

HOME IMPROVEMENT CONTRACTORS: A MODEL STATE STATUTE

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The Public Policy Institute, formed in 1985, is part of the Research Group at AARP. One of the missions of the Institute is to foster research and analysis on public policy issues of interest to older Americans. This publication represents part of that effort. The views expressed herein are for information, debate, and discussion.

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INTRODUCTION

A MODEL STATUTE

America spent over \$118 billion on home repairs in 1997, including more than \$85 million for improvements to owner-occupied housing and more than \$33 million for improvements to renter-occupied housing. Among homeowners aged 65 and older, 50 percent had home repairs or home maintenance completed within the previous 12-month period. Older persons are more likely to live in older homes—homes that tend to be in need of repairs—and less likely to do the necessary repair work themselves, often relying on home contractors. According to 1995 American Housing Survey data, more than three-quarters of homeowners 75 and older who had home repair work done during the previous two-year period did none of the repairs themselves, compared with less than one-third of homeowners under 50 years of age. Statutes that address abuses committed against consumers by dishonest home improvement contractors are crucial in protecting all consumers—and older homeowners in particular—who are trying to maintain their homes.

1995 AHS data on consumer spending for six common home improvements show that average home repair costs over a two-year period ranged from \$1,813 for homeowners under age 25 to \$4,435 for homeowners between the ages of 45 and 54. After age 54, the amount spent on annual home repairs declined consistently. While most contracted home repairs are completed professionally and satisfactorily, tens of thousands of homeowners annually receive inadequate, unprofessional, or fraudulent home repair work. The National Association of Consumer Agency Administrators (NACAA) and the Consumer Federation of America (CFA) report that nationally, in 1997, complaints about home improvement contractors ranked number two, second only to complaints regarding auto sales.

A review of state statutes regulating home improvement contractors demonstrates that state regulation of these contractors varies widely. Some states have no applicable laws or regulations, while others have statutes specific to home improvement contractors. Some states cover new construction and home repair work in a single statute, while others have separate home repair statutes. State statutes differ in a number of areas, including the definition of prohibited acts, requirements for licensing or registration, bonding and insurance requirements, and available remedies for victims of unfair, deceptive or fraudulent acts and practices. In addition, the enforcement of statutes varies across states.

The chart in Appendix A compares major provisions of state laws covering home improvement contractors and examines how states regulate this industry. These provisions have been identified as key components to protecting consumers, recognizing that the enforcement of these provisions are critical to the ultimate protection of consumers. Appendix B provides brief overviews of each state's home improvement contractor statutes.

Based on this review of existing state statutes, AARP has developed a model statute for regulating home improvement contractors. The model statute addresses three areas that are especially important to protecting consumers: regulating contractor conduct and coverage (including licensure, required and prohibited contract provisions, monetary prohibited acts and exemptions); creating resources for consumer recovery; and providing civil remedies and criminal

penalties for violations of the law. Contractor licensure and recovery funds, in particular, are essential to assisting a defrauded homeowner obtain compensation.

The AARP Home Improvement Contractor Model Statute requires home improvement contractors to be licensed, post a bond, and carry certain insurance coverage. In addition, it prohibits misrepresentations, deceptive acts, and failure by the contractor to perform as promised. The statute creates a Home Improvement Contractor's Board to promulgate regulations and enforce the act's provisions. It also grants consumers an explicit private right of action against the contractor and allows recovery of damages, fees, and costs.

The strong consumer protections included in this model statute can benefit all persons who contract for home improvements. These protections are of great value to the millions of older persons who desire to age in place.

Sharon Hermanson, Project Officer

**Home Improvement
Contractor Laws**

Model State Statute

**Section 1:
DEFINITIONS**

(a) "Home improvement contractor" includes any person who undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid to perform any home improvement for the owner, whether or not such person is licensed under or subject to the licensing requirements of this chapter. A home improvement contractor includes subcontractors.

(b) "Home improvement" includes, but is not limited to, the repair, replacement, remodeling, removal, renovation, alteration, conversion, modernization, improvement, demolition, rehabilitation, or sandblasting of or addition to any land or building, or that portion thereof, which is used or designed to be used as a residence or dwelling unit, or the construction, replacement, installation, or improvement of driveways, swimming pools, poolhouses, porches, garages, roofs, siding, insulation, solar energy systems, security systems, flooring, patios, fences, gazebos, sheds, cabanas, landscaping, painting, doors and windows, waterproofing, and other improvements to structures or upon land that is adjacent to a dwelling house. Without regard to affixation, "home improvement" includes the installation of central heating or air conditioning systems or storm windows or awnings.

(c) "Home improvement salesperson" includes any person who negotiates or offers to negotiate a home improvement contract with an owner or who solicits or otherwise endeavors to procure by any means whatsoever, directly or indirectly, a home improvement contract from an owner.

(d) "Owner" includes any homeowner, tenant, or any other natural person who orders, contracts for, or purchases the home improvement services of a home improvement contractor, or the person entitled to the performance of the work of a contractor pursuant to a home improvement contract.

(e) "Lien" means any legal claim on or security interest in real property that arose by consent or by operation of law.

(f) "Actual loss" means the cost of repairing, replacing, or completing work performed or to be performed pursuant to a home improvement contract.

(g) "Person" includes any natural person, corporation, partnership, or other business entity.

Home improvement contractors are defined to include persons who undertake home improvement business, or offer to undertake or bid on home improvement business regardless of whether they have a valid license. The model statute applies to home improvement salespersons in order to protect consumers from the myriad of unfair practices that may take place at the point of sale. As is the case in most states, the model statute protects both homeowners and tenants or any other person who has contracted for the work of a home improvement contractor.

The model statute defines home improvement contracting to include a broad range of repairs and improvements performed on a residence or work done to structures on land adjacent to the residence. Home repair fraud, especially involving door-to-door solicitation, often presents separate and distinct issues from those found in the new construction arena. This model statute is narrowly tailored to target home repair abuses and, therefore, excludes new construction.

**Commentary:
Applicability**

Section 2: EXEMPTIONS

Home improvement contractor does not include:

(a) any person who does a home improvement job for which, in total, the contract price is \$300 or less; and, any person for whom the total cash value of home improvement work performed during the immediate past 12 consecutive months is less than \$5,000.

(b) any person who performs labor or services for a home improvement contractor or subcontractor for wages or salary.

(c) any person other than a home improvement contractor who is required by law to obtain a license for such trade or profession and who is acting exclusively within the scope of the profession for which the person is currently licensed;

(d) an authorized representative of the United States government, the state of [INSERT STATE NAME], or any incorporated municipality, county, or other political subdivision of this state;

(e) a person performing work on a property that person owns or a tenant performing work on the tenant's residence;

(f) students enrolled in a certified vocational school program in which they work under the direct supervision of a licensed home improvement contractor or other contractor who is duly licensed in another field;

(g) a public utility operating under the regulations of the [INSERT STATE COMMISSION] or a rural cooperative utility in construction, maintenance, or development work incidental to its own business; and

(h) a person who only furnished materials, supplies, or equipment without fabricating them into or consuming them in the performance of the work of the home improvement contractor.

Commentary: Exemptions

This section creates a narrow list of exemptions in cases where abuse is unlikely or where other legislation exists. The model statute intends to grant the broadest possible coverage in order to confer the maximum protection for consumers who are defrauded, without imposing unnecessary burdens in situations where abuse is unlikely. Most states exempt certain persons who are deemed to pose little or no threat to the consumer or whose activities are regulated by other state laws.

The most significant exemption in the statute deals with the size of the contract price. It exempts improvement contractors who perform any home improvement job for which, in the aggregate, each contract price is \$300 or less AND who receive less than \$5,000 total during the previous 12-month period for all jobs. The aggregate limitation prevents an unscrupulous contractor from circumventing the statute by signing several small contracts with a consumer on one job. Unfortunately, some states set very high aggregate (per job) exemptions that leave the vast majority of consumers unprotected. For example, Alabama and Alaska have aggregate exemptions up to \$10,000; North Carolina exempts jobs up to \$30,000. The provision in the model statute exempts any person who does less than \$5,000 in home improvement work during the previous 12 consecutive months. This provision acknowledges that family members or friends may perform an

occasional job for a consumer at low cost. Other important exemptions include licensed professionals who act within the scope of their license and a consumer who performs work on his/her own residence. Finally, employees of licensed contractors are exempted.

There is established the [Home Improvement Contractors Board]. The Board shall have seven (7) members as follows: three (3) shall be consumer members of the general public not employed by or affiliated with a licensee hereunder, and who have no spouse or immediate family member employed by or affiliated with a licensee hereunder who are appointed by the head of the state consumer protection agency; three (3) shall be licensed or formerly licensed home improvement contractors, as defined in this statute, and each shall have at least five years of experience as a home improvement contractor and appointed by the governor; and one (1) shall be a current member of a craft or trade union of home improvement contractors appointed by the union. The membership of the Board shall be inclusive and reflect the racial, gender, geographic, urban/rural, and economic diversity of the state. The term of office of each member is four years, and members are eligible for reappointment. If there is a vacancy for any cause, the Governor shall make an appointment immediately effective for the unexpired term. The Board has the authority to hire employees to assist in the implementation of this statute. Further, the Board may promulgate regulations to achieve the purposes of this statute.

Effective state oversight of the industry requires strong enforcement; the composition of the Board plays a critical role. The model statute provides the following checks and balances to ensure that the Board is not dominated by special interests: three home repair industry members are appointed by the Governor; three consumers (who cannot have industry ties or affiliations) are appointed by the head of the state office responsible for the enforcement of the consumer protection act; and the seventh member, a representative of a home improvement contractor craft or trade union, is appointed by the union. In addition, the membership of the Board is required to reflect the racial, gender, geographic, urban/rural, and economic diversity of the state (see Appendix B - Alabama statute). Under the model statute, the Home Improvement Contractors Board is given broad regulatory powers to establish and administer a Recovery Fund (see Section 7); hold administrative hearings; issue, suspend, or revoke licenses; and seek injunctive relief.

(a) No person may engage in or transact any home improvement business, or represent such person to the public as doing home improvement business, or offer to transact any home improvement business in this state or negotiate or offer to negotiate a home improvement contract with an owner or solicit or otherwise endeavor to procure by any means whatsoever, directly or indirectly, a home improvement contract from an owner, except in compliance with the applicable provisions of this chapter.

(b) No person shall maintain, own, operate, or transact a home improvement business, unless a license is first obtained, as hereinafter prescribed.

Section 3: ENFORCEMENT AGENCY

Commentary: Enforcement Agency

Section 4: LICENSING

(c) Applications for a home improvement contractor's license shall be submitted to the Board on forms prescribed and furnished by the Board and shall contain the information and be accompanied by the attachments required by regulation of the Board.

(d) If the applicant is a corporation, partnership, or other business entity, a qualifying natural person within the entity must be listed on the application. If a corporation, such qualifying natural person must be a responsible managing officer or a responsible managing employee who can meet the experience requirements and pass the written examination. If a partnership or other entity, such qualifying natural person must be a responsible general partner or a responsible managing employee who can meet the experience requirements and pass the written examination. No license shall be issued by the Board to any applicant unless the Board is satisfied that the applicant is or has in its employ a party who is qualified for the classification for which application is made and the applicant has satisfied the requirements of this section.

(e) Any applicant, who for at least three (3) years, holds a valid license as a home improvement contractor or salesperson issued by a jurisdiction outside of the state of [insert state] shall be deemed to have satisfied the experience and examination requirements for licensure only upon a determination by the Board that the licensing requirements of the other jurisdiction are substantially similar to those of [insert state]. Such out-of-state applicant is subject to all other requirements of this statute.

(f) An applicant for a contractor license shall:

(1) demonstrate proof of financial responsibility as determined by regulation of the Board;

(2) pass an examination approved and adopted by the Board;

(3) pay all required fees as set by the Board;

(4) have at least two (2) years of trade experience or comparable educational training, as defined by the Board.

(5) file with the Board information that includes, but is not limited to: a complete statement of the general nature of the applicant's contracting business or the applicant's duties; all outstanding judgment(s) against the applicant in actions arising out of the field of home improvements or other construction work; and any pending litigation that the applicant is involved in arising out of the field of home improvements or other construction work.

(g) An applicant for a salesperson license shall:

(1) demonstrate proof of financial responsibility as determined by regulation of the Board;

(2) pass an examination approved and adopted by the Board;

(3) pay all required fees as set by the Board;

(4) file with the Board information that includes, but is not limited to: all outstanding judgment(s) against the applicant in actions arising out of the field of selling home improvements or other construction work; any pending litigation arising out of the field of home improvements or other construction work.

(h) The Board may refuse to issue or renew or may suspend or revoke a license hereunder if it finds that the applicant or licensee:

(1) has made a material omission or misrepresentation of fact on an application for a license;

(2) has failed to furnish information to the Board concerning an application for a license as required by this statute;

(3) lacks competence to engage in the home improvement business, as evidenced by work performed in a poor and unworkmanlike manner, or when the work involved is inadequate or incomplete;

(4) has been convicted of a felony or any crime of dishonesty;

(5) has failed to perform contracts, has manipulated assets or accounts, or has engaged in fraud or bad faith;

(6) has violated any provision of this statute or is performing or attempting to perform any conduct prohibited by this statute.

(i) Persons licensed under this statute must renew the license every two (2) years in the manner prescribed by the Board.

(j) The Board shall maintain a list of all information regarding complaints and claims filed against licensees. This will include information regarding the resolution of such complaints and claims, copies of all applications, information on all actions by the Board to deny, suspend, or revoke a license. This information shall be available to the public.

This section of the model statute requires all home improvement contractors to obtain a license. Licensing, though not a guarantee of competence or trustworthiness, is beneficial to the public interest for a variety of reasons. It assumes that a contractor has met specified requirements (years of experience, passed an examination, for example), thus discouraging contractors who lack minimum skills, knowledge, and personal character from doing home repair work.

Some states require registration rather than licensure. Registration generally involves a very streamlined process of essentially "signing up" to do contracting work, providing limited documentation (name and address, for example). However, as a general rule, in those states that have created and implemented a registration process, the enforcement actions that can be taken against contractors are minimal or nonexistent. For these reasons, this model statute requires licensure.

**Commentary:
Licensing**

**Section 5:
BONDING AND
INSURANCE**

The model statute requires that applicants must 1) demonstrate proof of financial responsibility, 2) pass an examination, 3) show at least two years of trade or comparable educational experience, and 4) disclose the nature of their business, or any outstanding judgments or pending litigation. An important provision allows the Board to refuse to issue or renew a license or to suspend or revoke a license if it finds that the applicant made a material omission or misrepresentation of fact on the application. Falsifying an application is only one of several grounds the Board has for taking such actions. Out-of-state home improvement contractors may obtain a license if they have three years of experience and if their state has substantially similar licensing requirements.

Those states that mandate licensing also create enforcement mechanisms to protect the public from the contractors who act in an illegal manner. When licensing is required, consumers can contact the state agency and obtain information about the contractor (e.g., whether complaints have been filed against the contractor) prior to signing any contracts. The opportunity for the public to get this information is critical to the important goal of preventing contractor abuses from occurring in the first place.

(a) All licensees must have in effect insurance covering personal injury in an amount not less than \$100,000/\$300,000 and insurance covering property damage caused by the work of that home improvement contractor in an amount not less than \$50,000. The contractor shall provide satisfactory evidence to the Board at the time of registration and annual renewal that the insurance required by this subsection has been procured and is in effect.

(b) A person who wishes to obtain or renew a license as a home improvement contractor shall file with the Board a surety or property bond or cash deposit. The amount of each bond or cash deposit must be fixed by the Board with reference to the magnitude of the contractor's operations but must not be less than \$50,000 for the benefit of any person who is damaged because of the breach of the home improvement contract. Any person so damaged may sue directly on the bond without assignment thereof. If the bond ceases to be in effect, the contractor's license shall become invalid.

(c) A person having a claim against a contractor for any of the prohibited acts in this statute may bring suit upon the bond in the court of appropriate jurisdiction. A person having a claim shall notify the Board at the time suit is filed, and the Board shall maintain a record, available for public inspection and copying, of all suits commenced. Such notification shall not constitute a pre-condition to the filing of a suit, and failure to notify the Board shall in no way affect the validity of such lawsuit. Priority for payment shall be based upon the time of filing with the Board. In the event that claims pending at any one time exceed the amount of the bond, the claims shall be satisfied from the bond in the following order:

- (1) homeowners' claims;*
- (2) labor, including employee benefits;*
- (3) material and equipment; and*
- (4) all other claims.*

This section of the statute provides consumers with important security against a contractor that commits a prohibited act (See Appendix B - Nevada, Arizona, and Oregon). Bonding and insurance create a greater potential for actual recovery by an injured consumer (as well as other individuals, such as material suppliers and subcontractors) when the contractor is otherwise judgment-proof or disappears, or files bankruptcy to avoid liability. The contractor must post a bond or security deposit of a minimum of \$50,000. The contractor's license may be revoked when the bond ceases to be in effect. Most important, the consumer may bring suit upon the bond. Subcontractors may also make claims on the bond, preventing a mechanic's lien from being placed on the home when the contractor fails to pay the subcontractor for materials or labor. Because multiple claims may be made against the bond, claims for consumers get first priority, followed by claims for labor, material and equipment, and all other claims.

Without such protections, consumers could be stuck with losses incurred through the fault of their uninsured contractors. The model statute remedies this problem by requiring all licensees to have personal injury insurance of at least \$100,000 per person and \$300,000 aggregate and at least \$50,000 of property damage insurance.

The following acts are prohibited:

(a) Abandonment of, or willful failure to perform, without justification, any home improvement contract or project engaged in or undertaken by a contractor, or deviation from or disregard of plans or specifications in any material respect without the consent of the owners;

(b) Failure to perform as promised under a home improvement contract;

(c) Any substantial misrepresentation in the procurement of a home improvement contract, or any false promise of character likely to influence, persuade, or induce;

(d) Any fraud in the execution of, or in the alteration of, any contract, mortgage, promissory note, or other document incident to a home improvement transaction;

(e) Misrepresentation of a material fact by an applicant in obtaining or attempting to obtain a license;

(f) Use or attempted use of a license that has expired or that has been revoked;

(g) Presentation of oneself falsely or impersonation of a licensed home improvement contractor or salesperson;

(h) Offer to make or making any home improvement without having a valid license under this statute;

(i) Entrance into a home improvement contract with the intent of:

(1) damaging the property of a consumer;

(2) doing work on the property of a consumer without the consumer's prior authorization;

**PROHIBITED
ACTS cont'd**

- (3) misrepresenting that the contractor or another person is an employee or agent of the federal government, the state, a political subdivision of the state, or any other governmental agency or entity;*
- (4) misrepresenting that the supplier or another person is an employee or agent of any public or private utility.*

(j) Advertisement, in any manner, that a licensee is licensed under the statute unless the advertisement includes an accurate reference to the appropriate current license number consisting of and limited to a form as prescribed by the Board;

(k) Creation or confirmation of a consumer's impression that is false and that the home improvement supplier does not believe to be true;

(l) Promises of performance that the contractor does not intend to perform or knows will not be performed;

(m) Use or employment of any deception, false pretense, or false promise to cause a consumer to enter into a home improvement contract;

(n) Entrance into a contract in which the total sales price is more than 25 percent greater than the value of the work performed under the contract;

(o) To act as a contractor or sell a home improvement under a name other than that which is stated on the person's license;

(p) Violation of any rule adopted by the Board;

(q) Aiding or abetting of an unlicensed person to evade the provisions of this statute, knowingly combining or conspiring with an unlicensed person, allowing one's license to be used by an unlicensed person, or acting as an agent, partner, associate or otherwise of an unlicensed person with intent to evade the provisions of this statute;

(r) Demand for or receipt of any payment for a home improvement before the home improvement contract is signed;

(s) Failure to pay all taxes associated with home improvement sales or contracting;

(t) Any violation of this section is also a per se violation of the state Unfair and Deceptive Acts and Practices act;

(u) Any contractor covered by this statute who violates the state Unfair and Deceptive Acts and Practices (UDAP) act, the worker's compensation law, federal and state tax law, or the state unemployment act in the course of conducting a home improvement business violates this statute;

(v) Any violation of a requirement under this statute not enumerated in this section or any violation of regulations of the Board;

(w) Failure to notify the Board of any change of address within ten (10) days of the change.

Prohibited acts are listed to help protect consumers from a variety of tactics used by unscrupulous home improvement contractors, such as overpriced or shoddy work or unfinished jobs. "Bait and switch" tactics, for example, are used by contractors to offer low prices for installed items such as windows and home siding. After the contract is signed, these contractors may tell owners that the items are out of stock and can be replaced only with a high-priced substitute, or contractors may promise triple-pane windows but install double-pane windows instead. Contractors sometimes claim that an item is more expensive than advertised because it has to be custom-made to fit the home. The contractors may misrepresent that the repair is specially priced by explaining that the home has been selected to model the repair. Energy savings, health benefits, and value added to the home are often misrepresented. In door-to-door sales, a common tactic is to mislead the owner by claiming that the deal cannot be canceled because certain items have already been ordered or custom-made for the job. Often, salespeople make oral representations that are either not included in or are contradicted by the written contract.

The model statute prohibits contractors from taking advantage of consumers in several ways, including: abandoning a project, failing to perform as promised, misrepresenting material facts, entering into contracts with a total sales price more than 25 percent greater than the value of the work performed, and demanding or receiving payment before the contract is signed.

Of critical importance in protecting consumers are two provisions included in this section: 1) any violation of the statute is also a per se violation of the state Unfair and Deceptive Acts and Practices (UDAP) act, and 2) any violation of the state UDAP act and of other specified state laws by a contractor subject to this statute constitutes a violation of this statute. Connecting the state UDAP act and the home improvement contractor statute in this manner increases consumers' chances to obtain viable remedies against unscrupulous contractors.

(a) The Board shall:

- (1) establish a Home Improvement Recovery Fund; and**
- (2) keep the Fund at a level of at least \$250,000.**

(b) Initial Fee. Before the Board issues a home improvement contractor license, the contractor shall pay a fee of \$100 to be credited to the Fund. If the Board finds that because of pending claims, the amount of the Fund may fall below \$250,000, the Board shall assess each contractor a fee of \$50. If a contractor fails to pay an assessment within sixty (60) days after notice of the assessment, the contractor's license is suspended until the assessment is paid.

(c) Claims against Fund

- (1) Subject to this statute, an owner may recover compensation from the Fund for an actual loss that results from any violation of this statute by a home improvement contractor, acting with or without a valid license, as found by the Board or a court of competent jurisdiction. For purposes of recovery from the Fund, the act or omission of a licensed home**

improvement contractor includes any act or omission of a subcontractor, salesperson, or employee of the licensed home improvement contractor whether or not an express agency relationship exists.

(2) Procedures for submitting claims. To begin a proceeding to recover from the Fund, a claimant shall submit to the Board a claim, under oath, that states:

- (i) the amount claimed, based on the actual loss;**
- (ii) the facts giving rise to the claim;**
- (iii) any other evidence that supports the claim; and**
- (iv) any other information that the Board requires.**

(d) Action on claim by Board. On receipt of a claim, the Board shall:

(1) send a copy of the claim to the contractor alleged to be responsible for the actual loss;

(2) require a written response to the claim within ten (10) days. The Board shall review the claim and any response to it and may investigate the claim; and

(3) on the basis of its review and any investigation, may do any or all of the following:

- (i) set the matter for a hearing held in accordance with Section 11 of this statute;**
- (ii) dismiss the claim, if it is made in bad faith; or**
- (iii) issue an order to pay all or part of the claim or deny the claim.**

(e) Payments from Fund. The Board may order payment of a claim against the Fund if:

(1) the decision or order of the Board is final and all rights of appeal are exhausted; or

(2) the claimant provides the Board with a certified copy of a final judgment of a court of competent jurisdiction or a final award in arbitration, with all rights of appeal exhausted, in which the court or arbitrator:

- (i) expressly has found on the merits that the claimant is entitled to recover under this statute; and**
- (ii) has found the value of the actual loss.**

(f) Order of Payment

(1) The Board shall pay approved claims in the order submitted.

(2) If approved claims submitted to the Board against a contractor exceed \$50,000 less the amount of unreimbursed claim payments previously made for the contractor, the Board may pay the approved claim proportionately so that each claimant receives the same percentage payment of the claims.

(3) After the Fund is reimbursed, the Board shall pay unsatisfied approved claims.

(g) Insufficient Balance. If there is not enough money in the Fund to pay an approved claim wholly or partly, the Board shall pay the unpaid claim:

- (1) when enough money is deposited in the Fund; and***
- (2) in the order that each claim originally was filed with a court of competent jurisdiction or submitted to the Board.***

(h) Limitations Period. A claim shall be brought against the Fund within [ESTABLISHED BY STATE] years after the claimant discovered or, by the use of ordinary diligence, should have discovered the loss or damage.

(i) Reimbursement of Fund. After the Board pays a claim from the Fund:

- (1) the Board shall be subrogated to all rights of the claimant in the claim up to the amount paid.***
- (2) the claimant shall assign to the Board all rights of the claimant in the claim up to the amount paid.***
- (3) the Board has a right to reimbursement of the Fund by the contractor or salesperson for:***
 - (i) the amount paid from the Fund, and,***
 - (ii) interest on the amount at an annual rate of at least 10 percent as adjusted by the Board.***
- (4) if, within thirty (30) days after the Board gives notice, a contractor on whose account a claim was paid does not reimburse the Fund in full, the Board may sue the contractor in a court of competent jurisdiction for the unreimbursed amount.***

This section creates the Home Improvement Recovery Fund. In addition to the bond and insurance requirements, the Fund is intended to enhance a consumer's chances for recovery for "actual loss" when a contractor fails to perform or does shoddy work. Situations arise in which unscrupulous contractors canvass neighborhoods, receive down payments, and fail to perform properly under the contract. As soon as consumers start to complain, the company closes up shop and disappears, hides the income, or files bankruptcy so that consumers cannot actually recover against the company. The Fund is designed to repay consumers for the costs of completion of the job and repair of shoddy work performed by both licensed and unlicensed contractors. The Fund will not pay for consequential damages to the home or other property of the consumer, emotional distress, or other damages. The contractor's bond or insurance may cover those losses.

