2C:7-1 et seq.) or the equivalent under the laws of any other
15 jurisdiction or for which the person is sentenced to parole
16 supervision for life.

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

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

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

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

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

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

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

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

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

45 (9) **【Is** incapable, for medical or any other good cause, of
46 discharging the functions of a licensee in a manner consistent with

1 the public's health, safety and welfare】 (Deleted by amendment,
2 P.L. , c.) (pending before the Legislature as this bill).

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

11 (a) the applicant;

12 (b) the holder of the registration; or

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

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

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

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

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

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

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

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

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

5 (4) The date of the offense;

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

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

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

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

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

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

25
26 5. Section 7 of P.L.2004, c.16 (C.56:8-142) is amended to read
27 as follows:

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

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

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

1 c. Every home elevation contractor engaged in performing
2 home elevations, in addition to the insurance required pursuant to
3 subsection a. of this section, shall secure and maintain cargo or
4 other insurance that specifically covers home elevation activities, in
5 a minimum amount of \$1,000,000 per occurrence to cover damages
6 or other losses to the homeowner, lessee, tenant or other party
7 resulting from a home elevation, except as otherwise provided in
8 this subsection. The Director of the Division of Consumer Affairs
9 in consultation with the Department of Banking and Insurance may
10 promulgate rules and regulations to implement this subsection,
11 which rules and regulations also may require that home elevation
12 contractors secure and maintain additional insurance of such kind
13 and in such amounts as the director may determine in consultation
14 with the Department of Banking and Insurance. In addition to or as
15 an alternative to the insurance required by this subsection, the
16 director may also require the posting of a bond in favor of the
17 owner, lessee, tenant or other party to the home improvement
18 contract for home elevation. Every bond and insurance policy
19 required to be maintained under this subsection shall provide that
20 the issuer of that bond or policy shall give the director written
21 notice of cancellation or non-renewal of the bond or policy within
22 10 days of the cancellation or non-renewal.

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

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

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

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

46 h. The bond required under this section shall be filed or
47 deposited with the director and shall be executed to the State of

1 New Jersey for the benefit of consumers as provided in subsections
2 i. and m. of this section.

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

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

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

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

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

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

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

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

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

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

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

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

15 b. In addition to any other penalty provided by law, a **person**
16 contractor who knowingly violates any of the provisions of this act
17 is guilty of a crime of the fourth degree.
18 (P.L.2004, c.16, s.11)
19

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

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

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

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

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

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

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

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

46 e. A contractor shall be liable for any fines or penalties
47 imposed in connection with a home improvement that the contractor

1 is making as a result of any failure to obtain necessary construction
2 permits.

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

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

9

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

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

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

24 (2) **【A】** If applicable, a copy of the certificate of commercial
25 general liability insurance required of a contractor pursuant to
26 section 7 of this act and the telephone number of the insurance
27 company issuing the certificate; 【and】

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

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

35 b. **【On or after December 31, 2005, a home improvement**
36 **contract may be cancelled by a consumer for any reason at any time**
37 **before midnight of the third business day after the consumer**
38 **receives a copy of it. In order to cancel a contract the consumer**
39 **shall notify the contractor of the cancellation in writing, by**
40 **registered or certified mail, return receipt requested, or by personal**
41 **delivery, to the address specified in the contract. All moneys paid**
42 **pursuant to the cancelled contract shall be fully refunded within 30**
43 **days of receipt of the notice of cancellation. If the consumer has**
44 **executed any credit or loan agreement through the contractor to pay**
45 **all or part of the contract, the agreement or note shall be cancelled**
46 **without penalty to the consumer and written notice of that**
47 **cancellation shall be mailed to the consumer within 30 days of**
48 **receipt of the notice of cancellation. The contract shall contain a**

1 conspicuous notice printed in at least 10-point bold-faced type as
2 follows:

3

4 "NOTICE TO CONSUMER

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

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

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

14 (Name of Contractor)

15 (Address of Contractor)

16 (Phone Number of Contractor)

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

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

24 "NOTICE TO CONSUMER

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

46 i. A contractor who in the ordinary course of business
47 regularly uses a language other than English in any advertising or
48 other solicitation of consumers, or in any printed forms for use by

1 consumers, or in any face-to-face negotiations with consumers shall
2 deliver the two copies of the receipt to a consumer whose principal
3 language is such other language, one in English and one in the other
4 language.

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

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

16
17 9. (New section) a. There is established in the General Fund a
18 non-lapsing fund to be known as the "Home Improvement
19 Consumer Protection Fund" which shall be administered by the
20 State Treasurer. The State Treasurer shall deposit into the "Home
21 Improvement Consumer Protection Fund" all fees and penalties
22 collected by the director pursuant to this act.

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

27
28 10. This act shall take effect on January 1, 2017, but the
29 Division of Consumer Affairs may take such anticipatory acts in
30 advance of that date as may be necessary for the timely
31 implementation of this act upon its effective date.

32 33 34 STATEMENT

35
36 This bill revises the "Contractors' Registration Act," P.L.2004,
37 c.16 (C.56:8-136 et seq.) ("the act"), to strengthen the protections
38 afforded New Jersey consumers who engage the services of home
39 improvement contractors. The bill is based on the recommendations
40 of the Division of Consumer Affairs in the New Jersey Office of the
41 Attorney General, in the Department of Law and Public Safety,
42 which is the agency that enforces the provisions of the act under
43 current law.

44 Specifically, the bill requires an applicant for registration to
45 disclose any person connected to a home improvement business
46 who has a substantial interest in the entity or any parent, subsidiary,
47 or affiliate of the entity. This addresses an ongoing problem that
48 the division has encountered concerning individuals who

1 reincorporate and apply for registration as a new business entity in
2 order to circumvent disclosing to consumers the existence of
3 division disciplinary actions against their previously registered
4 home improvement contracting business. In such cases, the new
5 business entity is purportedly run by individuals who have no
6 connection to the previously disciplined company, but the owner of
7 a previously disciplined company has a significant financial interest
8 in the new business. The bill requires an applicant for registration
9 to disclose any person connected to a home improvement business
10 who has a substantial interest in the entity or any parent, subsidiary,
11 or affiliate of the entity. As defined in the bill, “substantial
12 interest” means an interest as director, officer or partner or an
13 economic interest of 10 percent or more in a home improvement
14 contractor or any parent, subsidiary, or affiliate thereof.

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

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

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

46 The bill limits the scope of the act to residential property and
47 eliminates non-commercial property from the scope of the act.
48 Additionally, the bill eliminates from the scope of the act contracts

1 between contractors and owners for converting existing commercial
2 structures into residential property. The Division of Consumer
3 Affairs believes that the purpose of registration of home
4 improvement contractors is to protect consumers, and that an
5 individual or business that operates a multi-unit structure or
6 converts a commercial structure into residential property is better
7 able to take steps to protect itself from unscrupulous contractors.

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

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

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

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

38 The bill also revises the act to:

- 39 - align the due process provisions of the act to require the
40 director to afford "an opportunity to be heard" before
41 refusing to issue or revoking a registration;
- 42 - clarify certain disqualifying conditions;
- 43 - prevent an unregistered person who is required to register
44 from inducing a home owner into obtaining a permit for work
45 to be performed by the unregistered person;
- 46 - align the three-day cooling off period provided in the act with
47 the "Door-to-Door Home Repair Sales Act of 1968," and

1 provides an exception to the three-day cancellation
2 provisions for a bona fide emergency; and
3 - create a non-lapsing fund in the Department of the Treasury
4 for the deposit of fees and penalties, consistent with the
5 change to biennial registration.

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

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