The model statute requires the Board to maintain at least \$250,000 in the fund at all times and requires each contractor to pay a \$100 fee before receiving a license. An owner can recover for actual loss that results from any violation of the statute, as found by the Board or a court. It also provides for a claims procedure, payments from the Fund, and reimbursement of the Fund by the contractor.

**Section 8:
REQUIRED
CONTRACT
PROVISIONS**

No home improvement contract shall be valid and enforceable against an owner unless it:

- (a) is in writing and legible;
- (b) is signed by the owner and the contractor or a salesperson on behalf of a contractor;
- (c) contains the entire agreement between the owner and contractor;
- (d) contains the date of the transaction;
- (e) contains the name, specific address (post office box numbers only are not sufficient), and the license number of the contractor;
- (f) contains the approximate starting date and completion date;
- (g) is entered into with a licensed contractor or a licensed salesperson;
- (h) provides a notice in at least 14-point bold typeface that gives the toll-free telephone number of the Board and states:

STATE LAW REQUIRES THAT ANYONE WHO CONTRACTS TO DO HOME IMPROVEMENT WORK BE LICENSED BY THE BOARD IF THE TOTAL PRICE OF THE JOB IS \$300 OR MORE (INCLUDING LABOR AND MATERIALS). SALESPERSONS MUST ALSO BE LICENSED.

LICENSED CONTRACTORS AND SALESPERSONS ARE REGULATED BY LAWS DESIGNED TO PROTECT THE PUBLIC. YOU MAY CONTACT THE [DEPARTMENT] AT 1-800- [____] to be established upon implementation of the statute [____]] TO FIND OUT WHETHER THE CONTRACTOR OR SALESPERSON HAS A VALID LICENSE. THE BOARD HAS COMPLETE INFORMATION ON THE HISTORY OF LICENSED CONTRACTORS, INCLUDING ANY SUSPENSIONS, REVOCATIONS, COMPLAINTS, AND RESOLUTION OF COMPLAINTS.

IF YOU HAVE A COMPLAINT AGAINST A CONTRACTOR OR SALESPERSON, YOU MAY CONTACT THE TOLL-FREE NUMBER TO OBTAIN A COMPLAINT FORM AND FURTHER INFORMATION. YOU MUST FILE ALL COMPLAINTS WITHIN [____] determined by state statute of limitations [____]] YEARS OF THE DATE OF THE CONTRACT.

IF THE CONTRACTOR FAILED TO COMPLETE THE WORK OR PERFORMED SHODDY WORK, YOU MAY FILE A CLAIM WITH THE RECOVERY FUND BY CONTACTING THE TOLL-FREE NUMBER. YOU MUST FILE ALL CLAIMS AGAINST THE FUND WITHIN [____] determined by state statute of limitations [____]] YEARS OF THE DATE OF THE CONTRACT.

- (i) includes a description of the work to be performed and the materials to be used and a set of specifications that cannot be changed without the written approval of the owner;
- (j) includes the total sales price due under the contract;
- (k) includes the amount of any downpayment, which cannot exceed one-third (1/3) of the total contract price;

(l) Includes a schedule of all progress payments (if any progress payments are required), showing the amount of each payment and the state of completion of the work to be performed;

(m) includes a statement that upon satisfactory payment being made for any portion of the work performed, the contractor shall, prior to any further payment being made, furnish to the person contracting for the home improvement a full and unconditional release from any claim or mechanic's lien for that portion of the work being performed;

(n) includes a notice in at least 14-point bold type that the owner shall not sign the contract if there are any blanks and that the owner is entitled to a copy of the contract at the time the owner signs it;

(o) includes a notice of any three-day right of cancellation, if required under state or federal law;

(p) includes a description of any collateral taken to secure the contract;

(q) advises the owner that it is the responsibility of the contractor to obtain all necessary permits to perform the work;

(r) includes the names, license numbers, complete addresses (post office box numbers not sufficient) of all subcontractors on the project;

(s) complies with all applicable state or federal credit laws if the contract includes financing the work to be performed;

(t) includes a statement that any holder of the contract is subject to all claims and defenses which the owner could assert against the contractor and that recovery shall not exceed the total contract price; and

(u) is written in both English and another language if a language other than English is used in the negotiation or explanation of the contract or the work to be performed.

Consumers should receive a clear, written contract that they can understand. The model statute prevents contractors from hiding key contract terms in complicated legal jargon and requires that **all** promised work is included in the contract. In addition, the model statute informs consumers about how to investigate whether the contractor is licensed, whether any complaints have been filed against him or her, and what remedies are provided by state law should a contractor fail to perform or engage in other prohibited acts.

The provisions included in this section of the model statute represent a distillation of the information most critical to the owner, including notices that do the following: state that anyone who does home improvement work valued at more than \$300 must be licensed with the Board; give the owner the toll-free telephone number for the Board and advise the owner not to sign a contract with blanks; inform owners that should a contractor do shoddy work, they may file a claim with the Recovery Fund in order to recover their losses. In addition to these notices, the contract must include the price, a description of the work to be done, and the materials to be used, none of which can be changed without written approval of the owner. The section also requires that the contract state the name, license number, and

**Commentary:
Required
Contract
Provisions**

**Section 9:
Prohibited
Contract
Provisions**

address of the contractor and of all subcontractors who work on the project. Finally, the contract may not require the owner to make a downpayment of more than one-third of the total price of the contract. A larger downpayment may create an incentive for the contractor to leave before the work is complete.

Any of the following provisions, if included in a home improvement contract, shall be void and unenforceable:

- (a) a hold harmless clause;*
- (b) a waiver of federal, state, or local health, life safety, or building code requirements;*
- (c) a confession of judgment clause;*
- (d) a waiver of any right to a jury trial in any action brought by or against the owner;*
- (e) a clause in which the owner relieves the contractor from liability for any legal or equitable remedies that the owner may have against the contractor under the contract or other instrument;*
- (f) a mandatory arbitration clause;*
- (g) any assignment of or order for payment of wages or other compensation for services;*
- (h) a provision relieving the contractor from liability for acts committed by the contractor or the contractor's agent in the collection of any payments or in the repossession of any goods;*
- (i) a provision in which the owner agrees not to assert any claim or defense arising out of the contract;*
- (j) a provision that the contractor may be awarded attorney's fees and costs;*
- (k) a waiver of any provisions of this statute.*

**Commentary:
Prohibited
Contract
Provisions**

Consumers who enter into home improvement contracts that include waivers of important rights may be unaware that they have waived these rights. Discrepancies in sophistication and bargaining power between the contractor and the consumer leave the consumer at a distinct disadvantage. Taking this into account, the model statute follows the example set by several states by prohibiting certain unfair contract terms. For example, the contract may not waive the owner's right to a jury trial or any provisions of the statute. The contract may not relieve a contractor of liability for acts committed by the contractor, nor can the contract have a clause that requires the consumer to go to arbitration before filing suit.

**Section 10:
DENIALS,
REPRIMANDS,
SUSPENSIONS,
AND
REVOCATIONS:
GROUNDS AND
PENALTIES**

Denials, reprimands, suspensions, revocations: (a) In general: Subject to the hearing provisions of Section 11 of this statute, the Board may deny a license to an applicant, reprimand a licensee, or suspend, or revoke a license if the licensee violates any provisions of this statute.

(b) Commencement of action: An action which could result in denial of an application for a license, or a reprimand, suspension, or revocation of a license can be commenced at any time by the Board. An owner may file a complaint in the form prescribed by the Board at any time within [____ DE-TERMINED BY STATE____] years of the date of the contract, unless the Board finds that the complainant's delay in bringing the complaint was justified and the delay does not result in an undue burden on the licensee.

(c) Responsibility for violations by others: Subject to the hearing provisions of Section 11 of this statute, the Board may reprimand a contractor or subcontractor or suspend or revoke the license of a contractor for any violation of this statute by an agent, director, employee, manager, officer, partner, or salesperson of the contractor, unless the Board finds that:

- (1) the employee was acting outside of the scope of the employment;*
- (2) the contractor or management personnel of the contractor tried and could not prevent the violation.*

(d) Penalty: Instead of or in addition to reprimanding a licensee or suspending or revoking a license, the Board may impose a civil penalty not exceeding \$5,000 for each violation, whether or not the person is licensed under this title. In setting the amount of the civil penalty, the Board shall consider:

- (1) the seriousness of the violation;*
- (2) the good faith of the violator;*
- (3) any previous violations; and*
- (4) the harmful effect of the violation on the complainant and the public.*

Like most state statutes, the model statute grants the Board the authority to license and to reprimand contractors. The Board may deny a license to an applicant or revoke or suspend the license of a contractor if the contractor violates any provisions of the statute. In certain circumstances, the contractor may also be disciplined for acts committed by employees or agents of the contractor. The Board may impose a civil penalty of up to \$5,000 for each violation, even if the person is not licensed under the statute.

**Commentary:
Denials,
Reprimands,
Suspensions, and
Revocations**

Hearings:

(a) Right to hearing: Before the Board can suspend or revoke a license, it shall give the person against whom the action is contemplated an opportunity for a hearing before the Board.

**Section 11:
HEARINGS**

**HEARINGS
cont'd**

A MODEL STATUTE

(b) Specific notice requirements: *The hearing notice to be given to the person shall be sent at least ten (10) business days before the hearing by certified mail to the business address of the licensee on record with the Board. Every notice shall bear an identifying number, which is the number assigned to all hearings, orders, and communications between the parties relating to the subject matter of the hearing.*

(c) Oaths: *The Board may administer oaths in a proceeding under this section.*

(d) Hearing location, time: *The Board shall set the time and place of the hearing, but shall hold the hearing in an appropriate location in the state to accommodate the needs of 1) witnesses with disabilities, 2) indigent witnesses, and 3) a majority of witnesses.*

(e) Right to counsel: *The person may be represented at the hearing by counsel.*

(f) Subpoenas: *In connection with a proceeding under this section, the Board may:*

- (1) issue subpoenas for the attendance of witnesses to testify or produce evidence; and*
- (2) take testimony in the same manner and with the same fees and compensation for mileage as provided in civil cases in the state.*

(g) Rules of evidence: *The rules of evidence shall be those prescribed by state law for administrative hearings.*

(h) Failure to appear: *If, after due notice, the person against whom the action is contemplated does not appear, the Board may, nevertheless, hear and determine the issue.*

(i) Transcription of hearings: *All hearings shall be recorded. If a party appeals a final order of the Board entered in proceeding, the party, at its own expense, shall order for and deliver to the Board a complete transcript of the testimony for inclusion in the record to be transmitted to the clerk of the court.*

(j) Witnesses: *Any member of the Board may examine any witness called. The Board may call as a witness, in addition to those persons for whom subpoenas have been issued, any person attending the hearing.*

(k) Briefs: *Any party may, and at the request of the Board shall, submit to the Board briefs on the issues of fact and law involved in the hearings. The briefs shall be filed in the form, with the number of copies, and at the time that the Board may designate.*

(l) Orders: *All orders of the Board shall be in writing and shall designate the names of the parties. Copies of all final orders shall be sent to each party to the proceedings. Such orders are also available to the public.*

(m) Public access to hearings and records: *All hearings shall be open to the public. The records created as a result of all proceedings that result in a hearing are open to the public.*

(n) Right to intervene, consolidate: Any owner aggrieved by the actions of a licensee or other interested person may seek to intervene in any investigative or enforcement action pending against the contractor. The Board shall liberally grant such intervention requests. An owner who files a timely complaint against the contractor may request that the Board consolidate the complaint with any others currently pending against the contractor. The Board shall liberally grant such consolidation requests.

An open and public hearing process ensures fairness to all parties. Accordingly, this section of the model statute provides the right to notice and a hearing, public access to hearing records, and the right of interested parties to intervene. It also grants the Board the power to issue subpoenas and question witnesses. These provisions are in general accordance with state administrative procedures statutes.

**Commentary:
Hearings**

A party to a proceeding before the Board who is aggrieved by a final decision of the Board may take an appeal to the [INSERT APPROPRIATE COURT] for review.

**Section 12:
JUDICIAL
REVIEW**

The model statute gives an aggrieved party the right to appeal the final decision of the Board to an appropriate court.

Criminal penalties:

**Section 13:
CRIMINAL
PENALTIES**

(a) Application of section: This section applies only if there is no greater criminal penalty provided under this statute or other applicable law.

(b) Penalty: A person who violates this statute is guilty of a misdemeanor and, on conviction, is subject to a fine not exceeding \$1,000, which fine is payable to the Recovery Fund established in Section 7 of this statute, and is subject to an order of restitution to reimburse the victim for the harm performed by the contractor, but which must be payable to the Recovery Fund if the Fund had previously reimbursed the aggrieved person, to the extent of the claim paid; or is subject to imprisonment not exceeding six (6) months, or any combination of these.

Criminal penalties are an important deterrent to contractor fraud. This section applies only if there are no greater criminal penalties provided by the statute or by other applicable law. Any violation of the statute is a misdemeanor and is subject to a fine of up to \$1,000 and/or imprisonment of up to six (6) months. Critical to any criminal enforcement is the power the court has to order restitution to the consumer and/or the Recovery Fund instead of, or in addition to, jail time. Sometimes contractors, otherwise claiming to be penniless, pay court-ordered restitution to avoid a jail term.

**Commentary:
Criminal
Penalties**

**Section 14:
INJUNCTION,
RESTITUTION,
ORDER FOR
COMPLETION**

Injunction, Restitution, Order for Completion:

(a) If the Board concludes that the continuing conduct of a person alleged to be in violation of this statute will result in irreparable or substantial harm to any other person, the Board may sue for:

- (1) injunctive relief against the conduct;***
- (2) an order for satisfactory completion of a home improvement contract;***
- or***
- (3) restitution.***

(b) If the Board sues for injunctive relief against a person who is not licensed under this statute, the Board need not:

- (1) post a bond; or***
- (2) show that no adequate remedy at law exists.***

(c) A suit under this section shall be brought in the [____ SPECIFIED BY THE STATE____] court for the county where:

- (1) the alleged violation occurs; or***
- (2) the principal place of business of the alleged violator is located.***

**Commentary:
Injunction,
Restitution,
Order for
Completion**

When the Board has determined that a contractor poses a risk of imminent harm to others, injunctive relief is often necessary to stop the illegal activity and prevent further harm to consumers. Under this statute, if the Board finds that the acts of the contractor will result in irreparable or substantial harm to any other person, it may sue for injunctive relief, compel the contractor to complete the work, or pay restitution to the owner or aggrieved party.

**Section 15:
PERMITS**

No county, municipal, or other governmental authority shall issue a permit for a home improvement unless the contractor shows proof of licensure or proof of an exemption to licensure. The permit must include the licensee's number or a statement of the reasons for exemption. The contractor is responsible for obtaining all required permits to perform the work.

**Commentary:
Permits**

Nearly every jurisdiction requires a contractor to obtain a permit before starting a job. It follows logically that such permits should not be issued to unlicensed contractors. Therefore, the model statute requires all government authorities to receive proof of licensure or proof of an exemption from licensure before issuing any permit for a home improvement. This section also clearly places the responsibility for obtaining all required permits with the contractor.

**Section 16:
PRIVATE RIGHT
OF ACTION**

(a) An aggrieved person may raise claims or defenses against a contractor or salesperson based upon violations of this statute in any civil proceeding in a court with jurisdiction over the matter. If the aggrieved person prevails, the owner may obtain actual, consequential, and punitive damages; attorney's

fees; and costs. In addition, the aggrieved person is entitled to statutory damages in the amount of \$1,000 per violation.

(b) An aggrieved person may file the action provided for in subsection (a) as the representative of a class. In such a case, each class member is entitled to any or all of the damages set forth in subsection (a) that occurred to each class member as a result of the actions complained of.

(c) An aggrieved person may sue for injunctive relief and other appropriate equitable relief to stop a licensed or unlicensed contractor or salesperson from violating any provision of this statute.

(d) Where a contractor or salesperson violates any provision of this statute, any lien acquired by such contractor as a result of financing the transaction or by operation of law or any lien acquired by any lender with whom the contractor arranged financing is void.

(e) Any home improvement contract subject to the provisions of this statute that is negotiated, signed, or performed by a contractor or salesperson without a license shall be void. Any assignee of a contract entered into by an unlicensed contractor cannot enforce the contract in court. Any amounts paid pursuant to the contract shall be refunded.

(f) For purposes of this section, a contractor is liable for the acts of any agent, director, employee, manager, officer, partner, or salesperson of the contractor, unless the court finds that:

(1) the employee was acting outside of the scope of the employment;

(2) the contractor or management personnel of the contractor tried and could not prevent the violation.

(g) The provisions of this statute and the remedies provided hereunder do not in any way preempt the applicability of the state Unfair and Deceptive Acts and Practices (UDAP) act.

The ability of consumers to sue the contractor directly for violations of this statute and to seek complete relief for the wrongs performed by licensed and unlicensed contractors is critical. Agency enforcement alone is inadequate given the fact that agencies may not have sufficient resources for all appropriate enforcement actions. Providing the consumer the right to sue is one of the core provisions of this statute.

The consumer may bring a civil action or a class action suit and is entitled to actual, consequential, and punitive damages, in addition to attorney's fees and costs. The owner can also sue for injunctive or equitable relief. This section also states that any home improvement contract that was signed or performed by a contractor who was not licensed is void.

**Commentary:
Private Right
of Action and
Other Relief**

Appendix A:

**Home Improvement
Contractor Laws**

State Summary Law Chart

**(Includes the District of Columbia,
Puerto Rico, and the Virgin Islands)**

Home Improvement Contractor Laws State Summary* Law Chart

States	Contractor Requirements					Notes
	Licensing/ Registration** of Contractor	Prior Experience	Exam	Financial Solvency	Convictions or Bar	
Alabama	L					1) Counties and cities may regulate contractors and licensing. 2) Statute applies only to multi-family construction and residential subdivisions. 3) Municipalities may regulate contractors and subcontractors. 4) Licensure applies to residential builders only. **L=Licensure, R=Registration
Alaska	R					
Arizona	L					
Arkansas	R					
California	L					
Colorado						
Connecticut	R					
Delaware	L					
District of Columbia	L					
Florida	L					
Georgia						
Hawaii	L					
Idaho						
Illinois						
Indiana						
Iowa	R					
Kansas	(1)					
Kentucky						
Louisiana	L					
Maine						
Maryland	L					
Massachusetts	R					
Michigan	L					
Minnesota	L					
Mississippi	(2)					
Missouri	(3)					
Montana	R					
Nebraska	R					
Nevada	L					
New Hampshire	L					
New Jersey						
New Mexico	L					
New York						
North Carolina	L					
North Dakota	L					
Ohio						
Oklahoma						
Oregon	R					
Pennsylvania						
Puerto Rico						
Rhode Island	R					
South Carolina	L, R, (4)					
South Dakota						
Tennessee	L					
Texas						
Utah	L					
Vermont						
Virgin Islands	L					
Virginia	L					
Washington	R					
West Virginia	L					
Wisconsin						
Wyoming						

* Review of State Statutes effective as of June 1998; Shaded areas indicate that requirements existed in home improvement statute.

Home Improvement Contractor Laws State Summary* Law Chart

States	Contractor Coverage				Notes
	Required Contract Provisions	Prohibited Contract Provisions	Prohibited Acts	Contractor ⁵ Monetary Exemption	
Alabama				\$10,000/None	5) First number indicates aggregate value of the contract for the statute to be applicable; second number indicates minimum revenue of the contractor over a 12 month period for the statute to be applicable.
Alaska				\$10,000/None	
Arizona				\$750/None	
Arkansas					
California				\$300/None	
Colorado					
Connecticut				\$200/\$1,000	
Delaware				\$500/None	
District of Columbia					
Florida				\$1,000/None	
Georgia					
Hawaii				\$1,000/None	
Idaho					
Illinois				\$4,000/None	
Indiana					
Iowa				None/\$1,000	
Kansas					
Kentucky					
Louisiana					
Maine				\$1,400/None	
Maryland					
Massachusetts				\$500/\$5,000	
Michigan				\$600/None	
Minnesota				None/\$15,000	
Mississippi				\$100,000/None	
Missouri					
Montana				\$2,500/None	
Nebraska				None/\$1,000	
Nevada					
New Hampshire				\$25/None	
New Jersey				\$25/None	
New Mexico				None/\$7,200	
New York				\$500/\$1,500	
North Carolina				\$30,000/None	
North Dakota				\$2,000/None	
Ohio					
Oklahoma					
Oregon				\$500/None	
Pennsylvania				\$300/None	
Puerto Rico					
Rhode Island				\$500/None	
South Carolina				\$5,000/None	
South Dakota					
Tennessee				\$3,000/None	
Texas					
Utah				\$2,000/None	
Vermont					
Virgin Islands					
Virginia				\$1,000/None	
Washington				\$500/None	
West Virginia				\$1,000/None	
Wisconsin					
Wyoming					

* Review of State Statutes effective as of June 1998; Shaded areas indicate that requirements existed in home improvement statute.

Home Improvement Contractor Laws State Summary* Law Chart

States	Resources for Consumer Recovery				Penalties and Remedies		Notes	
	Recovery Fund	Insurance			Bonding	Criminal Penalties		Civil Penalties
		General Liability	Property	Personal Injury				
Alabama								6) First number indicates amount of insurance required for injury to one person, second number indicates amount of insurance required for injury to more than one person. 7) First number indicates insurance required for general contractor; second number indicates amount required for specialty contractor. 8) First number indicates insurance required for general contractor; second number indicates amount required for residential contractor. 9) First number indicates amount of insurance required for injury to one person, second number indicates amount of insurance required for injury to more than one person. 10) First number indicates insurance required for residential contractor; second number indicates amount required for general contractor. 11) Bond required for out-of-state contractors only. 12) Bond is only required if the contractor is a corporation or a company. 13) First number indicates amount required for specialty contractor; second number indicates amount required for general contractor.
Alaska		\$50,000/\$100,000 ⁶	\$20,000		\$10,000			
Arizona					\$5,000/\$15,000			
Arkansas		\$20,000	\$20,000	\$50,000/\$100,000 ⁹				
California					\$7,500			
Colorado								
Connecticut					\$10,000			
Delaware								
District of Columbia			\$10,000	\$50,000/\$100,000 ⁹	\$5,000			
Florida								
Georgia								
Hawaii			\$50,000	\$100,000/\$300,000 ⁹				
Idaho								
Illinois								
Indiana								
Iowa					\$5,000 ¹¹			
Kansas								
Kentucky								
Louisiana					\$10,000			
Maine								
Maryland		\$50,000						
Massachusetts								
Michigan								
Minnesota		\$100,000	\$10,000		\$5,000/\$15,000			
Mississippi								
Missouri								
Montana								
Nebraska								
Nevada					\$1,000/\$100,000			
New Hampshire					\$5,000 ¹²			
New Jersey								
New Mexico								
New York								
North Carolina								
North Dakota								
Ohio								
Oklahoma		\$500,000/\$100,000 ⁷	\$500,000/\$100,000 ⁷					
Oregon		\$500,000/\$100,000 ⁸	\$500,000/\$100,000 ⁸	\$100,000/0 ¹⁰	\$5,000/\$10,000 ¹³			
Pennsylvania								
Puerto Rico								
Rhode Island		\$300,000	\$300,000					
South Carolina					\$15,000			
South Dakota								
Tennessee					\$10,000			
Texas								
Utah					Price of Contract			
Vermont								
Virgin Islands								
Virginia								
Washington			\$20,000	\$50,000/\$100,000 ⁹				
West Virginia								
Wisconsin								
Wyoming								

* Review of State Statutes effective as of June 1998; Shaded areas indicate that requirements existed in home improvement statute.

Appendix B

Home Improvement Contractor Laws

State Summaries

**(includes the District of Columbia,
Puerto Rico and the Virgin Islands)**

ALABAMA

Ala. Code § 34-14A-1 et seq., Ala. Admin. Code § 465-x-1 et seq.

Applicability: The construction of residential buildings (defined as not over three (3) floors in height and no more than four (4) units in an apartment building); and, the repair or improvement of residential buildings if the cost is greater than \$10,000.

Enforcement Agency: Home Builders Licensure Board.

Composition of Board: A total of nine (9) members, one from each of the U.S. congressional districts: seven (7) are home builders, one is a building official, and one is a consumer. Members shall reflect the racial, gender, urban/rural, economic diversity of the state. Three (3) appointed by each of the following: Governor, Lieutenant Governor, Speaker of the House. Regulations describe the election of officers of the Board, allow for the hiring of an Executive Director, and provide for the conduct of meetings, voting, and the maintenance of a roster of licensees.

Licensing/Registration: Licensing. Annual renewal is required; grandfather clause for builders in the business prior to January 1, 1992. Board reviews applications using certain criteria, including experience, ability, character, business-related financial condition. Specific information must be provided, including a credit report; copy of a signed financial statement; additional information if these two reports show delinquent accounts, liens, and/or negative net worth, or if a lawsuit is pending; if a corporation, certification of good standing is required. Reciprocity with licensees from other states in certain circumstances. Board may require oral or written examinations. Certain appeal rights exist for applicants denied license. Annual fee is \$150; Recovery Fund fee is \$30. Regulations include sample application form.

Exemptions From Licensing: Employees of licensees; general contractors licensed under other provisions prior to January 1, 1992; licensed real estate agents; homeowners doing their own contracting and providing supervision under certain conditions; mobile home improvements; counties having less than 30,000 in population which do not elect to make the act applicable.

Prohibited Acts: Fraud or deceit in obtaining the license; gross negligence, incompetence, or misconduct (these are defined in the regulations) in the practice of residential home building; failure to maintain a valid license; failure to repay any amount paid out of the Recovery Fund.

Enforcement Actions: Board may revoke or suspend the license for prohibited acts. Investigative process, which is handled by an investigative committee, is triggered upon the filing of a complaint. Settlement of complaint is authorized. Investigative committee makes a recommendation to the Board as to whether probable cause exists for the Board to take further action. If formal disciplinary proceedings are initiated by the Board, there is a hearing procedure provided that includes a licensee's right to get notice; get permission to conduct discovery; produce evidence, cross-examine, have counsel, and appeal to the circuit court. Board may also levy fines of up to \$1,000 per violation and seek injunctive relief. A list of considerations to guide the Board in deciding whether to revoke or suspend is included in the regulations. A license can be reinstated upon Board vote. Failure to obtain a license constitutes a misdemeanor, and Board may obtain cease and desist order.

List of Licensees: Public information and published annually by the Board.

Permits: Permits to do a job will not be issued to unlicensed builders. Permit officials must report violations to the Board.

Enforceability of Contract if Unlicensed: Contractor cannot sue to enforce a contract made while unlicensed.

Recovery Fund: A contractor must notify Board of any suits or criminal actions filed against the contractor. Homeowner must notify Board of filing of a suit. Board may take a role in the case. Court must enter an order telling the Recovery Fund to pay after making certain findings. If such an order is entered, Board may revoke the license and refuse to issue new license until licensee repays the Fund.

Sunset Provision: Yes.

ALABAMA

ALASKA

Alaska Stat. § 08.18.011 et seq.; Alaska Admin. Code title 12 § 21.010 et seq.

Applicability: General contractors who undertake the construction or alteration (or submit a bid to do such work) of a privately owned residential structure of one to four (1 - 4) units. Alterations must exceed 25 percent of the value of the structure.

Enforcement Agency: Department of Commerce and Economic Development.

Licensing/Registration: Registration. General contractor must be registered and be issued a certificate annually. Must submit an application containing certain information that is then made available to the public; pass an examination that tests competence in certain areas; satisfactorily complete either a craftsman home program or course in arctic engineering; pay the application fee. Cannot have been convicted of certain crimes within seven (7) years prior to application. Special rules for mechanical and electrical contractors. Renewal of registration requires proof of "competency activities" as defined by regulation.

Exemptions: Various governmental personnel; public utilities; construction and repair incidental to the discovery of gas, petroleum, etc.; sale or installation of finished products that do not become a fixed part of a structure; work on one project (not part of a larger operation) that has a contract price of less than \$10,000 (unless the person advertises as a contractor, in which case the \$10,000 maximum does not apply). Contractor who performs jobs under \$10,000 but over \$2,500 must keep the insurance in force described below; owner who does the work or who contracts it out; landlord or tenant of commercial property in certain circumstances; persons performing certain work incidental to various outdoor occupations, such as farming, logging, fishing, and clearing.

Bonding and Insurance: Contractor must obtain and file with the state a surety bond or cash deposit of at least \$10,000; must have worker's compensation insurance and public liability insurance of not less than \$50,000/\$100,000 and property damage insurance of not less than \$20,000.

Claims Against Bond or Insurance: A claim may be made by a homeowner for negligent or improper work or breach of contract, by any person furnishing labor or materials to the contractor, or by any taxing authority. A copy of the complaint must be served upon the Commissioner of the Department of Commerce and Economic Development and the Insurance Commissioner. Rules govern priority of conflicting claims against the bond.

Claims Against Cash Deposit: Claimant must sue and then send a copy of the complaint to the Commissioner. All complaints received in this manner are open to the public. After obtaining a judgment, the claimant must send a certified copy of the judgment to the Commissioner. Rules govern how to pay claimants when all pending complaints exceed the amount of the cash deposit and how the claimant can establish a presumption of failure to prosecute the other claims.

Enforcement Actions: Citations are issued by the appropriate agency, which requires the cited person to appear in court. Failure to appear is a misdemeanor. Agency may also revoke, suspend, or deny registration under the following circumstances: if required insurance terminates; a final judgment depletes the bond; a violation is not corrected; the application is fraudulent or misleading; or the contractor is incompetent or engaged in fraudulent practices. Department may also seek civil

remedies and injunctive relief. Agency may obtain a cease and desist order against an unlicensed contractor.

Failure to Register: Failure to register constitutes a misdemeanor.

Enforceability of Contract if Unlicensed: Contractor cannot sue to enforce a contract or to collect for work performed without alleging and proving that the contractor was registered at the time the contract was made.

Sunset Provision: No



ARIZONA

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Ariz. Rev. Stat. § 32-1101 et seq.; Ariz. Admin. Code R4-9-101 et seq.

Applicability: Governs both residential and commercial contractors. On the residential side, the statute applies to anyone who undertakes or offers to undertake a project, submits a bid to construct, alter, repair, add to, subtract from, improve, move, or demolish any residential structure, which includes apartment complexes up to four units. Includes connecting a residential structure to a utility service or providing mechanical or structural service to the residence.

Enforcement Agency: Registrar of Contractors appointed by the Governor, who can hire appropriate personnel to carry out the law. Agency funding comes primarily from the monies collected by the registrar.

Licensing/Registration: Licensing. Applicant must submit an application including certain information; provide proof of compliance with worker's compensation requirements; pay the fee; provide a bond; be of good character and reputation; not have had a license revoked or been contracting without a license within one year prior to application; have had experience (waivable by Registrar); pass an examination. License is valid for two (2) years. License number must be listed on any contract, in advertising, and on other documents.

Exemptions: Various governmental personnel; employees of licensees; public utilities; surety and insurance companies under certain circumstances; a person working on a project in which the aggregate contract is less than \$750 (unless the type of work requires a permit); owner who does the work or who contracts the work; architects and engineers; person licensed in structural pest control; gardeners. Exemptions also include a "responsible managing employee" of a licensee who shows that within the last five (5) years that a license has been in effect, no more than five (5) valid unresolved complaints have been filed against the licensee. If such an exempt party violates the section containing prohibited acts, in certain circumstances, the exemption can be revoked.

Prohibited Acts: Failing to perform in a workerlike manner; falsely representing oneself as a licensed contractor. Failure of a contractor or subcontractor to promptly pay a subcontractor or material supplier for completed work or supplies is grounds for revocation or suspension. Payment of monies from the Recovery Fund automatically suspends the license until the amount is repaid. Reasons for suspension or revocation which are listed in §1154, include misrepresentation of a material fact in obtaining a license; performing wrongful or fraudulent acts resulting in substantial injury; conviction of a felony; failing to materially complete work; aiding and abetting an unlicensed contractor; allowing a license to be used by an unlicensed person; failing to comply with worker's compensation or labor laws; failing to pay income or other taxes; false or misleading advertising; failure to take corrective action to comply with rules and regulations.

Enforcement actions: Registrar can investigate a complaint filed by any person; can issue a citation; is required to hold a hearing if contested; and can impose civil penalties of up to \$500. Final decisions of the Registrar can be appealed to the Superior Court. Registrar can also issue cease and desist order.

Required Contract Terms/Prohibited Contract Terms: Contracts in amounts not less than \$750 and not more than \$150,000 must contain certain information. They cannot contain a hold harmless clause. The contractor must give the homeowner a

copy of the contract and a receipt for any cash paid. Failure to comply does not alone impair the contractor's right to enforce the contract.

Recovery Fund: The Recovery Fund is only available to the owner of residential property damaged by the failure of a licensed residential contractor in good standing to adequately build or improve the structure. An owner can be awarded up to \$20,000 for actual damages suffered as a direct result of the contractor's violation. No more than \$100,000 can be paid for the acts of any one contractor unless case is appealed to the Superior Court. Contractors pay a \$600 assessment, which goes into the Fund at the time of application and renewal. If the Fund dips below \$100,000, Registrar can assess additional fees against licensees. Homeowner must file a lawsuit within two (2) years of the injury. Registrar must be notified of the filing of the case. Failure to do so could result in nonpayment. Claimant must give Registrar twenty (20) days notice of application to the court for an order directing payment from the Fund following entry of judgment. Claimant must satisfy certain conditions before the court can enter such an order (e.g., notice to registrar was given, final judgment states amount due and owing, claimant has proceeded against any bond and has not been satisfied [unless a §1154 violation is found], and claimant is not aware of property or assets of the contractor which could satisfy the judgment).

Failure to Obtain a License: Failure to obtain a license constitutes a misdemeanor.

Enforceability of Contract if Unlicensed: Contractor must allege and prove that it was licensed at the time of the contract as a condition of maintaining a suit to collect on a contract or for work performed.

Proof of Licensure: Permits to do a job will not be issued to unlicensed contractors.

Sunset Provision: No.

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ARKANSAS

ARKANSAS

Ark. Code Ann. § 17-34-101 et seq.

Applicability: One who offers to undertake, submits a bid to, or contracts to construct a private residence (such a residence must have no more than four (4) units and be intended for residential purposes) on behalf of another. County and municipal codes are not pre-empted.

Enforcement Agency: Secretary of State.

Licensure/Registration: Registration. An annual application must be made to Secretary of State and include a certificate showing the existence of public liability and property damage insurance of not less than \$20,000 for injury or damage to property and \$50,000 for personal injury for one person and \$100,000 for more than one person.

Prohibited Acts: Engaging in this business without registering; engaging in business or advertising in name other than one listed on registration; failing to maintain required insurance.

Sunset provision: No.

Applicability: Any home improvement contractor as defined: a person who constructs, repairs, remodels, alters, converts, or modernizes residential property. Home improvement salespersons as defined: a person who is employed by a licensed home improvement contractor to solicit, sell, negotiate, or execute contracts for home improvements.

Exemptions: Jobs in which aggregate contract price is \$300 or less; public or governmental representatives (the state, however, cannot contract with an unlicensed contractor); nonprofit weatherization organizations; court officers; public utilities in certain circumstances; owner doing own work or having employees with wages as sole compensation in certain circumstances; real estate licensees; surety insurer which engages a licensed contractor; those who engage in the construction, alteration, improvement, or repair of personal property (mobile homes are not personal property); irrigation and drainage ditches, farming, water well drilling; architects; engineers; structural pest control operators; employees who receive wages as sole compensation; licensed alarm company operators; electronic and appliance repair dealers.

Enforcement Agency: Contractor's State Licensing Board (within the Department of Consumer Affairs) consists of thirteen (13) members: seven (7) are members of the public, one (1) from a labor organization representing building trades, and five (5) are contractors. The Governor appoints eleven (11) members and the Speaker of the Assembly and the Senate Rules Committee each appoint one public member. Rules exist on meetings, quorum, creation of committees, promulgation of rules and regulations. The Board appoints a Registrar, who carries out the law. A separate "special investigations unit" is created to investigate the laws administered by the Board. The Board must submit biannual reports to the Governor of its transactions, expenditures, and receipts during that time. Board may contract with licensed professionals to investigate consumer complaints and give opinions about the work performed.

Salesperson Registration: Salesperson must be registered by applying to the Registrar. Failure to register is a misdemeanor. Home improvement contractors employing an unregistered salesperson are subject to disciplinary action by the Registrar. Violations by the salesperson constitute cause for action against the contractor, whether or not the contractor had knowledge of or participated in the violation. Special rules exist in terms of payments or rewards for referral of business.

Contractor Licensing: A contractor must submit an application, take an examination (although the examination can be waived if the contractor meets certain experience requirements), show financial solvency (i.e., operating capital shall exceed \$2,500); pay an application fee and a contractor's License Fund fee. Registrar must be notified of change in information within ninety (90) days. Responsibility criteria of person qualifying on behalf of an individual or a firm must be met. License cannot be denied solely because of certain discriminatory reasons. Provisions to cancel license upon death or dissolution of licensee. Registrar shall publish list of licensees. Must provide a certificate of worker's compensation insurance. License must be renewed every two (2) years and may be renewed at any time within three (3) years after its expiration.



Bond Requirement: A contractor must post \$7,500, which can be doubled in case of certain prior convictions or previous revocations. A cash deposit in lieu of a bond is acceptable. A separate judgment bond is required of applicants who previously failed or refused to pay a judgement to another contractor, subcontractor, consumer, materials supplier, or employee.

Recovery from Bond: Claim on the bond can be made by the aggrieved homeowner and certain other claimants. The Registrar is served with the complaint which is specially filed and available to the public. Rules govern situations in which the amount of the claims exceed the value of the bond. Licensee must notify the Registrar of any unsatisfied judgments against it. Prior to the Board's renewing or lifting a suspension or revocation, the contractor must satisfy the unpaid judgment.

Enforceability of Contract if Unlicensed: Contractor must allege and prove that it was licensed at the time of the contract as a condition of maintaining a suit to collect on a contract or for work performed. Any security interests taken to secure the payment are unenforceable if the contractor was not licensed. A narrow exemption exists if the contractor had been licensed prior to the performance of the work, acted reasonably and in good faith to maintain a proper license, and did not know or reasonably could not have known that he or she was not licensed. Any security interest taken by a contractor to secure payment that occurs on or after January 1, 1995, is unenforceable if the salesperson was not registered.

Permits: Permits cannot be issued by local jurisdiction unless the contractor files a statement that it is licensed.

Required Contract Provisions: At the time of making a bid or prior to entering into a contract, certain warnings and information about licensing and the License Board must be given in at least 10-point capital letters. In addition, a contractor who has had his/her license suspended or revoked two (2) or more times in the previous eight (8) years shall disclose this information in at least 8-point boldface type. Home improvement contracts of over \$500 must contain certain information, including a 10-point type bold statement regarding the required license and how, when, and where to file a complaint; certain identifying information; commencement and completion date; plans and scale drawings; description of work to be done and material to be used; payment and downpayment schedule; amounts of payments; a statement about releases of mechanic's liens; a lengthy notice to the owner about mechanic's liens that includes information about what the owner can do to avoid such liens and protect himself or herself. If the contract contains an arbitration provision, it must contain mandated language in at least 10-point Roman boldface type or in contrasting red print in at least 8-point Roman boldface type that tells the owner about arbitration and what judicial rights the owner may be giving up. Owner must initial next to the arbitration notice. Non-conformity renders the arbitration clause unenforceable.

Prohibited Acts: Failing to display license in main office or chief place of business; using false, misleading, or deceptive advertising; making substantial misrepresentations; engaging in any fraud in the execution of or in the material alteration of any contract, note, mortgage, or other document; failing to install the brand name product or quality or size as promised; failing to obtain required permits; advertising without a license; abandoning the construction without legal excuse; failing to pay a subcontractor amount owed; failing to pay transportation charges for a dump truck in certain circumstances; diverting funds received for completion of a project; willfully failing to perform in a workerlike manner; willfully failing to follow plans or

specifications; violating a state safety law that results in death or serious injury; willfully or deliberately disregarding building codes, safety, labor, unemployment insurance laws; requiring an execution of a release of any claim on account of wages due; failing to maintain all contracts, documents, records, receipts, and disbursements and failing to make those available for inspection; making misrepresentations in the obtaining of a license; failing to complete the work in a material way; aiding or abetting an unlicensed person to evade the law; committing any willful or fraudulent act which substantially injures another; not using the name on the license; contracting under a suspended, expired, or revoked license; entering into a contract with an unlicensed contractor; advertising to do home improvement work without a license unless the advertisement states that the contractor is unlicensed; operating without a license unless exempt; violating any rule or regulation of the Board. An act which could result in disciplinary action by an individual can be held against the partnership, corporation, or other entity in certain circumstances.

Enforcement Actions: A person induced into a home improvement contract in certain circumstances may sue and obtain attorney's fees in addition to any other damages. Engaging in certain prohibited acts is a misdemeanor and subjects the contractor to disciplinary action. The home improvement contract is unenforceable in certain circumstances involving financing of the work. Administrative complaints against the contractor shall be filed with the Registrar within four (4) years of the act or omission, except that complaints about structural defects can be filed within ten (10) years, and a complaint based upon a warranty must be filed within the duration of the warranty. The Registrar may investigate the complaint and, if there is probable cause, may issue a citation, which the contractor can appeal. The procedure to handle such complaints is governed by the State Administrative Procedures Act. The Registrar may suspend the license, permit the licensee to finish the work, or impose licensee compliance under certain conditions. Civil penalties may be imposed of not less than \$2,000 and not more than \$15,000 for a violation. The Registrar can reinstate a suspended license but cannot reinstate a revoked license until at least one year has passed since the revocation and only upon a certain showing by the contractor. An injunction may be obtained against the unlicensed contractor through the Attorney General or District Attorney. A citation may be issued which includes an order of abatement and a civil penalty of between \$200 and \$15,000. Service of citation and the appeals process are specified. Complaints based on violations of certain sections can be referred by the Registrar and, if the parties consent, submitted to arbitration. Rules govern such arbitration.

Contractor's License Fund: Special fees assessed to contractors are placed in a special fund to be used to improve the Board's administrative and oversight activities.

Sunset Provision: Yes.

COLORADO

No statute or regulations found.

CONNECTICUT

5 C T C O N N E C T I C U T

Conn. Gen. Stat. Ann. § 20-418 et seq.; Conn. Agencies Regs. § 20-341gg-1 et seq.

Applicability: One who offers, undertakes, or agrees to repair, replace, alter, remodel, modernize, rehabilitate, or sandblast any land or building used or designed to be used as a private residence (no more than six (6) units) for which cash price exceeds \$200. One who solicits, endeavors to procure, negotiates, or offers to negotiate a home improvement contract from an owner on behalf of a contractor. One who, under the direction of a general contractor, performs work.

Exemptions: Total cash price of work for all customers in one year is less than \$1,000; construction of new home; sale of goods by seller who has nothing to do with the installation; sale of appliances designed for easy installation; any work performed by the owner on his/her own residence without compensation; certain governmental personnel; certain holders of professional or occupational licenses.

Enforcement Agency: Commissioner of Consumer Protection.

Licensing/Registration: Registration. General contractors and subcontractors and salespeople must be registered, and registration must be renewed annually. Fees are \$500 (contractors) and \$60 (salespeople). If registration is denied, hearing rights attach. Application must include information about whether there have been any judgments, claims, or suits, or whether any proceedings are pending; nature of construction projects in progress and completed during previous five (5) years; credit references; evidence of general liability insurance; certificate of good standing if a corporation.

Bond Requirement: A bond in the amount of \$10,000 may be required for use of the state and any person who may have a cause of action for failure of contractor to comply with this act.

Required Contract Provisions: All contracts must be in writing; signed by owner and contractor; contain the entire agreement; include date of contract and owner's cancellation rights where applicable; contain a starting and completion date. Copy must be given to owner at the time that the contract is signed. Failure to include some of this information will not prevent contractor from recovering the reasonable value of services, even if some of the required provisions are not included (denying recovery would be inequitable).

Prohibited Contract Provisions: Cannot state that contractor will perform work unless the owner instructs the contractor to the contrary.

Guaranty Fund: Created by payment of \$40 annually by each salesperson, \$100 annually by each contractor. Homeowner must obtain a final court judgment against a registered contractor (or contractor who has registered within two (2) years of the contract) for loss or damages from performance of or offering to perform a home improvement (not to exceed \$10,000 per claim). Homeowner must apply to the Commissioner for an order directing payment from the Fund for actual damages and costs (but no punitive damages) within two (2) years of the final judgment. Homeowner must state how much is still due and owing. If a homeowner is awarded restitution against a contractor as a result of an enforcement proceeding brought by the Commissioner or Attorney General or in a criminal case, the Fund will pay (if the homeowner is not paid by the contractor). Contractor has notification and hearing rights prior to payment by the Fund.

Prohibited Acts: Failing to exhibit certificate when requested; failing to advertise using the registration number; using the certificate of another contractor or a certificate that has expired, been suspended or revoked; giving false information in order to obtain a certificate; performing home improvement work without registering; employing a salesperson who is not licensed; acting as a salesperson for an unregistered contractor; performing home improvement work without a license; failing to refund the amount paid for a home improvement if the refund is requested within a certain time period and work was not performed; failing to obtain a building permit where required; failing to repay the Guaranty Fund plus interest; having been convicted of a felony; performing grossly incompetent or negligent work; knowingly making false statements; performing work with an unregistered subcontractor.

Enforcement Actions: Engaging in most prohibited acts is a misdemeanor. Violation of act constitutes an unfair and deceptive act. Commissioner may conduct investigations and hold hearings, issue subpoenas, compel testimony, seek injunctive relief through the Attorney General, impose a civil penalty. Investigations, hearings, etc., proceed by way of the rules established for the Commissioner under the state's Unfair and Deceptive Acts and Practices (UDAP) act. UDAP provides a private right of action for homeowners who suffer ascertainable loss, the right to a jury trial, right to bring case as a class action, and the right to attorney's fees and costs.

Sunset provision: No.

DELAWARE

DELAWARE

Del. Code Ann. Title 11 § 916; Del. Code Ann. Title 30 § Code Del. Regs. 31-200-127 et seq.

Applicability: Anyone engaged in the business of furnishing labor and materials in connection with the construction, alteration, repair, dismantling, or demolition of buildings, roads, bridges, sewers, water, gas mains, whether as a general contractor or subcontractor.

Enforcement Agency: Division of Revenue for certain application and bonding requirements. Otherwise, prohibited acts constitute crimes.

Licensing/Registration: Licensing. Contractors must make application, pay a fee of \$75, pay a fee of 0.624 percent of gross receipts as defined in the act. Surety bonds required of nonresident contractors. All applicants must be in compliance with unemployment and worker's compensation law.

Prohibited Acts: Prohibited acts are applicable only to "home improvement contracts" defined as any alteration, repair, addition, modification, or improvement to any dwelling or the property on which it is situated with a contract price of under \$500. Home improvement contractors cannot use any false pretense; create or reinforce the impression concerning the condition of a dwelling knowing that it is false; make any untrue statement or omit a material fact; receive money for the work but fail to pay for labor, equipment, and materials; use a false name, address, etc. Intent requirement is met under certain circumstances. Engaging in prohibited acts is a misdemeanor unless the contractor had been previously convicted or had engaged in prohibited acts in contracts with a homeowner 65 or older, in which case it is a felony.

Enforcement Actions: Division of Revenue can assess a civil penalty of up to \$10,000 if a nonresident contractor fails to post a bond or contractors fail to abide by other application requirements.

Sunset Provision: No.

D.C. Code Ann. § 2-501 et seq.; D.C. Mun. Regs. title 16, § 800 et seq.

Applicability: One repairing, remodeling, altering, converting, modernizing any addition to residential property. Salespersons (i.e., persons who, for consideration and with the express or implied consent of the contractor, negotiate any contractual agreement).

Exemptions: Contracts which in the aggregate are \$300 or less; employees of licensed contractors under certain circumstances.

Enforcement Agency: Director of the Department of Consumer and Regulatory Affairs. The Mayor is authorized to accept service of process for licensees (applicants must agree to this in application).

Bonding Requirement: Contractors must obtain a bond to be determined by the Council but not greater than \$5,000; may deposit cash, certified check, or marketable bond of \$5,000 instead of bond. Persons aggrieved by the violation of the law applicable to the licensee's conduct of the licensed activity have the right to bring suit against the surety on the bond.

Licensing/Registration: Licensing. Applicants must apply and procure insurance of \$50,000 per person for bodily injury, \$100,000 aggregate, and \$10,000 for property damage; must pay fee; must be trustworthy; can qualify as self-insured under certain circumstances. Application must include three (3) photographs.

Prohibited Acts: Failing to obtain a license and meet bonding and insurance requirements; accepting any advance payment for work unless licensed; failing to use name as it appears on license; failing of a salesperson to sell only for contractor who certified him/her on the application for a license; making false statements on application; failing to carry identification card; accepting any payment for work before the contract has been reduced to writing; accepting payment for work without giving homeowner a receipt (unless payment was by check or money order); using a contract form unless a sample has been submitted to and approved for compliance by the Director; failing to comply with any provision of law governing the conduct of home improvement work; conviction of certain crimes involving fraudulent conduct; misrepresenting or concealing or failing to state things required by this act.

Permits: A contractor is responsible for ensuring that work is performed in accordance with any applicable permits.

Enforcement Actions: Corporation Counsel takes enforcement action for prohibited acts constituting a misdemeanor (\$300 or 90 days imprisonment or both). Director may investigate information provided in application. Contractors are liable for actions of salespersons and such violations are cause for suspension or revocation of license. Grounds for suspension, revocation, or denial of license include performing a prohibited act. If Director proposes to suspend, revoke, or deny a license, the Director must give notice to contractor and include certain information. Appeal process from Agency decision is provided.

Required Contract Provisions: Must be in triplicate and all blanks filled in; signed by homeowner; include names and license numbers of all salespersons and contractor; must be signed by salesperson, if any, and the contractor with copy to homeowner. If contract states that the contract is not binding until accepted by

contractor, then contractor must give homeowner notice of acceptance or rejection within fifteen (15) days of homeowner's signing. Must contain work specifications showing the work to be performed and materials to be used; include a description of the terms of payment, the approximate date contract is to start and work is to be completed; contain no changes in specifications without written approval of homeowner; contain a notice in bold type no smaller than 10-point type warning the homeowner not to sign blank contract and advising the homeowner that he/she is entitled to a copy.

Prohibited Contract Provisions: Any waiver of any provisions of this act.

Sunset Provision: No.

Fla. Stat. Ann. § 520.61 et seq., §489.105 et seq.; Fla. Admin, Code Ann. §3D-80.002 et seq., §61G-4-15 et seq.

Applicability: One who contracts to construct, repair, replace, remodel, alter, convert, modernize, or improve any land or building to be used as a residence (up to three (3) units).

Enforcement Agency: Construction Industry Licensing Board. Members are appointed by the Governor for a four- (4) year term; total of eighteen (18) members, two (2) of whom must be consumers.

Exemptions: Work performed for less than \$1,000 (with certain exceptions); employees of contractor under certain circumstances; certain government employees; officers appointed by the court; public utilities; sale and installation of certain finished products with certain exceptions; specified tradespeople and professionals meeting certain standards; owners who occupy the land and who act as own contractor for work that does not exceed \$25,000; construction related to irrigation ditches, or clearing rural lands.

Licensing/Registration: Licensing. Application to be made for certification or licensing (depending upon the category). Renewals are required every two (2) years; contractor must complete continuing education requirements to renew; show evidence of public liability insurance; provide credit report; pay established fee; complete required examination; meet certain educational and/or experience criteria; show evidence of worker's compensation coverage.

Prohibited Acts: Failing to be registered or certified; failing to maintain worker's compensation coverage; failing to keep complete business and financial records for preceding three years; failing to notify department of change of address; failing to start work within certain periods of time if downpayment of ten (10) percent is given; negotiating a contract whose cost exceeds value of work; transacting business under a name other than that registered; knowingly giving false information to the Board; failing to obtain required permits; willfully disregarding building codes; being convicted of a related crime; assisting someone else in the contracting business who should be licensed and is not; committing mismanagement that causes financial harm to a consumer as described therein; failing to comply with this law; abandoning work; falsely indicating work is bonded; committing fraud or deceit of any kind in the practice of contracting; failing to pay a civil judgment within a reasonable period of time; failing to enter into contract unless it is in writing and contains a statement about the Recovery Fund and the Board's address and phone number.

Enforcement Actions: Failing to obtain permits is grounds for an enforcement officer to issue a citation containing certain information, and local code enforcement agencies can enforce penalties against unlicensed contractors. A hearing is provided, noncriminal penalties can be imposed, and penalties can be enforced through liens and levies. The Board may place on probation or reprimand any contractor who performs certain prohibited acts, and suspend, revoke, or deny renewal of the contractor's license. It may require financial restitution to a consumer financially harmed; impose administrative fine of up to \$5,000 per violation; assess costs; require continuing education for committing certain prohibited acts. Board may provide for binding arbitration in certain circumstances, but only if the amount of damage is less than \$2,500 or parties consent to it.



Enforceability of Contract if Unlicensed: Contract is not enforceable if entered into by unlicensed contractors.

Recovery Fund: The Recovery Fund is funded by a surcharge on building permits. A claimant must first exhaust limits of any bond, cash bond, surety, policy of insurance, etc. A claimant must obtain a final judgment or the Board must have issued a final order of restitution and have met certain criteria, including having given notice of the action to the Board, and claim made within two (2) years of cause of action (or discovery of it up to four (4) years). The maximum recovery from Fund is \$25,000 per claimant (\$100,000 for all claims against one contractor) but only for certain prohibited acts (knowingly violating a building code; committing mismanagement that causes financial harm to the consumer; abandoning work; falsely indicating work is bonded).

Sunset provision: No.

GEORGIA

Ga. Code Ann. § 16-8-15

Provides for criminal penalty if a contractor or subcontractor converts monies paid with intent to defraud for any purpose other than to pay for labor or service performed.

Haw. Rev. Stat. Ann. § 444-1 et seq.; Haw. Admin. Rules § 16-77-1 et seq.

HAWAII

Applicability: One who offers to undertake or does undertake to alter, add to, subtract from, improve, enhance, or construct any realty or building.

Exemptions: Contract price less than \$1,000; employees of various government agencies; any person acting as trustee in bankruptcy; a personal representative or other person appointed by a court; anyone who installs finished products that do not become fixtures; registered architect or engineer; owner or lessees under certain circumstances; public works projects in some cases; employee of licensee.

Enforcement Agency: Department of Commerce and Consumer Affairs and Contractor's License Board. Board has thirteen (13) members, including three (3) non-contractors. The list of powers of the Board includes granting licenses; adopting rules; enforcing the law; suspending or revoking licenses. The Board is also trustee of the Recovery Funds. The Board can hire an attorney to assist, and has the authority to intervene, in any proceeding that may result in recovery from the Fund.

Licensing/Registration: Licensing. Contractors are divided into general engineering, general building (includes subcontractors), specialty (which includes a long list of classifications), and asbestos (which has additional requirements). Applicants must pay several fees (application, Recovery Fund, education, compliance resolution fund); meet experience requirements (set forth in regulations); show history of honesty, truthfulness, financial integrity (presumed not to meet this if, during the six (6) years prior, has failed to satisfy an undisputed debt or judgment relating to services rendered in connection with being a contractor); include credit report for last five (5) years, financial statement (or SEC filings if a corporation), state tax clearance; pass a written exam; prove compliance with worker's compensation laws; submit proof of liability insurance (\$100,000/300,000 bodily injury; \$50,000 property damage); submit a bond, if required. Renewals are every two (2) years. The Board must approve applications within four (4) months. Denial triggers the right to hearing by the applicant.

Permits: Contractors must prove licensure before any jurisdiction can issue any building or other permit. Each jurisdiction must maintain an owner-builder registration list of projects in which the builder is exempt from the licensing law. Jurisdiction must also give exempted contractor a disclosure statement advising of the obligations to supervise the work, etc., and consequences for failure to qualify for exemption. Owner-applicants must sign that they have read and understand their responsibilities.

Prohibited Acts: Operating or advertising without a license; failing to include valid license number in advertisements (if advertising in print or broadcast media, must prove validity of license to the medium); aiding or abetting an unlicensed person or allowing one's license to be used by unlicensed person; failing to maintain liability insurance, comply with worker's compensation laws, or maintain a bond, if required; failing to maintain a definite place of business and display the license; failing to report change of address or phone number within ten (10) days of change; committing any dishonest, fraudulent, or deceitful act as a contractor that causes substantial damage to another; engaging in any unfair or deceptive act under state Unfair and Deceptive Acts and Practices (UDAP) act; abandoning work without reasonable or legal excuse; willfully diverting funds; willfully departing from plans/specifications without consent; willfully violating any law of the state; failing to

make and keep records; failing in certain requirements for a joint venture or corporation; misrepresenting material fact in application; willfully failing to pay debt for materials or labor within sixty (60) days of receipt of bill, unless proper dispute; failing to pay delinquent taxes, interest, and penalties assessed under another chapter; contracting outside the scope of the license.

Enforcement Actions: The Board can apply to court for injunction to restrain an unlicensed contractor. There is a schedule of fines for certain behavior. Upon final order that contractor has advertised without a valid license, the Board can order termination of contractor's telephone service. An investigator for the Board can issue citations to persons and the citation can contain a civil penalty. The Director can apply to court for enforcement of abatement and civil penalties; and these are in addition to any others in act. Enhanced criminal penalties exist for those acting without a license in repairing damage caused by a natural disaster or in contracting with person over 65 years of age. There is an automatic suspension if a claim is paid from Recovery Fund until repaid. Criminal liability for some prohibited acts.

Enforceability of Contract if Unlicensed: Cannot recover for work done, material or supplies furnished, or the reasonable value thereof if not licensed.

Required Contract Provisions: Must be in writing. Contain information about all lien rights of other parties performing any work, homeowner's option to demand disclosure of proof of bonding, contract terms and performance (must be explained verbally also), license number, exact amount due under the contract, date work is to commence and number of days until completion, scope of work and materials to be used. In capital letters next to homeowner's signature line, statement of the risk of loss of any payments made to a sales representative. Must be signed by both contractor and homeowner and be executed prior to performance. Must disclose percentage of work to be subcontracted. Roofing work must be accompanied by a guarantee of workmanship for at least seven (7) years, and contractor must provide a bond to guarantee the work.

Recovery Fund: Funded by \$150 fee paid at time of application. If fund contains less than \$250,000, the Board may assess annually. Homeowners (injured persons) must obtain order for recovery from the Fund from the circuit court (or arbitration award) and may apply for payment from the Fund of up to \$12,500 per contract for damages sustained by the act, representation, transaction, or conduct of the contractor. Injured party must meet certain conditions, including a showing that the contractor's assets are insufficient to pay the judgment. CANNOT recover if the contractor's license was revoked, suspended, forfeited, on inactive statute, or if the contractor was not licensed. Statute of limitations: six (6) years from date cause of action accrued. Board must be notified when case commences. Priority is established if amount of claims exceeds available funds. Settlement agreement can be entered into but only with unanimous agreement of the Board, Director of the Agency, and Attorney General. Rights of homeowner are subrogated to the Board once claim is paid.

Sunset provision: No.

IDAHO

No statute or regulations found.

Ill. Com. Stat. § 515/1 et seq., 505/2Q et seq.

ILLINOIS

Applicability: Fixing, repairing, replacing, altering, converting, improving, or the making of an addition to any real property used or designed as a residence.

Exemptions: Sale, installation, cleaning of carpets. Sale of goods that are not installed by seller; repair, installation, replacement of appliances; landscaping; contracts under \$4,000.

Prohibited Acts: Knowingly entering into an agreement and misrepresenting a material fact relating to the contract, condition of the property, or the work to be performed; using deception in order to induce one to enter into the contract; entering into an unconscionable contract requiring the payment of at least \$4,000; misrepresenting or concealing true identity; damaging the property; not intending to perform and failing to return payments in certain circumstances defined in the state Unfair and Deceptive Acts and Practices (UDAP) act; using a false name (UDAP); failing to complete work and failing to return monies paid where demanded from consumer; failing to notify consumer of new name, address prior to agreed dates from commencement or completion of work (UDAP).

Enforcement Actions: Where violations of UDAP statute, Attorney General can sue for civil penalties, injunctive relief. A consumer may, under UDAP, sue for actual economic damages, punitive damages, injunctive relief, etc. Criminal penalties for engaging in prohibited acts constitutes a felony. A felony is aggravated if the acts are committed against a person over 60 years of age or who is disabled. Defense does not exist that contractor did not know the person was over 60 years of age.

Sunset Provision: No.



INDIANA

Ind. Code Ann. § 35-43-6-1 et seq., § 24-5-11.5-1 et seq., 24-5-11-1 et seq.

Applicability: One who solicits or engages in the altering, repair, or other modification of residential property.

Required Contract Provisions: Name of consumer and address of property; name, address, and telephone number of contractor and of agent to whom problems can be addressed; date of submission of contract to consumer; reasonably detailed description of work, or if specifications will be submitted later, a statement that they will be and that the contract is subject to the consumer's separate written and dated approval of the specifications; approximate starting and ending dates; statement of contingencies that would materially change the completion date; contract price; signature lines (and contractor or agent must print or type name underneath signature). A contract must be in a form that consumer can reasonably read and understand. A copy must be sent to consumer immediately after signing. Violations constitute a deceptive act under the state Unfair and Deceptive Acts and Practices (UDAP) statute.

Prohibited Acts: Making an unconscionable contract (defined as an unreasonable difference between the fair market value of the work and the home improvement contract price). It is a misdemeanor to misrepresent a material fact relating to the terms of the contract or a pre-existing condition; promise to do work the contractor does not intend to do; use deception to induce an owner to enter into a contract; enter into an unconscionable contract of \$4,000 or more; misrepresent or conceal the contractor's true name or business address; knowingly damage the property; do work without prior authorization; misrepresent that contractor as an employee of a federal or state agency. There are enhanced penalties if the contract price is \$1,000 or more; the prohibited act is a second or subsequent offense; the consumer is at least 60 years old; and contract price is \$10,000 or less. There is no defense that contractor did not know owner was over 60 years old.

Warranties: Contractor may expressly warrant that the home improvement is free from defects. Act specifies the time period for the warranty: two (2) years for most work; four (4) years for roofs; ten (10) years for improvement to load-bearing parts of the home. Contractor can disclaim implied warranties only if certain conditions exist: if the express warranties are given; the performance on the express warranty is guaranteed by an insurance policy in an amount equal to the contract price; contractor carries a certain type of insurance. Such a disclaimer must be printed in at least 10-point boldface type. A Homeowner must be given a separate Notice of Waiver of Implied Warranties, which must be signed at time of signing of the contract. If there is a breach of warranty, an owner may bring suit for damages, specific performance, and attorneys' fees (if agreed to in the contract).

Sunset Provision: No.

Iowa Code § 91C.1 et seq.; Iowa Admin. Code r. 347-150.1 et seq.

Applicability: One who engages in construction defined as new work, additions, alterations, reconstruction, installations, repairs, and demolitions.

Exemption: Person who earns less than \$1,000 annually; owner who performs work on own property; the State and its agencies.

Enforcement Agency: Labor Commissioner of the Division of Labor Services of the Workforce Development Department.

Licensing/Registration: Registration. An applicant must register and renew every two (2) years and show compliance with worker's compensation laws; possess an employer account number or special contractor number issued by the Department of Workforce Development. An applicant must list name, principal place of place of business, description of business, and officers (if a corporation). A fee of \$25 must be paid. The information is available to the public.

Bond Requirement: The bond requirement applies only to out-of-state contractors who commence work on contracts over \$5,000.

Enforcement Actions: The Commissioner and inspectors may investigate violations, issue citations in writing, notify violators in certain ways, impose penalties, provide notice of hearing rights and of judicial review. Investigations may occur without prior notice. The name and address of complainant are not public information in certain circumstances. The Commissioner may revoke a registration number if contractor fails to maintain compliance with conditions necessary to obtain registration. A notice and right to hearing are provided prior to revocation. Registration may be suspended if the public health, safety, or welfare requires emergency action. Fines can range from \$500 to \$5,000 per violation.

Sunset Provision: No.

KANSAS

Kan. Stat. Ann. §§ 12-1556 through 1558.

Statute allows counties and cities to require licensing and examination of general contractors, building contractors, residential contractors.

KENTUCKY

No statute or regulations found.

LOUISIANA



La. Rev. Stat. Ann. § 2150 et seq.

Applicability: A contractor is one who undertakes or submits a price or bid or offers to construct, supervise, direct, or assume charge of the construction, alteration, repair, improvement, demolition of any building, etc. A residential building contractor includes construction only.

Exemptions: Public utilities; owners of property who supervise the work to be performed on their property; persons donating work to churches; farmers doing construction for agricultural purposes; persons bidding or performing work for the federal government; persons in the rail or pipeline industry regarding construction activities on that property.

Enforcement Agency: State Licensing Board for Contractors. Fifteen (15) members are appointed by the Governor. Twelve (12) members must have contracting experience; three (3) must be from the public at large. At least one member from each congressional district. There is exhaustive treatment as to how to appoint in the case of death, resignation, etc., and how to get on Governor's appointment list. The Board has the authority to carry out the law and hire employees for that purpose. The Legal Counsel to the Board is under the supervision and control of the Attorney General. Statute sets meeting schedule, quorum requirements, etc. The Board must keep a roster of all licensed contractors. The Board has a residential building contractor's subcommittee with some separate rules and obligations.

Licensing/Registration: Licensing. Applicants must apply and renew annually. The annual fee must be not more than \$100. Nonresident contractors may pay up to \$400. Contractors are classified into subcategories. There is a special category for residential building contractors. If the work is for \$50,000 or more, applicants must give a financial statement signed by an auditor. Applicants must have assets of \$10,000 or more or furnish a bond or letter of credit. All information is confidential. Applicants must take an examination in certain circumstances.

Prohibited Acts: Any dishonest or fraudulent action as a contractor which has caused substantial damage to another. Willful misrepresentation in obtaining a license; willfully failing to comply with this law; entering into a contract with an unlicensed contractor; permitting another to use the license; failing to maintain a qualifying person to represent the licensee; being insolvent; failing to fulfill licensing requirements; being disqualified by any public entity; operating without a license; advertising as licensed without specifying the type of license.

Enforcement Actions: The Board may revoke, suspend, or not renew a license; issue a cease and desist order; seek an injunction from the court. The Board may conduct hearings but must conduct a disbarment hearing prior to such action. The Board must maintain a record of all disqualified contractors and can assess costs against contractor. The contractor has right to appeal decision to court. It is a misdemeanor to conduct contracting business without a license. The Board may impose fines of up to \$1,000 for violations of this law after notice and hearing.

Prohibited Contract Provisions: There is no waiver of local and state health and life safety code requirements.

Sunset Provision: No.

Maine Rev. State. Ann. title 10 § 1486 et seq., title 17-A § 908, title 5 §§ 209-213.

Applicability: Contract to build, remodel, repair a residence.

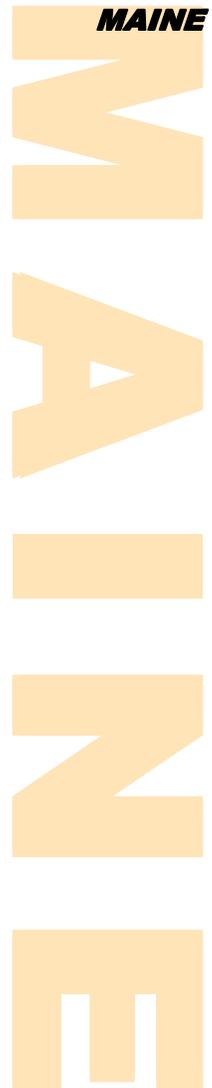
Exemptions: Residences of more than three (3) living units; contracts for less than \$1,400; parties agree in writing to exempt themselves.

Prohibited Acts: Intentionally misrepresenting a material fact relating to the terms of the contract; misrepresenting a pre-existing condition of the property; intentionally creating a misimpression relating to the contract; failing to perform; intentionally using deception or false pretenses in securing the agreement.

Required Contract Provisions: A contract must be signed by both contractor and owner (or lessee); copied and given to the homeowner; include the entire agreement; contain the name, address, and phone number of the parties; contain the location of property where work is to be performed; specify estimated beginning date of work and date work will be substantially completed; contain contract price (including all costs to be incurred); contain method of payment with initial downpayment being no more than one-third (1/3) of the total; contain description of work and materials; specify warranty in prescribed language (which specifically includes warranty rights and remedies under the Maine Uniform Commercial Code [UCC]); include a statement allowing the parties to adopt one of three methods of resolving contract dispute (specific language is in statute; options are binding or non-binding arbitration or mediation); include a change order statement, if a consumer solicitation sale, and description of the right to cancel; contain certain information if involving residential insulation.

Enforcement Actions: Violations of required contract provisions constitute a violation of the state Unfair and Deceptive Acts and Practices (UDAP) act. In civil action, a homeowner may seek a penalty of from \$100 to \$1,000 if action brought within two (2) years of date of occurrence of violation, in addition to actual damages, restitution, equitable relief, attorney's fees and costs. For UDAP violations, Attorney General may seek injunction and conduct an investigation. Contractor can raise the defense of unintentional and *bona fide* error. Prohibited acts constitute crimes.

Sunset provision: No.



MARYLAND

MARYLAND

Md. Code Ann. Bus. Reg. § 8-101 et seq., § 17-601; COMAR § 09.08.01 et seq.

Applicability: One who alters, adds, converts, improves, modernizes, remodels, or repairs a building, part of a building, or structure adjacent to a building to be used as a residence. The act contains an illustrative list of what constitutes "home improvements." The act is also applicable to one who negotiates or offers to sell home improvements.

Exemptions: Employees of contractors; construction of home; connection, installation, replacement of an appliance to existing plumbing lines; sale of materials if seller does not directly or indirectly perform any work to install; apartment with four (4) or more units; work done in common areas of condominiums; transactions of federal or state government; installation of antennas if certain conditions are met. Local jurisdictions may not regulate licensing of contractors but may create a system for building and work permits; clerical or other employee of contractor who is not a salesperson; telemarketer for contractor; architects, electricians, plumbers, heating/ventilation/air conditioning/refrigeration or other person required to be licensed under other statutes.

Enforcement Agency: Maryland Home Improvement Commission. The Commission consists of seven (7) members appointed by the Governor, three of whom must be consumer members. Term is four (4) years. Quorum, voting, meetings, compensation set by statute. Chair is selected by the Governor. The Commission can hire a full-time Executive Director who can hire investigators and experts to investigate complaints. Public records must be kept of all licenses issued; all expirations, revocations, and suspensions of licenses; all contractors represented by salespersons who hold a license.

Waiver Prohibited: Provisions of act cannot be waived.

Licensing: There are three licenses: Contractor, subcontractor, salesperson. Each must be renewed every two (2) years. Corporations can be licensed but to do so must employ one individual licensed contractor to be responsible for the corporation's home improvement work. A license to be issued only in the legal name of the applicant. The commission can require production of financial records. Must pass an examination prior to application (regulations specify failing grade, rights to reconsideration). There are provisions for a temporary license in certain circumstances. The application must include a full-face photo, a credit report, and a statement of all outstanding judgments. A contractor must maintain general liability insurance of at least \$50,000; have at least two (2) years of trade experience or comparable educational training, as defined by regulation; pay a Guaranty Fund fee (\$100), application fee (\$225 contractor, \$125 subcontractor, \$75 salesperson), and non-refundable fee of \$15. Financial information is confidential. Applicants must be notified of approval or denial and right to hearing if denied.

Prohibited Acts: For a salesperson to represent more than one contractor concurrently and more than two at any one time (the latter under certain circumstances), use a contract that does not disclose the contractor, choose a contractor for the owner, be paid by anyone other than the contractor, offer to give or pay an owner a gift or inducement except in limited circumstances, fail to account for payments from an owner; fraudulently obtain or use a license. For a contractor to fail to provide required information; fail to pass an examination; be convicted of a felony; fail to perform work often; falsify an account; engage in fraud; fail to show financial solvency; lack competence; violate or attempt to violate this act or a regulation; pay

another contractor, subcontractor, or salesperson who is unlicensed; operate without a license; accept a false completion certificate with knowledge of its falsity; abandon or fail to perform; deviate materially from plans or specifications; make substantial misrepresentations when obtaining a contract; make a false promise that is likely to influence, persuade, or induce; misrepresent a material fact when applying for a license; commit fraud when executing or materially altering a home improvement contract, mortgage, promissory note, or other document incident to performing or selling a home improvement; directly or indirectly publish a false advertisement; violate other specified laws; do business with an unlicensed person; fail to notify the commission of certain changes; conduct business under another name; advertise without a license number; demand a payment before the contract is signed or receive a deposit of more than one third (1/3) of the contract price; fail to conspicuously display the license number on both sides of all vehicles used primarily by the licensee; advertise in any way that is false, deceptive, or misleading; use certain words in advertising ("factory to you," "save the middleman's profit," for example), except in certain circumstances; advertise a sale or reduction in price except if certain specific information is conspicuously included; fail to accurately describe price or specific credit terms in advertising; fail to pay the subcontractors, workers, or material people, which results in the property being subjected to a mechanic's lien. If delivery or installation charges are extra, this fact must be conspicuously disclosed in advertising.

Required Contract Provisions: A contract must be in writing and legible, describe clearly any document it incorporates, be signed by each party, with copy given to owner; contain the name and address of contractor and salesperson and approximate date of commencement and substantial completion; describe the home improvement work and materials to be used; contain contract price; if financing is involved, number of monthly payments and amount of each payment; comply with other state laws regulating installment contracts; describe any collateral securing the obligation; provide a notice that gives the telephone number of the Commission and other information; if the home is securing the contract, provide special notice in 10-point bold type print which shall be specially initialed by the owner. If reference is made to a warranty or guarantee, terms, conditions, limitation, period of time shall be clearly and conspicuously disclosed (if contract is subject to the approval of the contractor); it must state that approval shall be made within ten (10) working days of the contract and owner shall be informed in writing of approval. If financing or a buying plan credit service, carrying or service charges shall be accurate and "clearly understandable."

Permits: Permits must only be issued to licensees. Local jurisdictions must notify the Commission if a contractor fails to correct a violation.

Enforcement Actions: The Commission may sue for injunctive relief, an order requiring completion of the work, or restitution against a licensed or unlicensed contractor if the Commission concludes that the contractor's conduct will result in irreparable or substantial harm to any person. The commission may revoke, suspend and/or deny a license after an opportunity for a hearing. A hearing Board consists of three (3) Commissioners (at least one (1) consumer and one (1) contractor member). The regulations specify the conduct of the hearings in detail. Judicial review of Commission decision is provided. Payment of a claim from the Guaranty Fund can result in suspension of license. Commission may impose civil penalties not exceeding \$5,000 per violation (for either a licensed or unlicensed contractor); person who violates this law is guilty of misdemeanor (knowing and willful language recently removed). Complaints must be filed with the Commission

MARYLAND

within three (3) years of date of the home improvement contract (except in limited circumstances, the Commission may entertain a late complaint on a complaint form provided by the Commission).

Guaranty Fund: The Guaranty Fund must maintain at least \$250,000 in the Fund, and the Commission may assess additional fee of \$50 to replenish Fund. Owner may recover from the Fund for actual loss that results from act or omission of a licensed contractor, subcontractor, or salesperson. If the contract included a written agreement to arbitrate, that must be utilized before attempting recovery from the Fund. A claimant cannot unreasonably reject good faith efforts of the contractor to resolve the claim. A claimant need not first obtain a judgment in court. The limits of recovery are \$10,000 per claimant; \$50,000 per contractor (if aggregate exceeds the limit, can pay in full in order of the filing of the claims or prorate). A complaint form is provided by the Commission. The Commission sends the complaint form to contractor, reviews the complaint, investigates, and conducts a hearing. A Fund hearing may be joined with a disciplinary hearing. If claimant has filed a court suit on same facts, the Fund action is stayed, pending the outcome of the court case. If judgment is obtained, it can be paid by the Fund in certain circumstances. However, the Fund cannot recover attorney's fees, consequential damages, court costs, personal injury or punitive damages, or an amount as a result of a default judgment. Claims must be made within three (3) years of discovery of the loss. Commission can obtain reimbursement from contractor by suit and judgment. Interest on the claim payment of 10 percent per annum can also be collected. Tax refunds can be intercepted. Commission may obtain a lien on any property. An assistant Attorney General represents the Fund in claims.

Sunset Provision: Yes.

Mass. Gen. Laws Ann. Ch. 142 § 1 et seq., ch. 93A §§ 4-9; Mass. Reg. Code title 940 § 3.09, 780 R6, 201 § 14, 15.

Applicability: The reconstruction, alteration, renovation, repair, modernization, conversion, improvement, removal or demolition, or construction of an addition to a pre-existing owner-occupied building containing at least one (1) but not more than four (4) dwelling units designed as a residence.

Exemptions: Aggregate price of contracts for one (1) project is less than \$500; contractors and subcontractors who earned in gross revenues less than \$5,000 in the last twelve- (12) month period; the state or any subdivisions; any school or vocational education program offering courses and training in any aspect of home construction or improvement; electricians, architects, plumbers, or other persons required to meet certain professional standards or be licensed; persons selling goods who have nothing to do with the installation; any employees who do not act in capacity of contractor or subcontractor; installation of central heating, air conditioning, or energy conservation devices, or entities that provide conservation services on behalf of a public utility; certain other contractors who perform landscaping, interior painting or wall covering, finish floor covering, install fencing or above-ground swimming pools, and others.

Enforcement Agency: State Board of Building Regulations and Standards (for licensing); Executive Office of Consumer Affairs and Business Regulation (Guaranty Fund Administration).

Licensing/Registration: Registration. Contractors and subcontractors must register. If a corporation, an individual shall be designated to be responsible for the corporation's work (corporation and designee shall be jointly and severally liable for violations and payment of fees, etc.) The application must contain certain information, including whether the applicant had been previously registered and under what names, has had any previous judgments or arbitration awards, and/or past registration suspensions or revocations. Must pay an application fee plus a Fund fee (if fewer than four (4) employees, \$100; four to ten (4-10) employees, \$200; eleven to thirty (11-30) employees, \$300; more than thirty (30) employees, \$500). There are additional requirements for corporations and other types of businesses. Fund fee is a one-time fee unless the fund is insufficient to cover claims being made against the Fund. Each registrant gets a number valid for two (2) years. Registration or renewal may be denied for certain prohibited acts.

Permits: If issued to an unregistered contractor, the permit must clearly state that the owner does not have access to Fund. Must include registration number of a registered contractor.

Prohibited Acts: Offering or undertaking to perform residential contracting services as a contractor or subcontractor without registering; deviating from the plan specifications in any material respect without owner permission; making material omissions or misrepresentations of application for registration; failing to pay required fees; failing to perform contracts consistently; performing in an unworkerlike manner; failing to complete contracts without good cause; engaging in fraud or bad faith regarding the contract; demanding final payment before contract is completed to satisfaction of the parties; failing to credit the owner for any payments made; making any material misrepresentation in the procurement of the contract; making any false promise that is likely to influence, persuade, or induce the owner to enter into the contract; knowingly contracting beyond the

scope of the registration; acting as a mortgage broker or agent for one; preparing, offering, or negotiating a mortgage loan on behalf of a mortgage lender; advertising without including the registration number; advertising in any false, deceptive, or misleading way; violating the building laws of the state or any subdivision; failing to notify the director of any change of trade name or address; using a name different from that registered; failing to pay subcontractors or for materials; failing to comply with any order of the director; violating any provision of this law. If home improvement work is sold door-to-door, additional specific acts are prohibited.

Required Contract Provisions: All contracts in excess of \$1,000 must be in writing and must include the complete agreement; clear description of any documents incorporated into the agreement; full name, Social Security numbers, addresses (no post office box numbers), and registration number of contractor; name and address of salesperson; date work is to begin and is to be substantially completed; detailed description of work and materials; total amount to be paid; time schedule of payments to be made and amount of each payment stated in dollars, including any finance charge; any deposit required; signatures of parties; clear and conspicuous notice that all contractors and subcontractors must be registered, where consumers can make inquiries, three-day cancellation rights under other laws if applicable, and all warranties; any lien or security interest in the residence as a result of the contract. Must include in 10-point bold type or larger "Do not sign this contract if there are any blank spaces"; all necessary permits that it is the duty of the contractor to obtain. Homeowners who obtain the permits themselves will be excluded from the Guaranty Fund provisions. Owners who contract with unregistered contractors will be excluded from the Guaranty Fund. If the contract contains any alternative dispute resolution provisions, they must be clearly and conspicuously disclosed (in language designated by the Secretary), and each party must separately sign and date the provision. HOWEVER, failure to comply for that reason alone does not invalidate the contract. In door-to-door transactions on any instrument of indebtedness, it must be clearly and conspicuously disclosed as a "Consumer Note" and that, as such, it may be discounted, negotiated, or assigned to a finance company or third party.

Prohibited Contract Provisions: An acceleration clause in the contract which allows acceleration of all payments, because the holder deems itself to be insecure. In a door-to-door transaction, any confession of judgment or waivers of any rights clauses.

Enforcement Actions: Any party may bring an action to enforce these provisions and seek damages in court. The party can also use the private arbitration services program approved by the Secretary. If using arbitration, a claim must be filed within two (2) years of the date of the contract. Findings of fact by arbitrator shall be prima facie evidence in subsequent appeal, or parties may file for a trial de novo in court within twenty-one (21) days of issuance of findings. Any violation of this law subjects the contractor to suspension, revocation, or reprimand. Contractor entitled to notice, hearing, and appeal. Director may assess a fine of not more than \$2,000 for each violation based upon certain guidelines. Knowingly operating without a license is a crime punishable by a fine of up to \$2,000 or imprisonment of not more than two (2) years or both. Same criminal penalty if there are violations of any provision of this law where no greater penalty is provided. Director also may seek injunctive relief and restitution in certain circumstances. Remedies are not exclusive. Violations of this law constitute an unfair and deceptive act under the state's Unfair and Deceptive Acts and Practices (UDAP) law. Under the UDAP act, the Attorney General can file for injunctive relief. Homeowners may file suit, individually or on

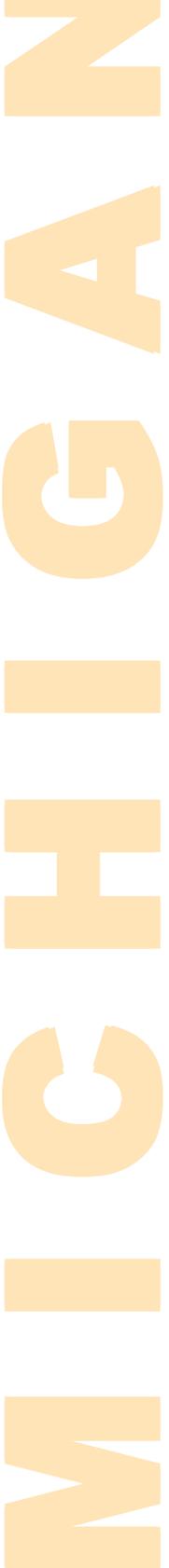
behalf of a class, under UDAP for damages, equitable relief, attorney's fees, and for up to three (3) but not less than two (2) times the actual damages if the violation was willful. No exhaustion of administrative remedies required under UDAP act.

Residential Contractor Guaranty Fund: Can compensate only for actual loss (amounts payable for cost of repair, replacement, completion of work, further defined by regulation). Applies only if the contractor was registered. Can make a claim only after a court has determined that the actual loss is a result of work performed in a poor or unworkerlike manner, which is a common law violation, or a violation of the consumer protection law. Homeowner must exhaust all customary and reasonable efforts to collect on the judgment, or not be able to collect because the contractor has filed bankruptcy, fled the jurisdiction, or is otherwise judgment proof. Conduct of contractor's subcontractors, employees, salespeople are held against the contractor in certain circumstances. Claim must be filed within six (6) months of date of judgment or arbitration award and owner must have exhausted all efforts to collect. Notice of claim is sent to contractor. Administrator of Fund schedules hearings regarding payment and renders decisions within ninety (90) days. Limits of claims: \$10,000 per homeowner or \$75,000 per contractor within a twelve- (12) month period (but waivable by the Fund administrator). Cannot recover for consequential or punitive damages, personal injury, attorney's fees, costs, or interest. Pendency of a claim does not limit the Director from taking disciplinary action. Homeowner subrogates rights to Fund; Fund may get reimbursed by contractor with interest. Fund is deemed a creditor in any bankruptcy filed by the contractor. A claim to the Fund shall not limit the availability of other legal or equitable remedies unless the claim is for the full amount of the value of the work claimed as damages.

Arbitration: Applicable only where the contractor is registered and there is a written agreement. Regulations specify how to commence arbitration, how to select an arbitration firm and how to process the forms, what the requirements of the arbitrator are, as well as the notification and scheduling of the hearings, hearing procedures, the decision, the award and appeal procedures.

Sunset Provision: No.

MICHIGAN



Mich. Comp. Laws Ann. § 339.2401 et seq., § 339.501 et seq., § 339.601 et seq., § 570.1201 et seq.; Mich. Admin. Code r. 338.1511 et seq.

Applicability: One engaged in the construction of a residential structure (or part residential and commercial) or in the repair of, alteration of, addition to, subtraction from, improvement of, wrecking of, or demolition of a residential structure (or part residential and commercial) or one who engages in the purchase, substantial rehabilitation, or improvement and resale of a residential structure, engaging in that activity more than twice in a calendar year. Employees of licensed residential builder or contractor who for a salary or other consideration solicits, attempts to obtain, or obtains a commitment for the services of a contractor, i.e. a salesperson, unless the sales are occasional and incidental to the person's principal employment. One who manufactures, assembles, constructs, deals in, or distributes a residential structure (or part residential and commercial) which is prefabricated, preassembled, precut, packaged, or shell housing.

Exemptions: Aggregate contract price for one project does not exceed \$600; licensed electrical, mechanical, or plumbing contractors; employees who work for wages for personal labor; work for the person's own use and occupancy; work is contracted for, with, or hired entirely to be done and performed for the owner by a licensee; representative of federal, state, or local government; owner of residential or rental property; an officer of the court acting within the terms of office; person other than a salesperson who engages solely in the business of subcontracting with a licensee.

Enforcement agency: Residential Builders' and Maintenance and Alteration Contractors' Board; Department of Licensing and Regulation (also administers the fund).

Licensing/Registration: Licensing. Applicants must show good moral character and financial stability and pass a written examination; must have a reporting agency send a construction credit report to the agency and provide a financial statement; must provide quarterly financial statements. If license denied, applicant may request a hearing. Must maintain a place of business in the state (P.O. Box, telephone number, or secretarial service alone is insufficient). Corporations, partnerships, etc., must designate an officer who must apply and take the examination. Nonresident licensee must file an irrevocable consent to service of process. The contractor or builder files the application for the salesperson's license. Must pay \$50 fee at application to the Recovery Fund. Additional fees may be assessed if the fund drops below one million dollars (\$1,000,000). Regulations govern transfer of salesperson's license if employment changes. License can be issued for a particular specialty. Bond may be required.

Prohibited Acts: Failure to pay within ninety (90) days of receipt of notice of construction lien; abandonment of a contract or project without legal excuse; diversion of funds or property; failure to account or remit money; willful departure from or disregard of plans or specifications in a material respect without consent of the owner; willful violation of the building laws of the state; failure to furnish to a lender the owner's signed completion certificate; failure to notify the Department within ten (10) business days of change in control of the business; failure to deliver to the purchaser the entire agreement of the parties, including financing terms if applicable; salesperson's failure to pay over money received from the owner to the contractor; aiding and abetting an unlicensed person to evade this law; acceptance of a commission or other consideration from someone other than the contractor;

insolvency, bankruptcy; failure to satisfy judgment creditor, failure to pay a lien, etc.; poor workmanship or failure to meet standards of the custom or trade; salesperson's failure to carry license and show to prospective purchasers; misrepresentations in advertising; failure to provide license number to advertising media; requirement that an owner display the work as a condition to entering into a contract; inaccurate portrayal of goods through the use of displays, models, samples; failure to keep complete and accurate financial books and records that are open to inspection by the Department; acceptance of the work obtained through an unlicensed salesperson.

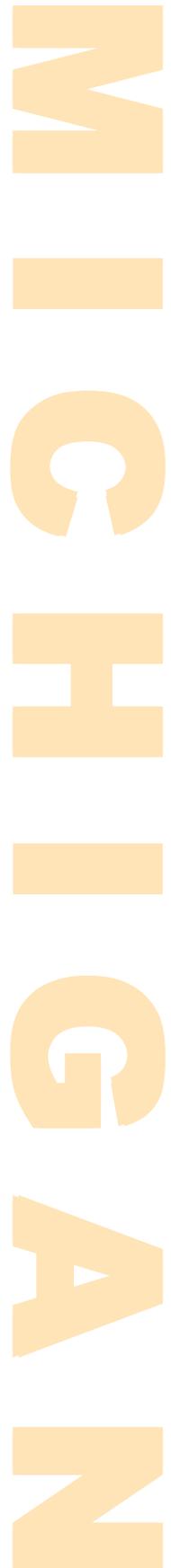
Enforcement Actions: Failure to pay construction liens results in the automatic suspension of one's license. Failure to be licensed is a misdemeanor, punishable by fine of \$500 or ninety (90) days imprisonment or both. Complaints must be filed within eighteen (18) months after completion, occupancy, or purchase, whichever occurs later. Complaints must be on Department forms and signed. Complaint is forwarded to the contractor, who must respond within fifteen (15) days; contractor has opportunity to correct the problem, resolve it, or settle it. Department can investigate, request the Attorney General to obtain subpoenas to require appearance of persons or documents, require a licensee to appear at an investigative conference. Investigations must be completed within thirty (30) days after receipt of complaint, unless good cause to extend it. If there is reason to believe that the licensee has violated this law, the Department may recommend a formal complaint, a cease and desist order, a notice of summary suspension, or a citation. If a formal complaint is filed, there are certain procedures that must be followed. If the complaint is not settled at an informal conference, a hearing is held and appeal rights attach. Service of process upon the Department is sufficient service upon the licensee. An owner may seek injunctive relief against an unlicensed contractor and, if successful, obtain attorney's fees and costs.

Homeowner Construction Lien Recovery Fund: Fund is to pay claims filed by homeowners or lessees when construction is shoddy or if the general contractor or subcontractor has failed to pay for work or materials and the owner or lessee has paid the contractor. Owner must make reasonable efforts to collect from the contractor. A subcontractor, supplier, or laborer who seeks enforcement of a construction lien through foreclosure must join the Fund. Maximum recovery is \$75,000 per residential structure. If total claims exceed \$75,000, each claimant gets a proportional share. The Department is subrogated to the rights of the owner, etc. Attorney General or privately contracted attorneys defend the Fund.

Required Contract Provisions: Must be in writing, fully executed, include all specifications. Must include definite terms regarding the transaction, type, and amount of work to be performed, quality of materials. Shall state that the parties shall adhere to applicable building, housing, and zoning requirements.

Enforceability of contract if unlicensed: Cannot sue to collect on a contract or for work performed unless the contractor alleges and proves that he/she was licensed during the relevant time.

Sunset Provision: No.



Minn. Stat. Ann. § 326.83 et seq., § 327A.01 et seq.

Applicability: One who is in the business of contracting or offering to contract with an owner to improve existing real estate by providing two or more special skills (excavation, masonry and concrete, carpentry, interior finishing, exterior finishing, drywall and plaster, general installation specialties). It also includes the construction of residences and manufactured housing installers (though not subject to every requirement).

Exemptions: Employees of licensee; material persons, manufacturers, or retailers who do not install or attach the items; architects, engineers, mechanical contractors, plumbers, electricians, or other persons subject to other licensing or professional requirements; specialty contractors who provide only one specialty; school districts or technical colleges. Persons who do not expect to exceed \$15,000 in gross revenues are exempt; however, they must apply for exemptions and state that they do not expect gross revenues to exceed \$15,000 during the calendar year for which the exemption applies.

Enforcement Agency: Commissioner of Commerce. Builders Advisory Council is an eight-member council appointed by the Commissioner. Includes six (6) contractors, one (1) public member, and one (1) representative of organized labor. The council advises the Commissioner.

Licensing/Registration: Licensing. Persons who qualify for licensing in certain types of businesses, such as corporations, sole proprietorships, or subsidiaries, are defined. Fee is \$75 per year, and may be adjusted by the Commissioner. Local jurisdictions may add a \$5 surcharge. Licensees must show completion of seven (7) hours of continuing education per year. Must submit an application under oath, which includes a worker's compensation certificate, employment insurance account number, certificate of insurance, name and address of applicant (and others, if a corporation); whether license has been previously obtained and any revocations and suspensions: specified convictions; and, business history for last five (5) years. The Commissioner must act on application within thirty (30) days. Must take a written exam. Competency skills can be adopted by the Commissioner. Must have public liability insurance of at least \$100,00 per occurrence, which includes a minimum of \$10,000 for property damage. Insurance amounts may be increased by the Commissioner. License must be renewed annually.

Bonding: Must post a bond ranging from \$5,000 to \$15,000, depending on the amount of annual gross receipts. Roofers need only post a \$5,000 bond.

Prohibited Acts: Filing an incomplete or false or misleading application; engaging in a fraudulent, deceptive, or dishonest practice; engaging in conduct involving any aspect of business that results in a court permanently enjoining the contractor; failing to pay subcontractors which results in a judgment; failing to place license number on all building permits and on all business cards and contracts; failing to repay the Recovery Fund twice the amount paid out with interest at 12 percent, and failure to obtain a bond of \$40,000.

Enforcement Actions: Commissioner may deny, suspend, or revoke a license and impose a civil penalty if: 1) it is in the public interest, and 2) the licensee has performed a prohibited act. Unlicensed persons are guilty of a misdemeanor. Commissioner may also bring an action to obtain a cease and desist order.

Permits: Local jurisdictions shall not issue permits to unlicensed persons.

Contractor's Recovery Fund: Not applicable to roofers. Licensees must pay a fee upon application and renewal, ranging from \$100 to \$200, depending on gross annual receipts. Purpose of Fund is to compensate owners or lessees who obtain a final judgment in any court against a licensee for fraudulent, deceptive, or dishonest practice, conversion of funds, or failure to perform arising directly out of any transaction when the licensee was licensed at the owner's residence. Cannot recover if licensee had not paid recovery fee.

Sunset Provision: No.

Statutory Warranties: A separate statute creates statutory warranties limited to sale of home improvement work involving "major structural changes." When applicable, contractor must warrant that work is free from defects caused by faulty workmanship and defective materials due to noncompliance with building standards for a period of one year. Must also warrant that work is free from "major construction defects" (as defined) for a period of ten (10) years. Must also warrant that work involving the installation of plumbing, electrical, heating, or cooling systems is free from defects caused by the faulty installation of the system for a period of two (2) years. If the work is not covered by the above warranties, contractor must warrant that work is free from defects caused by faulty workmanship and defective materials due to noncompliance with building standards for a period of one (1) year. Liability is limited and does not include a laundry list of damages (that is, secondary loss or damage such as personal injury or property damage). Warranties can be excluded or limited only if in writing in boldface type of at least 10 points and signed by the parties, and warranties are not effective unless the contractor provides substitute express warranties offering substantially the same protections.

MISSISSIPPI

Miss. Code Ann. § 31-3-1 et seq.

Only applies to contracts for more than \$100,000, to multi-family construction projects to be occupied by more than 50 families, or to residential subdivisions where the contractor is developing either single-family or multi-family lots.

MISSOURI

Mo. Rev. Stat. § 94.110 et seq.

Applicability: Municipalities have the authority to regulate building contractors and all subcontractors.

MONTANA



Mont. Code Ann. § 39-9-101 et seq.

Applicability: Person/firm in pursuit of independent business that constructs, alters, repairs, adds to, improves, wrecks, or demolishes a building, highway, road, railroad, excavation, or other structure attached to real estate. Also applies to offers or bids to do such work.

Enforcement Agency: Department of Labor and Industry.

Exemptions: Twenty-four (24) categories listed, including government representatives (federal, state, local), court officers, public utilities, and rural cooperative utilities. Repair or operation incidental to discovery or production of oil or gas; sale or installation of finished products/materials that do not become fixed part of a structure; construction, alteration, improvement, or repair done on site or reservation under jurisdiction of federal government; person who only furnished materials, supplies, or equipment in performance of contractor's work; work on one project of a minor/inconsequential nature, the aggregate contract price of which is less than \$2,500 per job, except where work is part of larger or major operation. Architects, civil, or professional engineers, professional land surveyors, farmers; owner who contracts work to be done by a registered construction contractor, except where owner constructs residence with intention of promptly selling property; owner working on the owner's own property; electricians or plumbers; employees of registered construction contractor with wages as sole compensation; enrolled tribal members or association or business 51 percent owned by enrolled tribal member; independent contractors with no employees.

Licensing/Registration: Registration. Must submit application under oath on form provided by Department. Certificate of registration is valid for two (2) years. Sufficient if one of general partners/joint venturers is registered. Maximum of \$70 for initial registration certificate, \$70 for renewal or reinstatement of certificate. Fees collected are credited to Department and used for administration and enforcement of the statute. Fifteen (15) percent of fees must be used for educating building industry about registration program and public education about hiring construction contractors. Department compiles list of all registered construction contractors and updates at least bimonthly. List is available to public for reasonable fee. Local governments may collect nondiscriminatory license fees but cannot require or issue any licenses or registrations for same or similar purpose.

Prohibited Acts: Engage in business under name other than registered name, falsify registration number, work when registration is suspended, or transfer registration to unregistered contractor.

Enforcement Actions: Department may issue penalty up to \$5,000 for certain prohibited acts such as falsifying registration or using a false business name. Penalty is determined by Department after hearing under state Administrative Procedures Act. However, no penalties for inadvertent error. Department may issue penalty of up to \$500 for committing other prohibited acts (i.e., performing work as contractor without being registered or when under suspension) after hearing held under state Administrative Procedures Act.

Sunset Provision: No.

Neb. Rev. Stat. § 48-2101 et seq.

Applicability: Work on real property and annexations, including new work, additions, alterations, reconstruction, installations, and repairs performed at one or more different sites which may be dispersed geographically. Contractor defined as person in business of construction, including subcontractor, general contractor, and any other person arranging for performance of construction.

Enforcement Agency: Department of Labor.

Exemptions: The state or any political subdivision of state; person who earns less than \$1,000 annually or performs work or has work performed on own property.

Licensing/Registration: Registration. Contractor must register with Department before doing work in county with population over 100,000; register for each name under which contractor does business. Application must include certain information, including principal place of business, type of business entity, and proof of worker's compensation insurance. Notify Commissioner of changes in information on application. Fee of \$25 for application or renewal; fee is waived for self-employed contractors who pay less than \$1,000 per year in total wages to employees. When an investigation reveals that a contractor fails to maintain adequate worker's compensation insurance, the Commissioner issues notice of revocation of registration.

Enforcement Actions: Commissioner has broad investigatory powers and may administer oaths and affirmations, subpoena witnesses, take evidence, require production of documents. Commissioner may ask court to order compliance with subpoena. All written complaints made to Commissioner regarding registration of contractor must receive a written response as to results of the investigation. Citation issued when not registered or registration information not substantially complete and accurate. Maximum penalty is \$500 for first violation and \$5,000 for second or subsequent violation. Contractor has fifteen (15) working days to contest citation or penalty and must send notice to Commissioner. Commissioner must provide a hearing under state Administrative Procedures Act.

Sunset Provision: No.

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Nev. Rev. Stat. Ann. § 624.010 et seq. Nev. Admin. Code. Ch. 624, § 010 et seq.

Applicability: General building contractors (Class B), who perform construction or remodeling of buildings or structures for support, shelter, and enclosure of people, animals, chattels, or movable property of any kind that requires the use of more than two unrelated building trades or crafts. Subclassifications include premanufactured housing; residential and small commercial, speculative building; service stations, and prefabricated steel structures. Regulations contain over forty (40) classifications for general engineering, plumbing and heating, and other types of contractors.

Enforcement Agency: State Contractor's Board.

Exemptions: Work done exclusively by authorized representative of U.S. government, state of Nevada, or other political subdivision of state. Officer of court acting within scope of office; public utility operating under Public Utilities Commission regulations in Nevada. Property owner building or improving a residential structure for his own occupancy and not intended for sale. Owner of apartment, condominium, or townhouse complex who performs \$500 or less in repairs (with some exceptions). Sale or installation of product that does not become a fixed part of structure; construction, alteration, improvement, or repair of personal property. Work done within limits of federal government site or reservation. Owner of agricultural property who builds for own use or occupancy and not for sale or lease. Owner who builds on own property and contracts with licensed managing contractor, subject to certain conditions.

Composition of Board: Seven (7) members appointed by the Governor. At the time of appointment, six (6) members of Board must hold unexpired licenses to operate as contractors, be actively engaged in contracting business, have been active in business for at least the previous five (5) years, and have been citizens and residents of Nevada for at least five (5) years preceding appointment. One member of Board must be a representative of the general public. In manner provided in statute, Board may appoint Advisory Committees of its members or of homeowners, employees, contractors, or other qualified persons. District Attorneys prosecute all violations (unless prosecuted by the Attorney General); Board may request Attorney General to prosecute.

Licensing/Registration: Licensing. Board may investigate, classify, and qualify applicants for licenses by written or oral examinations or both; licenses expire after one (1) year, subject to change by Board; annual renewal required. Fee for application, examination, or license may not exceed \$300. Applicants submit written application including proof of insurance and certificate of qualification as self-insured employer. Financial responsibility of contractor must be established by a review of certain criteria, including net worth, liquid assets, credit records, prior business experience, prior and pending lawsuits, prior suspension or revocation of license, conviction of crime involving moral turpitude, and reputation for honesty and integrity. Applicant and each officer, director, partner, and associate must possess good character; applicants not in compliance with child support court orders may not obtain or renew a license; license does not authorize contractor to construct or repair mobile home, manufactured home, or commercial coach; must have additional license to engage in joint venture.

Bonding: Applicant must file a surety bond or cash deposit between \$1,000 and \$100,000, depending on finances and size of operations; bond or deposit may be

withdrawn after five (5) years if evidence supporting such relief is presented to Board. Each bond or deposit is for benefit of owner of property to be improved, employee of contractor, supplier or materialman, or person injured by unlawful act or omission of contractor. Claimant may bring court action on the bond or against Board on the deposit for amount of damage suffered to extent covered by bond/ deposit. Must notify Board in writing of action, which has two (2) year limitation period. Surety may interplead all claimants. Claims of employees for labor are preferred claims. Other claims have equal priority, and if bond or deposit is insufficient, they are paid pro rata. Claimants may sue contractor for unpaid balance.

Required Disclosures: General bidding contractor must provide in writing to owner of single-family residence: name, license number, business address, and telephone number of all subcontractors on project; all persons who furnish material of \$500 or more; notice of who may record notice of lien on residence; and informational form to be prescribed by Board. On commercial vehicles, must display name and license number.

Prohibited Acts: Knowingly misapply money under certain circumstances; obtain money, property, or labor by false pretenses; fail to state true name when receiving payments, or fail to disclose a material fact; advertise without a valid license; engage in business or submit a bid on a job without a license; act beyond scope of license, bid to contract, or contract for sum in excess of license limit; knowingly enter into a contract with unlicensed contractor or contractor in excess of limit or scope of its license. Construct or repair mobile home, manufactured home, or commercial coach, unless licensed under separate statute or owns, leases, or rents the property. Fraudulent or deceitful acts, felony conviction, substandard workmanship, incomplete advertising; abandonment of any construction project without legal excuse. Materially fail to complete any project, willfully fail to comply with terms of contract or written warranty that caused material injury to another. Willfully and prejudicially depart from or disregard plans or specifications without owner's consent; willfully or deliberately disregard and violate building, health, and safety laws of state. Divert funds or property received for completion of project. Willfully fail to pay monies when due for materials or services rendered. Fail to keep certain records, misrepresent material fact in obtaining a license, fail to keep bond or cash deposit in force, misuse of license, and aid or abet unlicensed person to evade authorities.

Enforcement Actions: Board may take testimony, administer oaths, depose, and issue subpoenas for witnesses and production of documents in connection with Board hearing or investigation. Board may investigate fraud or cooperate with other local, state, or federal agencies. For operating without a license, Board may impose an administrative fine of between \$1,000 and \$10,000 for each violation; if not paid, fine must be recovered by Attorney General in civil case. Board can suspend or revoke license; refuse renewals; limit field, scope, and monetary limits of licenses; order corrective action; reprimand or take other disciplinary action. If discipline is imposed, costs of proceeding, including investigative costs and attorney's fees, may be recovered by the Board. For any violation of § 624, first offense is misdemeanor, punishable by fine between \$500 and \$1,000 and maximum of six (6) months in jail. For second or subsequent offense, a gross misdemeanor with fine of \$1,000 to \$2,000 and maximum of one year in jail. Penalties not precluded by any disciplinary action taken by Board against a contractor.

Sunset Provision: No.



N.H. Rev. Stat. Ann. § 320:1 et seq.

Applicability: To any person who travels from town to town or within a town offering to perform household repairs or improvements, including contracts for the replacement or installation of siding on any residence or building.

Exemptions: Any nonprofit or other organization organized exclusively for religious, charitable, or other specific purposes.

Enforcement Agency: Secretary of state. Secretary shall keep records of all licenses issued and such records shall be open for public inspection.

Bond Requirement: If the licensee is not a natural person, must deposit \$5,000 with the secretary or provide a surety bond in that amount.

Licensing: Must pay a \$50 fee and obtain a "Hawkers and Peddlers" license to be renewed annually. Licenses are not transferable. Licensee must endorse his/her usual signature on the license and shall at all times be prepared to exhibit the license.

Prohibited Acts: Entering into a loan in a consumer credit sale if it is negotiable; wilfully falsifying information on the license application.

Enforcement Actions: License can be revoked for any prohibited acts. In addition, grounds for revocation include insanity; proof of sexual psychopathy; or the commission of an assault or battery, disorderly conduct, or other violent or offensive acts. Contractor has right to appeal revocation of license. Falsifying or forging a license is guilty of a misdemeanor. Any other violation of this law is a misdemeanor.

Enforceability of Contract if Unlicensed: Contract is void and unenforceable.

Other Consumer Rights/Remedies: Assignee of contract in a consumer credit sale is subject to all claims and defenses the buyer would have against the seller. In any home improvement installment contract or cash sale of \$25 or more, the homeowner may cancel the transaction at any time before midnight of the third business day.

*N.J. Stat. Ann. § 56: 8-1 et seq.; N.J.Admin. Code title 13, § 45A-16.1 et seq.
N.J. Stat. Ann. § 17:16C-62 et seq.; N.J. Admin. Code title 3, § 19 et seq.N.J.
Stat. Ann § 17:16C-95 et seq.*

Applicability: Home Repair Financing Act governs financed home repair contracts—the repair, alteration, improvement of real property (noncommercial) where owner pays in installments over period greater than ninety (90) days. Home improvement: remodeling, altering, painting, repairing, or modernizing of residential or noncommercial property or making additions to the property. Home improvement contract defined as oral or written agreement between seller and owner of residential or noncommercial property (home or place of residence, whether or not a single- or multi-unit structure) where seller performs services/labor for home improvements or furnishes materials for the job. Separate provision applies to contracts over \$25 entered into at places other than contractor's place of business.

Enforcement Agency: Home Improvement Advisory Board; Attorney General.

Composition of Board: Commissioner of Banking (Chair of Board), and eight (8) other members appointed by the Governor, with Senate approval. Of the eight (8) appointees, four (4) must have had practical experience as home improvement contractors or material suppliers, two (2) must have experience in financing home building or improvement loans, and two (2) must be public members. Terms are four (4) years and are staggered.

Exemptions: Contracts involving self-installation by owner.

Required Contract Provisions: Must be written and include the entire agreement between the owner and the home repair contractor; names and addresses of all parties; dates when executed; and a description of the goods and services. Must be completed in full without any blank spaces to be filled in after being signed by the owner, except for unavailable serial numbers or identifying marks. All contracts must also contain a notice to the owner in 10-point bold type or larger, directly above the space provided for the owner's signature, informing the owner of the right to a copy of the contract and stating that one should not sign any completion certificate or agreement stating satisfaction with the entire project before project completion. Include certain information about worker's compensation and public liability insurance. Provide for payment of time balance in substantially equal amounts on dates separated by substantially equal payment periods. Statute allows for certain exceptions for uneven or unequal installments. State separately cash price of goods or services furnished; downpayment; unpaid cash balance; amount included for credit life insurance and certain other benefits. Official fees, principal balance; credit service charge; and the time balance, the number of installments required, the amount of each installment, and the due dates. Also required are dates work is to begin and be completed, description of any mortgage or security interest to be taken, and statement of any warranty. If person other than seller will assume responsibility for performance of contract, that person's name and address must be disclosed. No contract can require or entail execution of any note, unless required disclosures are printed.

Prohibited Contract Provisions: Acceleration clauses under which the unmatured time balance may be declared due and payable because the holder is insecure, agreement to pay amount other than the time sales price of the goods or services furnished under the contract, and any power of attorney. Provision relieving the home repair contractor from liability upon any claim that the owner may

have under the contract, any provision where the owner waives right of action against the contractor for act committed in the collection of the payments or in the repossession of the goods. Any assignment of or order for payment of wages or other compensation for services and provision for a payment or credit to owner for the privilege of placing sign on the premises where work is being done or for recommending to contractor the names of people interested in making a home repair contract, unless provision is approved by Banking Commissioner. Provision relieving the holder or other assignee from liability on contract claim that the owner may have against contractor; requiring execution of a note unless it has printed "Consumer Note" in 10-point bold type or larger.

Prohibited Charges: Home repair contractors may not charge for any costs, charges, insurance premiums, examination, appraisal service, brokerage, commission, interest, discount, expense, fee, fine, penalty, or other thing of value other than the charges permitted by statute, except court costs, attorney's fees, and certain other expenses. A credit service charge **is** permitted on the amount owing on the unpaid principal balance of the contract.

Place of Business: All home repair contractors must own, rent, or lease a place of business in New Jersey. The premise or premises must be identified by a sign legible to a visitor entering the main entrance and contain the words "licensed as a home repair contractor." It is permissible to operate from a private residence under certain conditions.

Certificate of Completion: No contractor can accept a certificate of completion signed by the owner before actual completion of the work; certificate of completion must contain certain notice in 10-point bold type or larger.

Prohibited Acts: Misrepresenting to buyer that residence will serve as a "model"; Misrepresenting that products used need no maintenance or other service; are of a specific or well-known name; perform certain functions; meet or exceed certain standards; are approved or recommended by any governmental agency, person, or firm; are of sufficient size and nature to do the job expected; are custom-built for buyer's needs; or may be repaired within buyer's immediate trade area. Various practicing forms of "bait selling," including offering specific products as being for sale to entice buyer into purchase of other products, disparaging or degrading purchase of products in order to induce buyer to purchase other products, substituting products for those specified in home improvement contract without buyer's knowledge or consent, failing to have quantity of advertised product sufficient to meet reasonably anticipated demand, and misrepresenting availability of certain products. Various misrepresenting the seller's identity, offering gifts without fully disclosing terms or failing to comply with stated terms, certain misrepresenting and improperly disclosing price, discounts, insurance, delivery or installation, the effect of the downpayment, and finance charges. Performance-related matters, such as pressuring buyer into contract, failing to start or complete work on time, and failing to give timely written notice for any delay in performance; misrepresenting that a competitor's work was done by the seller, misrepresenting or misleading buyer about charitable or other effect purchase will have; failing to make statement or explanation that causes advertisement to be deceptive, or misrepresenting that customer's material, product, or home is in need or repair or replacement. Seller must make sure that all required permits have been issued and must furnish buyer with a copy of all warranties.

Enforcement Actions: Committing any prohibited acts under home improvement practices regulation is a violation of New Jersey Unfair and Deceptive Acts and Practices (UDAP) act. Any person who violates UDAP is liable to a maximum penalty of \$7,500 for first offense and a maximum penalty of \$15,000 for second and each subsequent offense. Any person who suffers an ascertainable loss of monies or property, real or personal, as a result of the use of any unlawful act under the UDAP statute may bring action for treble damages and reasonable attorney's fees, filing fees, and costs of suit. Attorney General enforces UDAP statute.

For home repair financing act, Commissioner of Banking may suspend, revoke, or refuse to renew any license for certain acts including material misstatement in application, knowing failure to comply with act, lack of financial responsibility, unworthiness, bad faith, or dishonesty. Violation of act subject to penalty of up to \$2,500 for each offense.

A person who procures the execution of a note in violation of the act shall be fined not more than \$500 for each offense; no finance, delinquency, collection, repossession, or refinancing charges may be recovered in any action based on the contract.

For door-to-door home repair contracts, owner may sue contractor for amount paid upon entering contract where contractor fails to pick up goods and refund monies paid by owner within ten (10) business days; court shall also require defendant to pay plaintiff a reasonable attorney's fee and costs; willful violations of statute constitute a fine of not more than \$500 for each offense.

Sunset Provision: No.

N.M. Stat. Ann. 1 60-13-1 et seq. (Michie.1997)

Applicability: Constructing, altering, repairing, installing, or demolishing any buildings, roads, airports, parks, sewerage, radio towers, mechanical works; includes subcontractor, specialty contractor, construction manager.

Enforcement Agency: Construction Industries Commission; Construction Industries Division of the Regulation and Licensing Department.

Composition of Commission: One (1) representative of residential construction industry; one (1) licensed electrical contractor; one (1) licensed mechanical contractor; one (1) licensed and practicing architect; one (1) practicing general contractor; one (1) representative of liquefied petroleum gas industry; one (1) resident of state who is not a licensed contractor or certified journeyman; one (1) representative of subcontracting industry; one representative of organized labor. Adequate representation of all state geographic areas is taken into account for appointments. Director is appointed by Superintendent of Regulation and Licensing and must meet certain qualifications. Division approves rules and regulations recommended by Commission; issues licenses and certificates of qualification; resolves jurisdictional conflicts, among other duties.

Exemptions: Individual who works only for wages or who earns less than \$7,200 annually, subject to certain conditions; supplier of materials; operator of petroleum, gas, or water well; public utility or rural electric cooperative; utility department of municipality or local public body; railroad company; telephone company; mining, gas, or oil company that repairs its facilities; radio or television broadcaster; owner of single-family dwelling or farm or ranch, provided work is done in conformity with all other statutory provisions.

Licensing/Registration: Licensing. Must pass an examination approved by Division on general business knowledge, Division regulations, and provisions, of statute. Examinations given in both English and Spanish. Licenses expire after two (2) years and can be renewed upon application to Division and payment of fee. Unless renewed within three (3) months of expiration, license is canceled. Licensee must indicate license number on all written bids and on applications for building permit. Must demonstrate proof of responsibility. Certificate of qualification issued after passing examination on general business knowledge and Division rules and regulations. May satisfy knowledge of business and construction law by taking accredited course. Certificate of qualification issued to a "qualifying party," who then takes an examination for a license and is responsible for licensee's compliance with the statute and regulations.

Bonding Requirements: Applicants for a contractor's license (or renewal) must be determined responsible to perform under individual permit capacity by providing either license bond underwritten by corporate surety, an agreement of cash collateral assignment executed with state or national bank or federally insured savings association, or a current financial statement. If license bond or cash collateral assignment is canceled, expires, or becomes ineffective, license is canceled by Division. Licensee may prevent cancellation by providing proof of responsibility within thirty (30) days. Contracting or bidding not allowed while license bond or cash collateral assignment is canceled or expired.

Required Acts: Before work starts, contract is signed, or funds are paid, contractor must disclose in writing to owner that license does not protect consumer if contractor defaults.

Prohibited Acts: Willfully, or by reason of incompetence, violating any provision of the statute, rule, or regulation; knowingly contracting or performing a service beyond scope of license. Failing to maintain proof of responsibility; unjustifiably abandoning any contract; converting of funds or property; willfully or fraudulently commissioning any act where someone is substantially injured; failing to maintain worker's compensation insurance; aiding or abetting to evade or violate the statute by allowing license to be used by unlicensed person.

Enforcement Actions: Division has power to investigate licensees. Within 180 days of receiving a complaint, investigator must submit a report to Director. Informal resolution of complaints is allowed with consent of all parties. Commission or Division may enforce statute in district court by injunction, mandamus, or any proper legal proceeding. Commission may designate a hearing officer to preside over any hearing; may be employee of Division or individual hired on contract basis. Commission may assess the following administrative penalties: where value of contract is \$5,000 or less, minimum penalty of \$300 and maximum of \$500; where contract is more than \$5,000, minimum penalty of \$500 and maximum of ten (10) percent of contract value. Amounts are doubled for person whose license has been previously revoked or suspended. Additional penalty of \$100 per day for failure to comply with order. Acting as contractor without a license or as a sales representative of contractor who does not have a license is a misdemeanor. If contracting work is valued at \$5,000 or less, ninety (90) days in jail or fine of \$300 to \$500 or both; if value of work is more than \$5,000, six (6) months in jail or fine of ten (10) percent of value of work, or both.

Permits: Trade bureaus may require a permit to be conspicuously posted prior to any work done, except for certain classes of work, such as minor repairs, installation of temporary wiring for testing electrical equipment, or work done after regular business hours or during a holiday. Permits are issued to entity that regularly employs certified journeymen on annual basis.

Sunset Provision: Yes.



N.Y. Gen Bus. Law § 36-A-770 et seq.; N.Y. Gen. Obligations Law § 5-301 et seq.

Applicability: Home improvement is defined as repairing, remodeling, altering, converting, or modernizing or adding to residential property, including driveways, swimming pools, siding, insulation, roofing, windows, terraces, patios, fences, garages, and basements. Also, the construction of a custom home, installation of home improvement goods or furnishing of home improvement services. Home improvement contractor is a person, firm, or corporation that owns or operates a home improvement business or that undertakes any home improvement for a fee and for which the total cash price of all of one's home improvement contracts with all customers exceeds \$1,500 during any period of twelve (12) consecutive months. Home improvement contract is an agreement for performance of home improvement between home improvement contractor and an owner, where aggregate contract price exceeds \$500.

Enforcement Agency: The Attorney General may seek injunction for violation of statute. Director of municipal consumer affairs office or any designee of local government can enforce provisions of the statute.

Exemptions: Sale or construction of a new home, other than a custom home; sale by seller who does not work on the installation of the goods; sale or installation of appliances such as stoves and refrigerators; sale or installation of decorative goods or services; or performance of repairs, replacements, or services regarding an express/implied warranty or a maintenance agreement. Any person or firm that owns in whole or in part the property to be improved.

Required Contract Provisions: An owner must receive copy of written agreement, signed by contractor before any work is done. Name, address, phone number, and license number of contractor; dates when work will begin and be substantially completed, including statement of contingencies. Must specify whether definite completion date is of the essence; description of work to be performed, materials to be provided owner. Notice to owner that contractors, subcontractors, or materialmen may have claim against owner if they are not paid, and claim may be enforced by applicable lien laws. Certain notice to owner in clear and conspicuous boldface type disclosing possibility of mechanic's lien as set forth in statute. Notice to owner that contractor is legally required to deposit all payments received prior to completion, or may post a bond, contract of indemnity, or letter of credit with owner guaranteeing return or application of payments to purposes of contract. If contract provides for one or more progress payments before substantial completion of work, a schedule of such payments showing amount of each payment and the state of completion of work to be performed. Notice that owner may cancel the contract until midnight of the third business day after the day on which the owner has signed an agreement or offer to purchase relating to such contract. This does not apply where owner has initiated the contact or home improvement is needed to meet an emergency of owner or owner furnishes contractor with separate dated and signed personal statement in owner's handwriting describing situation and expressly waiving right to cancel.

Enforcement Actions: Fine of \$100 for technical violation of any provision. Failure to deposit funds in escrow account, provide bond or contract of indemnity, or irrevocable letter of credit or to provide written contract in compliance with statute, subject to penalty not to exceed greater of fine of \$250 for each violation or five (5) percent of aggregate contract price; total penalty cannot exceed \$2,500 for each contract.

Defenses: Where contractor commits multiple violations, court considers volume of business, number of contracts in violation, actual financial loss to owner and whether contractor acted in good faith. If contractor can show violation was unintentional and resulted from *bona fide* error, contractor will not be subject to higher penalties for substantial violations. Where owner induced to contract for home improvement in reliance on fraudulent written representations or false written statements, owner may sue and recover damages, an award of \$500, plus reasonable attorney's fees. If suit is without arguable legal merit, court may award attorney's fees to contractor.

Bonding Provision: Where improvement is for \$100,000 or more, a copy of any payment bond executed in connection with contract for improvement of real property, other than a contract for a public improvement, must be filed in county clerk's office within thirty (30) days of execution by the owner. Owner failing to file payment bond is liable for attorney's fees of any claimant. Every agreement affecting real property where contractor exempts himself from liability caused by his negligence in connection with construction, maintenance, and repair of property is void and unenforceable. Agreements by owners, contractors, subcontractors, or suppliers to indemnify architects, engineers, and surveyors from liability caused by defects in plans, maps, or designs are void and unenforceable.

Sunset Provision: No.

NEW YORK

N.C. Gen. Stat. § 87-1 et seq.; N.C. Admin. Code title 12, r. 12.01000 et seq.

Applicability: Anyone who bids upon, superintends, manages, or performs construction of any building, improvement, or structure where the cost is \$30,000 or more or erects a manufactured modular building, is a “general contractor.”

Enforcement Agency: Licensing Board for General Contractors.

Composition of Board: Nine (9) members appointed by the Governor for staggered five-year terms. Five (5) members are general contractors, including two (2) members whose businesses are construction of residences; one (1) highway constructor, one (1) in public utilities, and one (1) in buildings; one (1) registered engineer; and three (3) public members with no ties to the construction industry.

Licensing/Registration: Licensing. Must file application for an examination to become a general contractor. Exam fee is \$50, but \$1,000 if applying for an unlimited license, \$75 for an intermediate license, or \$50 for a limited license. Depending on the type of license, there are restrictions on the value of a project that the contractor is permitted to work on. Applicant must show good character, competency, ability, integrity, financial responsibility. Applicant cannot have committed an act involving dishonesty, fraud, or deceit, or been convicted of a crime involving moral turpitude relating to building or contracting. Five classifications: Building contractor (private, public, commercial, industrial, and residential buildings); residential contractor (residences required to conform to residential building code); highway contractor; public utilities contractor; and speciality contractor (covers interior construction, roofing, insulation, and other specialties listed in regulations).

Exemptions: Persons or firms that construct or alter a building on land they own, provided building is intended for their sole occupancy; farmers who construct or alter a building on land they own, provided building is intended for their use after completion.

Permits: Issued only to licensees; when contractors apply for permits, they must provide proof they have appropriate license.

Prohibited Acts: Fraud or deceit in obtaining license; gross negligence; incompetence or misconduct; willful violation of the statute. Practicing general contracting without a license; using another person’s license; giving false or forged evidence to the Board.

Enforcement Actions: Revoke license for prohibited acts; class two misdemeanor for unauthorized practice of contracting, impersonating contractor, or giving false evidence to Board. Board may seek injunctive relief from Superior Court; Board must maintain detailed records of complaints against each licensee. Procedures for reviewing charges against licensees are contained in regulations. Generally, a review committee makes a threshold determination whether charges have merit and then refers the matter to the Board for a final determination. When the Board acts or may act in a way that affects the rights, duties, privileges, or license of a person, that person has a right to an administrative hearing. The regulations provide for intervention of right and permissive intervention.

Homeowners' Recovery Fund: The Board must maintain \$250,000 in order for payments to be disbursed; the purpose is to reimburse homeowners who have

suffered a reimbursable loss in constructing or altering a single-family residential dwelling unit. An owner must exhaust all civil remedies against general contractor and have obtained a judgment against general contractor that remains unsatisfied, unless owner is prevented from filing suit due to automatic stay of bankruptcy code. An owner must not have obtained the building permit in his or her own name. Applicants must file for recovery within one year after termination of all proceedings, including appeals, in connection with an unsatisfied judgment against general contractor. For claims based on automatic stay of bankruptcy code, the applicant has three (3) years from discovery of dishonest conduct or six (6) years from substantial completion of the work on residence in question, whichever comes first. Regulations provide procedure for processing application for recovery from Fund. A review committee makes a threshold determination and makes a recommendation to the Board. After a hearing, the Board may enter an order requiring payment from the Fund. Payments from the Fund cannot exceed ten (10) percent of total amount in Fund. Also, no recovery for consequential damages, multiple or punitive damages, civil or criminal penalties or fines, incidental damages, special damages, interest, and court costs. If the applicant and the contractor settle the claim, the claim cannot be reimbursed from the Fund and will be dismissed by the Board.

When general contractor applies for permit for the construction or alteration of a single-family residence, city or county inspector collects a \$5 fee for each unit to be constructed or altered (\$4 goes to the Board and is deposited in Fund, and \$1 goes to city/county). Board may suspend collection of fee for any year if it determines amount in Fund is sufficient to meet likely disbursements for that year. The Board may only use monies from Fund for following purposes: reimburse applicant's loss after approval by Board; purchase insurance to cover reimbursable losses; invest amounts in Fund not currently needed to reimburse losses and maintain adequate reserves; pay expenses of Board to administer the Fund. The Board investigates applications for reimbursement and has complete discretion to determine the order, amount, and manner of payment of approved applications. Regulations provide that payments that have been unsatisfied for longest period of time will be paid as funds become available. All payments are a matter of privilege and not of right. Board may bring an action against general contractor whose conduct caused the reimbursable loss for restitution or any other claims.

Sunset Provision: No.

NORTH DAKOTA

N.D. Cent. Code § 43-07-01 et seq.

Applicability: Person engaged in business of construction, repair, alteration, dismantling, or demolition of every type of structure, project, development, or improvement coming under definition of real or personal property; includes subcontractor. Must have a license to engage in job for \$2,000 or more.

Enforcement Agency: Secretary of State of North Dakota (“the Registrar”).

Licensing/Registration: Licensing. Applicant must submit an application containing experience and qualifications, proof of liability insurance, proof of worker’s compensation coverage, and other information that Registrar may require. The Registrar may investigate applicant’s fitness to act as contractor; conviction of an offense is not an automatic bar from licensure. License fees range from \$50 to \$300, depending on class of license. Must file for renewal of license each fiscal year; failure to file for renewal causes contractor’s license to be deemed not in good standing and contractor is considered unlicensed. There are four (4) classes of licenses, each with its own limit on the value of the construction project in which a contractor may engage.

Exemptions: Any authorized representative of U.S. government, state of North Dakota, or any local government, or political corporation; persons who make any fabricated or finished product that is not incorporated into or attached to real property.

Permits: A contractor must provide license number to official who issues building permit; persons exempt from statute must provide permit official license number of subcontractors engaged on project.

Prohibited Acts: Operating without valid license; failing to renew license; failing to maintain liability insurance coverage; failing to file, to renew, or to amend any fictitious name certificate; failing to maintain an active status as a corporation; and failing to file or renew a trade name registration. Abandonment of any contract; diversion of funds or property received under express agreement for the prosecution or completion of a specific contract or to defraud or deceive creditors or the owner; any fraudulent act by licensee which causes certain level of injury; making any false statement in application for license or its renewal.

Enforcement Actions: May revoke license for performing a prohibited act. Contractor may then appeal such revocation to the district court.

Public Records: An indexed record of all applications, licenses, certificates of renewal, revocations, and other information must be maintained in Registrar’s office and made available for public inspection.

Sunset Provision: No.

Ohio Rev. Code Ann. § 1345.01 et seq. Ohio Admin. Code § 109:4-3-01 et seq.

Applicability: Construction of a single-family dwelling unit by a supplier on the real property of a consumer, among other services. Supplier defined in statute as seller, lessor, assignor, franchisor in business of effecting or soliciting consumer transactions.

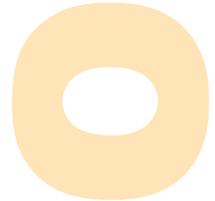
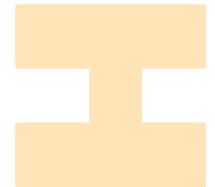
Enforcement Agency: Attorney General.

Required Acts: Where cost exceeds \$25 and there has been face-to-face contact between consumer and supplier before the work begins, the supplier must provide consumer with form indicating date, supplier's identity, consumer's name and phone number, anticipated completion date, anticipated cost of repair/service, and a clear and conspicuous disclosure of the right to an oral or written estimate (must be similar to language provided in regulations). Supplier must post a sign at place of business disclosing right to estimate (must use language provided in regulation); make a bona fide effort to give written estimate at consumer's request; provide requested written or oral estimate to consumer before commencing work. Where no face-to-face contact between consumer and supplier before work commences, supplier must inform consumer orally of right to receive an oral or written estimate of cost; give oral estimate at consumer's request before starting work; provide written estimate at consumer's request before starting work. Supplier does not have to comply with above provisions on providing estimates if it provides consumer (before work starts) with written quotation of price that indicates that quotation is binding for five (5) days.

Prohibited Acts: Charge consumer for any unauthorized repair or service (regulation sets forth duty of supplier for repairs of different costs); fail to disclose that charge will be imposed for disassembly, re-assembly, or partially completed work, if consumer authorizes commencement but not completion of a repair or service; fail to disclose upon first contact with consumer that charges unrelated to actual performance of work (service charges, travel charges) will be imposed; misrepresent condition of goods or necessity of repairs or whether work has been done or whether work must be performed away from consumer's residence; materially understate or misstate estimated cost; fail to provide consumer with an itemized list of work done; fail to tender to consumer any replaced parts; fail to provide (upon request by consumer) a written, itemized receipt for goods given to supplier for repair/service; fail to provide consumer copy of document consumer signs; fail to disclose that person performing work is not supplier's employee (under certain conditions).

Enforcement Actions: Attorney General may take action to obtain a declaratory judgment, obtain an injunction, bring a class action on behalf of consumers. Attorney General has two (2) years in which to bring an action after occurrence of violation. Consumer may bring individual suit to rescind transaction or recover up to three (3) times actual damages or \$200, whichever is greater, or recover damages or other appropriate relief in a class action. Reasonable attorney's fees are recoverable if consumer brings groundless suit or supplier knowingly violates statute.

Sunset Provision: No.



Okla. Stat. Ann. title 15, § 751 et seq.

Applicability: (Under state Unfair and Deceptive Acts and Practices (UDAP) statute) Fixing, replacing, altering, converting, modernizing, improving addition to any real property primarily designed or used as a residence (single- or multiple-family dwelling, including single-family home, apartment building, condominium, duplex or townhouse).

Enforcement Agency: Attorney General.

Exemptions: Original construction of residences; sale, installation, cleaning or repair of carpets; sale of goods/materials by merchant who does not perform any work in connection with installation; repair, installation, or replacement of home appliance or landscaping.

Prohibited Acts: Constitutes home repair fraud to knowingly, or with reason to know, misrepresent material fact; create or confirm a false impression; promise performance with no intention of performing; use deception, false pretense to induce or solicit consumer; require payment for repair at unreasonable price; damage person's property with intent to enter into consumer transaction for home repair; misrepresent self to be government employee or agent with intent to cause person to enter into home repair contract.

Enforcement Actions: Violation of act constitutes unlawful business practice and is subject to state Consumer Protection Act. Attorney General may obtain declaratory judgment that act violates statute, obtain an injunction, recover actual damages and penalties on behalf of consumer, recover expenses and investigation fees, or accept a consent judgment (which may include stipulation for restitution to consumers). Consumer may bring action for actual damages, costs, and attorney's fees. If act is found unconscionable, consumer can recover penalty in an individual action of up to \$2,000 for each violation. Court takes circumstances into account to determine unconscionability. If court finds claim or defense asserted in bad faith, losing party reimburses winner up to \$10,000 for costs and fees. Court imposes civil penalty of up to \$10,000 for a violation of the statute or willful violation of any injunction or court order (Attorney General petitions for recover of civil penalties). Additional penalties are also provided in statute for persons convicted of violating the statute in a criminal proceeding.

Sunset Provision: No.

Or. Rev. Stat. § 701.005 et seq. Or. Admin. R. 812-02-000 et seq.

Applicability: Residential-only contractors defined as a general contractor or specialty contractor who works exclusively on residential structures and their appurtenances, including an owner who builds or pays someone to build a residence with the intent of selling it; person engaged in commercial harvest of forest products as independent contractor (except landscape contractor, nurseryman, gardener, or person involved in commercial harvest of forest products). Residential structures include site-built homes, modular homes constructed off-site, floating homes, condominiums and manufactured dwellings, duplexes or multi-unit residential buildings of four (4) units or less.

General contractors are contractors who engage in business which uses more than two (2) unrelated building trades or crafts that contractor supervises or performs, whenever the sum of all contracts on any single property exceeds \$2,500. Specialty contractors are contractors whose operations do not fall within definition of general contractor.

Enforcement Agency: Construction Contractors Board.

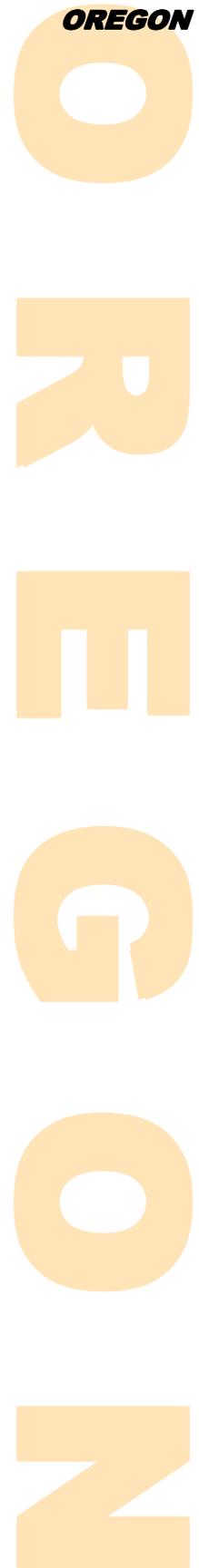
Composition of Board: Nine (9) members appointed by Governor, subject to Senate confirmation. Three (3) members are contractors who primarily work on residential structures; two (2) are general contractors who work on nonresidential structures; two (2) are public members; one (1) is an elected representative of local government body; and one (1) is a specialty contractor who works on nonresidential structures or is a limited contractor. Terms are four (4) years at pleasure of the Governor, and members can be reappointed. The six (6) contractor members must maintain their registration in good order. Board appoints advisory Board called Construction Contractors' Training Board, which assists in development of education standards.

Licensing/Registration: Registration. Must register with Board in order to work/bid for work as a contractor. Application includes basic information, plus list of unsatisfied judgments from bond claims and litigation. Certificate of registration valid for two (2) or four (4) years, at discretion of registrant. Renewal procedure same as application procedure. Registration fees determined by the Board.

Exemptions: Person who is constructing, altering, improving, or repairing personal property or a structure within federal government jurisdiction; person who furnishes materials but does not make them into finished product or consume them as a contractor; person whose aggregate contracts are less than \$500 and whose work is of casual, minor, or inconsequential nature; owner who contracts for work to be performed by registered contractor; owner working on own property or person working as owner's employee or person working on own residence (does not apply where work is done in pursuit of independent business); licensed architects, engineers, manufacturers of manufactured homes, well water contractors, among other licensed members of certain trades/professions; commercial lending institution or surety company; real estate licensee; and most units of government.

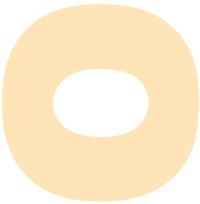
Permits: Building permits are not to be issued to anyone without a current, valid certificate of registration.

Bond and Insurance Requirement: Must file with Board a surety bond: general contractor must obtain bond of \$10,000; for speciality contractor, \$5,000. Board may





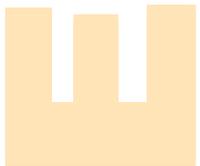
reduce amount to \$2,000 upon showing that contractor does not perform work exceeding \$30,000 gross annual volume. Bond is for exclusive purpose of payment of final orders and arbitration awards of the Board; registration may be suspended if bond is inadequate to pay claim; contractor may then be required to file bond of up to five (5) times the ordinary amount. Residential contractor must have minimum of \$100,000 in public liability, personal injury, and property damage insurance coverage. General contractor and speciality contractor must have minimum of \$500,000 in public liability and property damage insurance.



Required Acts: Contractor must deliver a summary of the contractor statute (prepared by the Board) to the owner when beginning work on a residential structure. For jobs over \$2,500, contractor must have a written contract. If price increases to more than \$2,500 in middle of job, contractor must provide owner with a written contract within five (5) days.



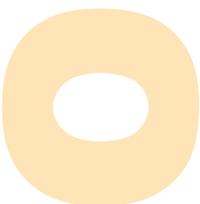
Prohibited Acts: Failing to pay in full any final judgment on claims decided by Board or a court; knowingly providing false information to Board; working without required permit that results in claim being filed with Board; exceeding specified limits when multiple registered contractors are working together on same; violating any rule or order of Board; knowingly assisting unregistered persons to violate statute; filing lien because registrant/applicant failed to perform a contractual duty to person claiming lien; perfecting a claim of a construction lien or bringing a claim with Board, in arbitration, or in any court for compensation or for breach of contract unless contractor held a valid registration (with certain exceptions); hiring employees while registered as exempt; lacking surety bond and required insurance; performing dishonest or fraudulent conduct.



Enforcement Actions: Any person who suffers costs or damages may bring suit in court as a result of contractor providing false or misleading information with respect to registration. Court may award reasonable attorney's fees to prevailing party. Board may suspend, revoke, or refuse to issue a certificate of registration for prohibited acts. A schedule of fines for prohibited acts is provided in regulations. Enforcement actions generally occur after notice and a hearing, except where administrator of Board finds serious danger to public welfare. Board may ask Attorney General or District Attorney to apply for an injunction. Board has power to investigate activities of contractors, administer oaths, issue notices and subpoenas, compel attendance of witnesses and production of evidence. Board may order work to stop immediately if contractor not licensed. Board appoints three (3) members to serve on an appeal committee, one of whom is a residential contractor; committee hears appeals on proposed orders and on petitions for reconsideration and rehearing and motions for stays that were appealed to the Board as proposed orders. Parties have right to appeal decision to the Court of Appeals. Board and State Police have an interagency agreement to address fraud in construction industry by coordinating investigations and information.



Claims: Board hears claims for negligent work, improper work, and breach of contract. Board may refuse to accept certain claims (same facts and issues involved have been submitted to a court, or claimant does not permit contractor to be present at inspection made by Board, for example); claims must be filed in a timely manner. Board must generally receive claim not later than one (1) year after claim accrues (statute provides limitations period for several scenarios). Board investigates claim and may recommend that registrant take action to compensate claimant. Determinations and judgments resulting from residential owners' claims have payment priority over all other types of claims to full extent of bond. Statute provides order of priority for other claims. Contractor waives ability to arbitrate claim if it fails to initiate arbitration within thirty (30) days after Board notifies it of claim.



Sunset Provision: No.

Pa. Stat. Ann. title 73, § 500-101 et seq. Pa. Stat. Ann. title 73, § 501 et seq.

PENNSYLVANIA

Applicability: Home improvement contracts where cash price is greater than \$300, buyer takes out a loan, or contract is paid back in installments. Contractor and subcontractor payment statute applies to improvements to real property except units under construction simultaneously (six or fewer only).

Enforcement Agency: Attorney General.

Exemptions: Real property for commercial or business purpose; sale of goods where seller does not directly or indirectly install the goods; appliances that are freestanding and not permanently affixed to structure; loan is contracted for or obtained directly by buyer from lending institution; loan is insured pursuant to national housing legislation. Owner performing own work is exempt from contractor payment act.

Required Contract Provisions: Words “home improvement installment contract” at top of contract or above signature of buyer in at least 10-point type; notice (including provisions as specified in statute such as buyer may rescind contract, buyer has the right to pay off full amount due) in at least 8-point bold type; certain basic information about contractor; location of premises to be improved (as required in Truth in Lending disclosures); notice provided in statute when contract not payable in equal installments. Contract must contain entire agreement, be in writing, dated, and be in at least 8-point type.

Prohibited Contract Provisions: Provisions stating that buyer agrees not to assert claim or defense arising out of the sale; in absence of buyer’s default, holder may without reasonable cause accelerate maturity of any part or all of amount owing; buyer relieves contractor from liability for any legal remedies that buyer may have against contractor under contract or other instrument; contractor authorized to enter premises unlawfully; seller entitled to liquidated damages which exceed ten (10) percent of cash price in contract; buyer waives right of action against contractor for illegal act committed in collection of payments.

Required Acts: Must deliver installment contract to buyer; when contract is assigned, must deliver a certain notice of assignment to buyer in at least 8-point type.

Enforcement Actions: Willful violation of the statute is a misdemeanor and results in maximum \$500 fine for first offense; for each subsequent offense, a fine and/or imprisonment of one year. Attorney General or District Attorneys may seek an injunction; violation of injunction results in maximum \$1,000 civil penalty.

Sunset Provision: No.

PENNSYLVANIA

P.R. Laws Ann. title 33, § 4306; § 4306a.

Applicability: Entrepreneur, engineer, architect, or contractor of any work or structure.

Prohibited Acts: Failing to comply with or violating obligation to finish the work with intent to commit fraud after receiving partial or full payment to execute contracted job. Committing fraud or deceit by not following duly approved plans or quality of materials agreed upon.

Enforcement Actions: For first prohibited act, a maximum of six (6) months in prison or \$500 fine or both if cost of contract and unfinished work are less than \$200. If more than \$200, contractor shall be punished for fixed term of two (2) years; if aggravating circumstances, the term is maximum of three (3) years; if extenuating circumstances, reduced to minimum of one year. For juridical person, if cost exceeds \$200, a minimum fine of \$5,000 is imposed, and person is suspended. Court shall order convicted person to indemnify injured party for double amount received as partial or full payment to undertake contracted work.

For second prohibited act, a maximum of six months in prison or \$500 fine, but if harm is caused to person/property, prison term is fixed at three (3) years. In case of aggravating circumstances, a maximum of five (5) years in prison. If there are extenuating circumstances, term may be reduced to minimum of two (2) years. Court has discretion to impose a maximum fine of \$5,000 and/or the penalty of restitution.

Sunset Provision: No.

Applicability: Contractor defined as person who constructs, alters, repairs, improves a structure and its appurtenances. It includes a person who purchases or owns property and constructs or for compensation arranges for construction of one or more structures. Structures are defined as residences, including condominiums, mobile homes, and duplex or multi-unit residential building of four (4) dwelling units or less.

Enforcement Agency: Contractors' Registration Board.

Composition of Board: Seven (7) members are appointed, four (4) of whom are contractors. One member is a current member of the building codes standards committee and designated by the state Building Commissioner. The Governor appoints three (3) members for three-year terms and three (3) members for two-year terms. Contractor Board members must maintain their registration in good order. Executive Director is member of classified service on state Building Commissioner staff and directs conduct of investigations.

Licensing/Registration: Registration. Required to have current, valid certificate of registration in order to do work or submit a bid to do work as a contractor on a structure. A certificate of registration is issued to only one person. A partnership, corporation, or joint venture must be registered for contracting work. In issuing building permits, local governments must require contractors to file written statement confirming they are registered or listing the basis for an exemption. Certain subcontractors who are not employees of a registered contractor must obtain a registration certificate prior to conducting any work, including carpenters, siding installers, roofers, and masons. Contractor must be registered in order to file a lien; file a claim with the Board; or bring a lawsuit for performance of work or breach of contract. Fee for registration/renewal is \$60; contractor must submit application with certain information; must notify Board of any change in address. Registration valid for one year and may be renewed upon application. All fees collected by Board go to general revenues. Late registration fee is \$25.

Exemptions: Person constructing, altering, improving, or repairing his or her own personal property or a structure within boundaries of any site or reservation under federal government jurisdiction; supplier, furnisher of materials; person working on one structure or project when price of all that person's contracts for labor, materials, and all other items is less than \$500 and work is of casual, minor, or inconsequential nature. This does not apply to person who advertises. Person who constructs for compensation with intent to sell structure or arranges to have structure sold before, upon, or after completion. Owner performing work on single-dwelling unit property, whether or not person occupies property; person performing work on own residence, whether or not he or she own the residence. No exemption for person performing work on structure he or she owns if it is performed in pursuit of independent business with intent of offering it for sale before, upon, or after completion; employee of contractor; manufacturer of mobile home constructed under federal government standards; person involved in movement of modular buildings not larger than fourteen (14) feet in width or not bigger than sixteen (16) feet in width when being moved by owner if owner not required to be registered contractor. Any person or business licensed by state employing licensed trade persons under certain statutes.

Insurance: Public liability and property damage insurance of at least \$300,000 is required; failure to maintain insurance invalidates registration and may result in a fine.

Required Contract Provisions: All written contracts between contractor and property owner must contain statement that the contractor, subcontractors, or material persons may file a lien under the Rhode Island Mechanics Lien Act. Failure to provide notice to homeowners of construction liens is subject to a fine of \$1,000.

Required Acts: Contractors must maintain a list with certain information about all subcontractors or other contractors performing work for them, including names, addresses, registration numbers, notice of right of rescission as stipulated in Rhode Island consumer protection laws, insurance information. There is a fine of \$25 for failure to deliver list to Board within twenty-four (24) hours of request.

Enforcement Actions: After notice and a hearing, Board may revoke, suspend, or refuse to issue, reinstate, or reissue a registration for certain violations of code, including knowing assistance of an unregistered person to violate the act; failure to have valid registration or the required insurance; dishonest or fraudulent conduct; violation of rule or order of Board; knowing and willful violation of state or local building codes; false or fraudulent statements on application. Board may impose fine up to \$500 for first violation and up to \$1,000 for second violation. Hearing officer has option to require contractor to attend continuing education course. There is a \$1,000 penalty for using another registrant's number or for making modifications to registration card. Board may ask Attorney General to apply for an injunction; has power to administer oaths, issue notices and subpoenas, and compel attendance of witnesses and production of evidence. Violation of a final order of Board or failure to register as a contractor is a misdemeanor punishable by maximum one year in prison and maximum fine of \$1,000.

Claims: Regulations list types of claims that Board considers for possible damages against contractors, including claims by owner for negligent or improper work and breach of contract, and claims to discharge or recoup funds expended in discharging a lien under certain circumstances. In addition, Board may hear claims against contractor by another contractor or by an employee of a contractor. Person with claim against contractor may file statement of the claim with the Board; all such claims are heard by designated hearing officer; however, if lawsuit is filed by either party in state court, Board must discontinue processing the claim. Other grounds upon which the Board may refuse to accept or continue processing a claim include: same facts and issues in claim have been submitted to another entity for resolution and settlement; claimant does not permit contractor to be present at any inspection made by the Board; after Board determines that contractor is capable of compliance, claimant does not permit contractor to comply with the recommendations; or Board determines that court is proper forum due to nature/complexity of claim. If contract has an arbitration provision, both parties must waive arbitration for Board to hear the claim. Neither party can file a claim for damages after going through arbitration.

Claimants may seek monetary damages if the claim has not been disposed of and/or dismissed, the claimant or contractor does not agree with the settlement proposed by the Board, or the contractor does not fulfill the settlement terms and the claimant notifies the Board. No monetary damages are awarded if either party refuses to waive the right to a trial by jury. The regulations provide the procedure

for claimants to follow when seeking monetary damages. For example, claimants must submit substantiating evidence and can only seek payment for items on their claim form. The Board may set an administrative hearing to mediate the facts and alleged amount due. No monetary award for attorney fees, interest, or other administrative costs, except by court order or explicit contract language. The claim is dismissed if the claimant fails to appear at the hearing or if the contractor fails to show a default order is issued based on the claimant's presentation of a *prima facie* case. The hearing officer issues a proposed order, and the Board issues the final order.

The Board only processes claims that satisfy requirements regarding when the Board receives the claim. The following time limits are among the requirements: for new structure, one (1) year from later of date occupied or date of closing on structure; for existing structure, one (1) year from date work substantially completed on an existing structure or date work stopped. When owner files claim because contractor failed to begin the work pursuant to a written contract, the Board must receive the claim not later than one (1) year after date parties entered into the contract. If owner files claim because contractor failed to substantially complete the work, the Board must receive claim not later than one (1) year after date contractor ceased work.

Board gives notice to party against whom claim is made and investigates validity of the claim. Board recommends appropriate action, including revocation or suspension of registrant's certificate. A contractor's registration is suspended for one (1) year if the Board finds a willful and knowing violation of any provision with respect to three (3) or more structures in one year.

All contested claims, enforcement proceedings, and administrative fines are heard in accordance with the Administrative Procedures Act. The Board hears appeals from decisions of the hearing officer, and has the authority to impose a \$20 fee. The Executive Director of the Board is authorized to resolve contested proceedings through informal disposition.

Sunset Provision: No.

S.C. Code Ann § 40-59-10 et seq.; S.C. Code Regs. 106-1 et seq.

Applicability: Repair, improvement, or reimprovement of building used by another person as a residence when the cost exceeds \$5,000. "Residential builder" who constructs a residential building or structure for sale or who undertakes the construction or superintending of any building not over three (3) floors in height and has no more than sixteen (16) units in apartment complex. "Residential specialty contractor" who is an independent contractor (not a licensed residential builder) who contracts with a licensed residential builder, general contractor, or individual property owner to do construction work, repairs, improvement, or reimprovement that requires special skills and use of specialized construction trades or craft. Applies to undertakings of \$200 or more; limited to plumbers, electricians, heating and air conditioning installers and repairers, vinyl and aluminum siding installers, insulation installers, roofers, floor covering installers, masons, drywall installers, carpenters, wall paperers, and painters.

Enforcement Agency: Residential Builders' Commission. (Statute also enforced by Director of Department of Labor, Licensing, and Regulation.)

Composition of Commission: Commission is composed of seven (7) people: two (2) consumers, four (4) residential builders, and one (1) specialty residential contractor. One (1) member is appointed from each congressional district, and one (1) is appointed from the state at large. Governor appoints Commission with advice and consent of Senate. Terms are four (4) years. Commission promulgates rules/regulations and files an annual report with Governor and General Assembly.

Licensing/Registration: Both.

Licensing. Residential builders must pay examination fee and annual license fee, provide an executed bond with a surety for \$15,000 or proof of financial responsibility. License is renewed upon submission of renewal application, proof of responsibility or bond, and payment of annual license fee (See regulations for fees.) Commission examines the experience, ability, character, financial condition, equipment, and ability and willingness to protect public health and safety of applicants.

Registration. Residential specialty contractors must register with Commission and pay annual registration fee. If cost of a job for an individual owner exceeds \$5,000, residential specialty contractor must obtain executed bond of \$15,000 with surety approved by Commission. Registration must also be renewed annually. A schedule of all fees is contained in regulations.

Exemptions: Any person licensed as a general contractor; agricultural buildings or buildings used for agricultural purposes or buildings constructed as a community effort.

Prohibited Acts: Fraud or deceit in obtaining a license or in registering. Gross negligence, incompetence, or misconduct; failure to obtain or maintain a valid license/registration.

List of Licensees: All names and places of business of builders and specialty contractors are prepared annually by Commission and filed with clerks of the county courts.

Permits: Permits to do a job will not be issued to unlicensed builders. Permit officials must report violations to the Board.

Enforcement Actions: Commission hears charges against contractor within three (3) months of date complaint was filed. Contractor may cross-examine witnesses and produce evidence at hearing. Commission may revoke, suspend, or restrict license/registration for prohibited acts. All appeals are governed by state Administrative Procedures Act. Director of Department of Labor, Licensing, and Regulation has authority to order contractor to cease and desist any activities in violation of code or regulation. Director may also apply through Attorney General for an injunction. Civil penalties provided for up to \$2,000. Criminal penalties are provided for in statute: Operating without a license, or registration, or filing false information is subject to a minimum fine of \$100 or thirty (30) days in prison.

Sunset Provision: No

SOUTH DAKOTA

No statute or regulations found.

SOUTH CAROLINA,
SOUTH DAKOTA

TENNESSEE

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Tenn. Code Ann. § 62-37-101 et seq. Tenn. Comp. R. & Regs. § 0765-1 et seq.

Applicability: Persons engaged in home improvement business, defined as repair of, replacement of, remodeling of, alteration of, conversion of, modernization of, improvement, or addition to any land or building used or designed to be used as a residence or dwelling unit for one to four (1-4) dwelling units, including the construction, replacement, or improvement of driveways, swimming pools, porches, garages, landscaping, fences, fall-out shelters, roofing, painting, and other improvements to structures or upon land adjacent to a dwelling house for one to four (1-4) units. Includes installation of central heating or air-conditioning systems, storm windows or awnings without regard to affixation.

Enforcement Agency: Home Improvement Commission, a subdivision of Board for Licensing Contractors.

Composition of Commission: Six members appointed by Governor: four (4) home improvement contractors and two (2) members of the public. Terms are four (4) years.

Licensing/Registration: Licensing. Submit written application that includes record of previous experience, evidence of worker's compensation coverage or copy of insurance policy, information regarding any judgments that have been rendered against applicant and pending litigation. Commission may require information on character, experience, and financial stability. License expires after twelve (12) months and may be annually renewed. Examination fee is \$25, license fee is \$150, and renewal fee is \$100, as provided in regulations. Licenses are assignable according to conditions in statute.

Exemptions: Construction of a new home or work done by contractor in compliance with guarantee of completion of a new building project; any home improvement of \$3,000 or less; seller who does not directly or indirectly do any work in connection with installation or application of goods, provided not involving alterations to structure of building, its plumbing or its wiring; replacement, installation, or connection of plumbing lines that require alteration of existing lines; replacement, installation, and connection of dishwasher, disposals, refrigerators with icemakers to existing exposed household plumbing lines, or dryers. Interior design services. Individual who works for contractor or subcontractor for wages or salary. Licensed plumber, electrician, architect acting within the scope of the craft or profession; clerical or other employee of licensed contractor; residential or commercial contractor who holds valid license under Contractors Licensing Act; and a homeowner who does improvements on own property. Official transactions of U.S. government or any State or other political subdivision.

Bond Requirement: Applicants for license must file cash, surety, property bond, or irrevocable letter of credit for \$10,000 for benefit of person damaged by breach of home improvement contract who may sue directly on the bond. Liability of surety may not exceed in aggregate the amount of the bond and surety not responsible for completion of home improvement contract. Contractor's license becomes invalid if bond ceases to be in effect.

Required Contract Provisions: Notice above owner's signature regarding signing a blank contract; approximate dates work begins and will be substantially completed; agreed upon consideration; notice that all contractors must be licensed and that inquiries can be made to Commission; Also, contract must be legible, contain

complete agreement, full names and addresses of parties, date executed, description of work to be done. Must be completed in full after signed by owner.

Prohibited Contract Provisions: Power of attorney to confess judgment; authorizing employee or agent of contractor to change agreement on owner's behalf.

Prohibited Acts: Omitting material; misrepresenting fact on application for license; failing to furnish information on application; consistently failing to perform contracts, manipulating accounts, engaging in fraud or bad faith; transacting/offering to transact any home improvement business without a valid license; abandoning or willfully failing to perform; willfully deviating or disregarding plans/specifications without owner's consent; substantial misrepresenting in procurement of contract; making false promise of character likely to influence, persuade, or induce; executing fraudulent or altered contract, mortgage, promissory note; accepting or preparing a mortgage or note, knowing it provides a greater obligation than agreed consideration; willfully disregarding and violating building, sanitary, and health laws, labor or worker's compensation laws; failing to notify commission of change in ownership, management, or business name; conducting business in a different name than on license; failing to comply with order or requirement of Commission; demanding or receiving payments prior to signing contract; receiving a deposit of more than one-third (1/3) the contract price; failing to obtain necessary permits; accepting or receiving a false completion certificate with knowledge of its falsity or using of such a document.

Guaranty fund: Fund was terminated. New claims were not allowed to be filed as of May 22, 1992.

Enforcement Actions: Commission may refuse to issue or renew and may revoke or suspend license for prohibited acts. Director of Commission may issue citation for acting without a license, including a civil penalty of between \$50 and \$250. Citations may be appealed. Maximum penalty of \$1,000 against person who engages in unlicensed contracting. Commission may assess maximum civil penalty of \$500 for other prohibited acts and consider seriousness of violation and good faith. Commission also has power to seek an injunction. State Administrative Procedures Act governs the hearing and judicial review of any contested case.

Certain violations of statute, for example, conducting home improvement business with no license or license suspended or revoked, constitute Class A misdemeanors. Each violation deemed a separate offense.

Sunset Provision: No.





Tex. Prop. Code Ann. § 27.001 et seq. Tex. Prop. Code Ann. § 41.001 et seq. Tex. Prop. Code Ann. § 162.001 et seq. Tex. Prop. Code Ann. § 53.001 et seq. Tex. Bus. & Com. Code Ann. § 17.01 et seq.

Applicability: Residential construction liability act covers person contracting with an owner for an alteration of or addition to an existing residence; repair of a new or existing residence; construction, sale of, or alteration of, addition to, or repair of an appurtenance to a new or existing residence. Residence defined as single-family house, duplex, triplex, or quadruplex, or unit in multi-unit residential structure under a condominium or cooperative system; act also applies to actions to recover damages from construction defect except claim for personal injury, survival, wrongful death, or damage to goods. Construction payments are trust funds where made to contractor or subcontractor under construction contract for improvement of specific real property. Loan receipts are trust funds where borrowed by owner for improving specific real property and secured by a lien on property.

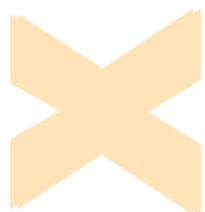
Exemption From Liability: Contractor not liable for any percentage of damages caused by negligence of person other than contractor or an agent, employee, or subcontractor of the contractor. Failure of person other than contractor (or others such as agent) to mitigate damages; normal wear and tear; normal shrinkage; contractor's reliance on written information that was obtained from official government records. These limitations on damages and defenses to liability will not apply if contractor fails to make a reasonable settlement offer, or a reasonable attempt to complete repairs in an accepted offer or to complete repairs.

Required Contract Provisions: Notice in at least 10-point bold type with certain language as provided in statute (§ 41.007). As specified in statute (§ 53.255) the original contractor must provide certain disclosures to the owner before a residential construction contract is executed, including statements advising the owner to know his or her rights, know the contractor, get the contract in writing, read before signing, get a list of subcontractors and suppliers, monitor the work, monitor payments, and obtain title insurance protection.

Prohibited Acts: Cause or permit use of advertising or solicitation that is untrue or misleading; misapplication of trust funds.

Enforcement Actions: In a private suit, claimant may only recover the following damages proximately caused by construction defect: reasonable costs of repairs necessary to cure any construction defect; reasonable expenses of temporary housing during repair period; reduction of market value due to structural failure; and reasonable and necessary attorney's fees. The total damages awarded may not exceed the claimant's purchase price for the residence. Where defect creates an imminent threat to health or safety, or residents and contractor have received a written notice of construction defect, contractor must take steps to cure defect as soon as practicable. If contractor fails to cure in reasonable time, owner may recover reasonable cost of repairs, other damages recoverable under any law, plus attorney's fees and costs.

Failure to include notice contained in § 41.007 is Unfair and Deceptive Acts and Practices (UDAP) act violation, and consumer can sue where it produces economic damages or mental anguish; treble damages available. For misapplication of trust funds of \$500 or more, a Class A misdemeanor; for funds of \$500 or more with intent to defraud, a felony in third degree.



Notice and Offer of Settlement: Sixty (60) days before filing suit for damages arising from a construction defect, claimant must send written notice to contractor specifying construction defects that are subject of complaint. During thirty-five (35) day period after receiving notice, contractor has reasonable opportunity to inspect property to determine nature of defect and extent of repairs necessary to remedy defect. Contractor has forty-five (45) days after receiving notice to make written settlement offer to claimant. If claimant accepts offer, contractor has forty-five (45) days to make repairs or have them made by independent contractor. However, if statute of limitations is about to expire or complaint is asserted as a counterclaim, consumer not required to give notice before filing suit. If consumer unreasonably rejects an offer or does not permit reasonable opportunity to repair defect, consumer may not recover in excess of cost of repairs to cure defect and may only recover attorney's fees and costs incurred before offer was rejected.

Warranties: Residential Construction Liability statute does not create an implied warranty.

Sunset Provision: No.



UTAH



Utah Code Ann. §14-2-1 et seq.

Applicability: Contracts for construction, alteration, repair, or improvement of structures or land between owner and another person.

Exemptions: Contracts less than \$2,000; authorized representative of federal, state, or local government; person engaged in irrigation, drainage ditches, farming, coal mining, well drilling, and lumbering; regulated public utility; sole owners building structures on own property for noncommercial use or an employee or volunteer of the owner; person engaged in sale of personal property that by design must be attached and who contracts with a licensed contractor; contractor submitting a bid on a federal highway project so long as before construction started license is obtained; a person engaged in repair, remodeling or improvement of a building with an agreed value of less than \$1,000, including both labor and material and all changes or addition to the agreed-upon work (however, electrical and plumbing work must be performed only by licensed contractor, regardless of value of work); owners and lessees of property and their employees for the purpose of maintaining property; a person installing a water conditioner.

Licensing/Registration: Licensing. Contractors, including general, electrical, engineering, plumbing, and apprentices, are all required to obtain licensing before engaging in trade. Contractors include any persons who build on own property for purpose of sale or builds a structure for public use, who represent themselves as contractors, engage as maintenance persons, or engage in construction trade. License issued after examination passed, fee paid, satisfactory evidence of financial responsibility (evidencing a reasonable expectation that applicants successfully engage in business as contractors without jeopardy to public health, safety, and welfare, based on past, present, and expected conditions and business conduct), and satisfactory evidence of knowledge and experience in construction industry, knowledge of principles of conduct of business as contractors reasonably necessary for the protection of the public health, safety, and welfare, and adequate and required insurance. Business entities obtaining license must meet same requirements and have an individual “qualifier,” who must comply with all requirements.

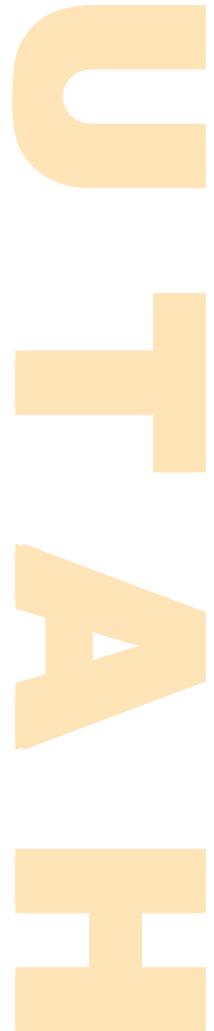
Licensing division establishes maximum value of work that each licensee is allowed to engage in, based on financial statements and qualifications; special requirements when working for state or local government.

Prohibited Acts: Engaging in work for which licensing is required without a license; acting beyond the scope of license, applying for or obtaining a building permit when not licensed; failing to obtain a building permit when required to do so; willfully misrepresenting a material fact in connection with obtaining a license; doing business under a name other than name that appears on the license; receiving funds for work performed without paying the subcontractors; willfully disregarding the building laws or the health, safety, or labor laws; failing to establish or maintain financial responsibility while licensed as a contractor; disregarding or violating through a pattern of negligence the building, safety, health, or labor laws of state; performing any willful, fraudulent, or deceitful acts that cause material injury to another; performing any contract violations that pose a threat to public health or safety; willfully misrepresenting material fact in connection with an application to claim recovery from the Residence Lien Recovery Fund.

Enforcement: Penalties range from infraction, misdemeanor, or felony, a prohibition against accepting contracts; suspension of license, fines, cease and desist orders.

Enforceability of Contract if Unlicensed: A contractor may not bring an action in court for collection of compensation for performing an act for which a license is required without proving that he or she was properly licensed when the contract was entered into and the work was performed.

Sunset Provision: No.



VERMONT

T N O M R E V

Vermont Stat. Ann., title, § 4001 et seq.

Applicability: Any contract for work or the provision of materials for building, repair work, improvement on or beneath the surface of real property, including excavation, roadways, sewage systems, and landscaping to which an owner of the real estate agrees.

Essential Requirements: Governs payment obligations between owner, contractor, and subcontractor. Requires payment in accordance with contract; if no terms regarding payment, payment should be based on invoices submitted by contractor. Unless otherwise agreed, payments due twenty (20) days after billing. Contractor required to pay subcontractor essentially along same terms as owner required to pay contractor. Any sums retained on the contract must be paid within thirty (30) days after acceptance. Prepayments allowed.

Enforcement: Owners and contractors allowed to withhold payment equaling value of claims for unsatisfactory or defective work. However, a finding of failure to comply with payment terms entitles contractor to damages plus a penalty of one (1) percent per month of all sums to which payment was wrongfully withheld. Prevailing party entitled to expenses and reasonable attorney's fees.

Sunset Provision: No.

V.I. Code Ann. title 27, §301 et seq.

Applicability: Every person wishing to engage in the business of “construction contractor” (not defined in statute) and a comprehensive list of other trades and professions (general business licensing statute).

Enforcement Agency: Commissioner of Licensing and Consumer Affairs.

Licensing/Registration: Licensing. Commissioner issues license and collects fees. Contractor must furnish information concerning identity, personal history, experience, business record, purposes, record of any conviction of any offense that is a felony or crime involving moral turpitude, and other pertinent facts Commissioner may require. Commissioner may deny license due to moral character or previous misconduct. Commissioner shall not issue or renew a license to any person who does not present an affidavit signed by authorized Virgin Islands revenue officer affirming that applicant has filed and paid all taxes, penalties, and interest applicable to business.

Exemptions: Agencies of the Virgin Islands or U.S. government; religious, charitable, benevolent, or educational organizations when not engaged in conduct of business pursuits for profit; transactions involving a charitable or benevolent purpose.

Prohibited Acts: Using any subterfuge, fraud, deceit, or misrepresentation to obtain a license. Allowing improper or wrongful behavior of a substantial character and public concern on the licensed place of business. Falsely claiming exemption from any excise tax, gross receipts tax, or customs duty. Failing to file and pay all taxes, penalties, and interest due to the Bureau of Internal Revenue.

Enforcement Actions: Commissioner, after notice and hearing, may refuse to issue or may revoke or suspend a license for prohibited acts. Applicant may produce witnesses and evidence in own behalf, cross-examine witnesses, and examine such evidence as may be produced; may apply to Commissioner for issuance of subpoenas to compel witnesses to attend hearing. Commissioner may issue subpoenas, administer oaths, take testimony, and receive exhibits in evidence. Commissioner may assess an administrative fine of not more than 25 percent per month of the license fee against persons who have willfully failed or refused to comply with the statute.

Willful failure or refusal to comply with statute is a misdemeanor and results in maximum \$500 fine and/or maximum thirty (30) days in prison. Attorney General may bring action to enjoin any person from engaging in business without a license.

Sunset Provision: No.

Va. Code Ann. § 54.1-1100 et seq. 18 Va. Admin. Code 50-10-10 et seq.

Applicability: Contractor defined as person who bids on/contracts to perform, manage, or superintend the construction, removal, repair, or improvement of structure permanently annexed to real property owned, controlled, or leased by another person, or any other improvements to such real property. Three classes of contractors: Class A contractors (\$70,000 total value for single contracts/projects or a total value of \$500,000 for all work in any twelve (12) month period); Class B contractors (\$7,500-\$70,000 for single contracts/projects or a total value of \$150,000-\$500,000 for all work in any twelve (12) month period; Class C contractors (\$1,000-\$7,500 total value for single contracts/projects or a total not exceeding \$150,000 in any twelve (12) month period). Owner-developers who perform or supervise work on a structure owned, controlled, or leased by the owner, where either total value of all improvements to single parcel is \$70,000 or more or total value of all improvements in any twelve (12) month period is \$500,000 or more. Exceptions are made for a person who performs/supervises work of only one building for his own use in a twenty-four (24) month period; a house that is a gift to a family member; industrial or manufacturing facilities for own use; or a person who contracts with licensed Class A contractor classified as building contractor.

Enforcement Agency: Board of Contractors; Department of Professional and Occupational Regulation.

Composition of Board: Thirteen members: two (2) citizens; one (1) licensed Class A general contractor; one (1) member whose business involves construction of utilities; one (1) member in construction of commercial and industrial buildings; one (1) member in construction of single-family residences; one (1) member in the business of the construction of home improvements; one (1) subcontractor; one (1) member who sells construction materials and supplies; one (1) local building official; one (1) licensed plumbing contractor; one (1) licensed electrical contractor; one (1) licensed heating ventilation and air conditioning contractor. Terms are four (4) years. Board meets four (4) times per year and at other times as necessary.

Licensing/Registration: Licensing. License is necessary to work as contractor or operate as owner-developer. Statute provides application requirements for each class of license. Basic requirements include filing a written application and paying a fee. The Board looks into past performance, and applicants must take an oral or written examination. Regulation provides for a speciality license for home improvement contracting, defined as repairs/improvements to one- and two-family residential buildings or structures.

Exemptions: Governmental agencies, U.S. armed services, work for U.S. government on land under exclusive jurisdiction of federal government, work for Department of Transportation, and material supplier who gives advice on use of products sold and does not provide construction or installation services.

Contract Requirements: Regulations require all residential contractors (excluding subcontractors and those who engage in routine maintenance or service contracts) to include the following terms in written contracts: date work begins and estimated completion date; total cost of contract, amounts, and schedule for progress payments, including specific statement on amount of downpayment; list of specified materials and work to be performed; exculpatory clause in plain language concerning events beyond control of contractor; assurance that contractor will comply with all local requirements for building permits, inspections, and zoning; and disclosure

of cancellation rights of parties. For contracts resulting from door-to-door solicitation, a signed acknowledgment that consumer has read Department statement of protection; contractor's name, address, and other information. Any change to contract that changes cost, work performed, and time of completion must be in writing and signed by all parties.

Prohibited Acts: Working on/bidding upon work to be performed on another person's real property without license or certificate; using another person's license; giving false/forged evidence to Board in application or renewal of license or certificate; impersonating another contractor; using expired or revoked license or certificate; receiving or considering as awarding authority a bid from unlicensed person. Publishing advertisement related to contracting that contains false, deceptive, or misleading assertions. Gross negligence, misconduct, a court finding of improper or dishonest conduct, and failure to use a legible written contract in residential contracting. Failure to deliver a copy of the contract to the consumer before work starts; abandonment, intentional failure to complete work, retention/application of funds paid, and misrepresentation or false promise that is likely to influence or persuade.

Enforcement Actions: Any person may file complaint with Department. Department Director investigates complaints, and the Board takes disciplinary action, in accord with state Administrative Procedures Act (APA). Board may revoke or suspend license, or issue fine when contractors violate statute/regulation or cooperate with others who commit such a violation. In lawsuit, lack of licensure/certification is not a defense where the party seeking to recover gives substantial performance under contract and did not have actual knowledge of licensing requirements. Failure to renew license/certificate creates a rebuttable presumption of actual knowledge of requirements. Class 1 misdemeanor for committing certain prohibited acts.

List of Applicants: Director maintains a list of all applicants, indicating whether application was approved.

Recovery Fund: Only available to owner of residential property who is awarded a judgment against contractor where improper or dishonest conduct occurred. Certain conditions apply, including within twelve (12) months of judgment, owner must file verified claim with Director to obtain directive ordering payment from Fund of amount of judgment left unpaid; owner must serve copy of process upon Board, including an affidavit stating all dishonest or improper conduct, and send to Board copies of any pleading or document filed. Claimant must include certain statements in verified claim (such as claimant conduct regarding debtor's interrogatories to determine if debtor had assets, description of assets disclosed by interrogatories, all legally available actions taken for sale or application of disclosed assets, and balance due claimant after sale or application of such assets). If Board issues directive ordering payment from Fund to claimant, it notifies claimant in writing and issues its findings. Contractors pay a \$25 assessment, which goes into Fund at the time of application. If Fund balance goes below \$400,000, Board can assess additional fees against licensees. Failure to pay assessment can result in suspension of license. Owners may receive up to \$10,000, based on unpaid judgment in a single transaction, regardless of unpaid amount of judgment. For any one contractor, there is a \$20,000 aggregate limit for claims against the Fund based on unpaid judgments in a biennium (two-year period beginning July 1 of even-numbered years). Statute provides for a prorated distribution among claimants where aggregate of claims exceeds \$20,000 during a biennium and certain other conditions are



VIRGINIA

met. If Fund cannot wholly satisfy any claim or claims, Board will pay in order the claims were filed with Board. Claim against the Fund may include court costs and attorney fees (interest, punitive, or exemplary damages are excluded). Board immediately revokes license of regulant upon payment to a claimant from the Fund. Contractor is ineligible to apply for another license until the amount is repaid in full plus interest. However, full payment does not affect any disciplinary proceeding against contractor.

Sunset Provision: No.

Wash. Rev. Code Ann. § 18.27.010 et seq. Wash. Rev. Code Ann § 19.86 et seq. Wash. Admin. Code § 296-200 et seq.

WASHINGTON

Applicability: Undertake, offer to undertake, submit a bid to construct, alter, repair, add to, improve, move, wreck, or demolish for another person any building, highway, road, railroad, excavation, or other improvement, structure, project, or development attached to real estate, including carpet installation, erecting scaffolding, roofing or siding repairs, and employs members of more than one trade on single job, permit, or project.

Enforcement Agency: Department of Labor and Industries.

Exemptions: Owner who contracts for project with a registered contractor, person working on own property, any person working on own personal residence, except person who constructs improvement on own property with intention of selling it. Government representatives (federal, state, local), officers of a court, public utilities. Construction or repair incidental to producing or discovering petroleum or gas. Sale or installation of finished products, materials, merchandise not a fixed part of structure; personal property (except manufactured housing); construction, repair, or improvement on reservation /site under federal government jurisdiction. Person who only furnished materials without fabricating them or consuming them. Work where aggregate contract price is less than \$500 and of a casual, minor, or inconsequential nature, except where as part of larger operation. Construction or operation incidental to construction and repair of irrigation and drainage ditches of irrigation districts or reclamation districts. Licensed architect, civil or professional engineer, electrician, and plumber. Owners of commercial properties who use their own employees to do the work and employees of a registered contractor with wages as sole compensation.

Licensing/Registration: Registration. Certificate of registration valid for one year; must be renewed on or before expiration date. Fee is \$40. Applicants must submit information regarding their business/firm; type of contracting activity; evidence of workers' compensation coverage; industrial insurance account with number of employees domiciled in Washington. Application is denied if applicant has unsatisfied final judgment against him or her that was incurred during a previous registration.

Permits: May not be issued without verification that contractor is currently registered.

Bonding and Insurance Requirement: Applicants must file either a surety bond issued by surety insurer or a cash or other security deposit with Department. Cancellation or revocation of bond or withdrawal of the surety from the bond suspends the registration until a new bond or reinstatement notice has been filed and approved. Any person with claim against contractor may bring suit upon the bond or deposit in superior court. Surety shall be named as a party to any suit on bond. Surety not liable in aggregate amount in excess of amount named in bond nor for any monetary penalty assessed pursuant to statute. Statute provides order in which claims shall be satisfied from the bond. At time of registration/re-registration, applicant must provide insurance or financial responsibility in form of assigned account of \$20,000 for injury/damages to property; \$50,000 for injury/damage to any one person; \$100,000 for injury/damage to more than one person. Registration is suspended/denied for failing to maintain insurance or financial responsibility.

Required Contract Provisions: Certain notice contained in statute disclosing potential for lien against owner's property when work is for four (4) or fewer residential units and contract price/bid is \$1,000 or more.

Prohibited Acts: Advertising, offering restitution to do work, submitting a bid, performing any work without being registered, or while license is suspended or revoked. Advertising that contractor is bonded and insured because of the bond/insurance required in statute. Falsifying registration number and using it. Using expired registration number in connection with solicitation or identification as contractor. Using false or expired registration number in purchasing advertising, transferring valid registration to unregistered contractor, and allowing unregistered contractor to work under another contractor's registration. Improperly installing mobile home under certain provision in statute.

Enforcement Actions: Consumers who bring lawsuits against contractors must file in superior court. Any misdemeanor or infraction under statute constitutes violation of state Unfair and Deceptive Acts and Practices (UDAP) act. Under UDAP, if action brought within four (4) years, consumer may recover actual damages (treble damages up to \$10,000 available), costs of suit, and reasonable attorneys' fees. Civil penalties are also available. Attorney General may seek injunction.

Contractor statute that calls for strict enforcement of its provisions-doctrine of "substantial compliance" cannot be used by Department in its application and construction. Director appoints compliance inspectors to investigate violations. Department may issue notice of infraction; contractor must respond within twenty (20) days of issuance of notice, and administrative law judge makes final decision (penalties range from \$200-\$5,000). Infractions generally subject to penalty between \$200 and \$5,000; however, failure to register subject to penalty between \$1,000 and \$5,000 (certain exceptions). A schedule of monetary penalties is provided in regulations. Director may waive collection of a penalty in favor of restitution to consumer complainant. Director establishes a two (2) year audit/monitoring program for contractors who become registered after receiving an infraction or conviction. Director may issue citation ordering contractor to cease unlawful advertising. After hearing under state Administrative Procedures Act (APA), Director may levy maximum penalty of \$5,000 for violation of prohibited advertising section of statute. Director or authorized compliance inspector may issue an order immediately restraining further construction work when reasonably believes contractor failed to register. In addition, Director may petition the superior court to enjoin any activity in violation of the statute. Director also authorized to issue subpoenas. Certain prohibited acts are misdemeanors (working without license, for example).

Sunset Provision: No.

W. Va. Code § 21-11-1 et seq.; W. Va. State R. title 28 § 2-1 et seq.

WEST VIRGINIA

Applicability: Contractors who offer to and/or construct, alter, or repair any building, highway, or scaffolding where the cost of the undertaking is \$1,000 or more for the material and labor involved. Includes furnishing of work or both materials and work for another person. Does not apply to a person who merely furnishes materials or person who works on site owned or leased by that person or real estate agent or manager, appraiser, or architect or engineer whose primary purpose is to prepare construction plans.

Exemptions: When repair work is contracted for by the owner on an emergency basis (defined as an occurrence of an event that presents an imminent threat to persons or property constituting a serious health or safety hazard), work performed by an employer's employees for which employees are paid regular wages; work performed when specifications have been developed by registered professional engineers and because of its special nature, the work cannot reasonably be contracted for within the general area of the facility.

Licensing/Registration: Licensing. Specific written examinations must be passed for each kind of contractor, including general building contractor, residential contractor, specialty contractor, etc.

Enforcement Agency: West Virginia Contractor Licensing Board.

Enforcement Actions: Board may revoke, suspend, or impose limitations or conditions of licensee, as well as censure or reprimand the licensee. The Board must issue a cease and desist order against any person engaged in contracting business without a valid license; continuing to engage in contracting without a license is misdemeanor. A person who undertakes construction work without a valid license when the total cost of the contract is \$25,000 or more must be assessed a penalty of \$200 a day for each day in violation.

Sunset Provision: No.

WEST VIRGINIA

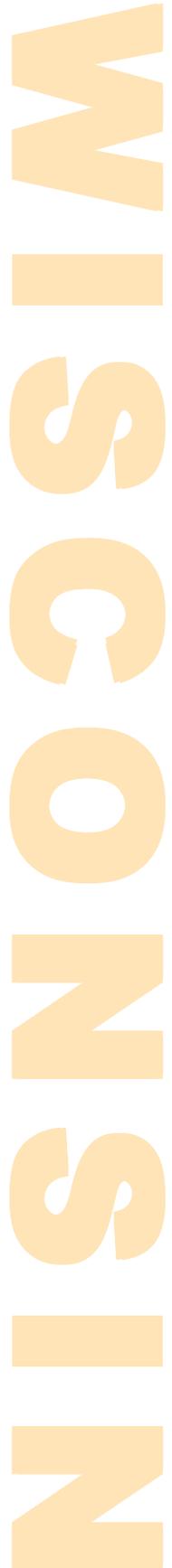
to be used, and price to be paid, including all finance charges. Due dates and time periods required. Description of security interest to be taken, along with warranties provided. Contract must be provided to buyer before work started, and information about insurance required. Before buyer enters a written contract, the seller must determine whether the buyer is able to read and understand the contract. If buyer is blind or unable to read, the contract must be read and explained to buyer by a third party designated by the buyer and having no connection with the seller. If language other than English is used in negotiations, the written contract must be in both English and other language. Liquidated damages for breach by buyer limited to ten (10) percent of contract price up to \$100. If a note is required, amount and terms of note must correspond exactly with those stated in oral or written contract.

Preservation of Buyer Claims and Defenses: Assignees of contracts take subject to claims and defenses. Waivers not permitted. Sellers required to use note that has notice on it. Regardless of notice, every holder of note executed in violation of section who knew, or should have known at time note was acquired, that home improvement contract was involved, takes subject to all claims and defenses of maker. Claims and defenses of buyer against assignee limited to total amount for which buyer was obligated when contract entered into.

Contract Cancellation: If seller fails to provide materials or services by contract deadline or fails to give notice of delay or fails to fulfill contract obligations in timely manner, then buyer can cancel contract, demand return of all payments not expended on home improvement, demand a written accounting. Written notice must be delivered to seller.

Penalties: Person who suffers monetary loss based on violation entitled to recover twice the amount of the loss, plus costs and reasonable attorney's fees. If violation is against older or disabled person, which causes one of specific financial losses, civil fine to state between \$100 and \$10,000 required.

Sunset Provision: No.



WYOMING



Wyo. Sta. § 6-3-608.

Applicability: Contractor or subcontractors.

Prohibited Acts: Contractors or subcontractors who purchase materials on credit and represent that they will be used in a designated building or improvement, and with intent to defraud the seller, uses the materials in a building or improvement other than the one designated (constitutes a misdemeanor). Contractor who receives money from owner and provides owner with affidavit that all materialmen and subcontractors have been paid with knowledge that they have not been paid (constitutes a felony).

Enforcement Actions: Misdemeanor punishable by maximum six (6) months in prison and/or maximum \$750 fine; felony punishable by maximum of five (5) years in penitentiary and/or \$10,000 fine.

Sunset Provision: No.