

1 H.157

2 Introduced by Representatives Campbell of St. Johnsbury, Anthony of Barre
3 City, Austin of Colchester, Brumsted of Shelburne, Christie of
4 Hartford, Cina of Burlington, Colburn of Burlington, Cordes of
5 Lincoln, Masland of Thetford, McCullough of Williston, Ode of
6 Burlington, Patt of Worcester, Stebbins of Burlington, Till of
7 Jericho, Townsend of South Burlington, Troiano of Stannard,
8 Walz of Barre City, White of Hartford, and Yantachka of
9 Charlotte

10 Referred to Committee on

11 Date:

12 Subject: Commerce and trade; consumer protection; construction

13 Statement of purpose of bill as introduced: This bill proposes to create a
14 framework for registering construction contractors.

15 An act relating to registration of construction contractors

16 It is hereby enacted by the General Assembly of the State of Vermont:

17 ~~Sec. 1. FINDINGS~~

18 ~~The General Assembly finds that.~~

1 (1) There is currently no master list of residential construction
2 contractors operating in the State.

3 (2) There is no standard process for determining or adjudicating
4 construction contract fraud complaints either on the part of contractors or
5 consumers.

6 (3) Public authorities have no mechanism to contact all contractors
7 when necessary to provide updates to public health requirements, safe working
8 protocols, codes and standards, and available trainings and certifications.

9 (4) Wide dissemination of information on codes, standards, and
10 trainings is vital to improving construction techniques throughout the State's
11 construction industry. Since building thermal conditioning represents over
12 one-quarter of the State's greenhouse gas emissions, improving energy
13 performance is a key strategy for meeting the requirements of the Global
14 Warming Solutions Act, 2020 Acts and Resolves No. 153.

15 (5) While registration is not licensure and confers no assurance of
16 competence, consumers have no way of knowing whether a contractor is
17 operating legally or has been subject to civil claims or disciplinary actions.

18 (6) A noncommercial, standardized public listing will provide
19 contractors an opportunity to include in their record optional third-party State-
20 sanctioned certifications.

21 Sec. 2. 5 V.S.A. § 122 is amended to read.

1 ~~§ 122. OFFICE OF PROFESSIONAL REGULATION~~

2 The Office of Professional Regulation is created within the Office of the
3 Secretary of State. The Office of Professional Regulation shall have a director
4 who ~~shall be~~ is an exempt employee appointed by the Secretary of State and
5 ~~shall be an exempt employee~~. The following boards or professions are
6 attached to the Office of Professional Regulation:

7 * * *

8 (50) Residential Contractors

9 Sec. 3. 26 V.S.A. chapter 107 is added to read:

10 CHAPTER 107. RESIDENTIAL CONTRACTORS

11 Subchapter 1. General Provisions

12 § 5501. REGISTRATION REQUIRED

13 (a) A person shall register with the Office of Professional Regulation prior
14 to contracting with a homeowner to perform residential construction in
15 exchange for consideration of more than \$2,500.00, including labor and
16 materials.

17 (b) Unless otherwise exempt under section 5502 of this title, as used in this
18 chapter, “residential construction” means to build, demolish, or alter a
19 residential dwelling unit, or a building or premises with four or fewer
20 residential dwelling units, in this State, and includes interior and exterior
21 construction, renovation, and repair, painting, paving, roofing, weatherization,

1 ~~installation or repair of heating, plumbing, electrical, water, or wastewater~~
2 ~~systems; and other activities the Office specifies by rule consistent with this~~
3 ~~chapter.~~

4 § 5502. EXEMPTIONS

5 This chapter does not apply to:

6 (1) an employee acting within the scope of his or her employment for a
7 business organization registered under this chapter;

8 (2) a professional engineer, licensed architect, or a tradesperson licensed
9 by the Department of Public Safety acting within the scope of his or her
10 license;

11 (3) delivery or installation of consumer appliances, audio-visual
12 equipment, telephone equipment, or computer network equipment;

13 (4) landscaping;

14 (5) work on a structure that is not attached to a residential building; or

15 (6) work that would otherwise require registration that a person
16 performs in response to an emergency, provided the person applies for
17 registration within a reasonable time after performing the work.

18 § 5503. MANDATORY REGISTRATION AND VOLUNTARY

19 CERTIFICATION DISTINGUISHED

20 (a)(1) The system of mandatory registration established by this chapter is
21 intended to protect against fraud, deception, breach of contract, and violations

1 ~~of law, but is not intended to establish standards for professional qualifications~~
2 ~~or workmanship that is otherwise lawful.~~

3 (2) The provisions of 3 V.S.A. § 129a, with respect to a registration,
4 shall be construed in a manner consistent with the limitations of this
5 subsection.

6 (b) The system of voluntary certification established in this chapter is
7 intended to provide consumers and contractors with a publicly available,
8 noncommercial venue for contractors to list optional approved certifications.
9 The Director of Professional Regulation, in consultation with public safety
10 officials and recognized associations or boards of builders, remodelers,
11 architects, and engineers, may:

12 (1) adopt rules providing for the issuance of voluntary certifications, as
13 defined in subdivision 3101a(1) of this title, that signify demonstrated
14 competence in particular subfields and specialties related to residential
15 construction;

16 (2) establish minimum qualifications, and standards for performance
17 and conduct, necessary for certification; and

18 (3) discipline a certificant for violating adopted standards or other law,
19 with or without affecting the underlying registration.

20 Subchapter 2. Administration

21 § 5505. DUTIES OF THE DIRECTOR

- 1 ~~(a) The Director of Professional Regulation shall:~~
- 2 ~~(1) provide information to the public concerning registration,~~
- 3 ~~certification, appeal procedures, and complaint procedures;~~
- 4 ~~(2) administer fees established under this chapter;~~
- 5 ~~(3) receive applications for registration or certification, issue~~
- 6 ~~registrations and certifications to applicants qualified under this chapter, deny~~
- 7 ~~or renew registrations or certifications, and issue, revoke, suspend, condition,~~
- 8 ~~and reinstate registrations and certifications as ordered by an administrative~~
- 9 ~~law officer; and~~
- 10 ~~(4) prepare and maintain a registry of registrants and certificants.~~

11 ~~(b) The Director, after consultation with an advisor appointed pursuant to~~

12 ~~section 5506 of this title, may adopt rules to implement this chapter.~~

13 ~~§ 5506. ADVISORS~~

14 ~~(a) The Secretary of State shall appoint two persons pursuant to 3 V.S.A.~~

15 ~~§ 129b to serve as advisors in matters relating to residential contractors and~~

16 ~~construction.~~

17 ~~(b) To be eligible to serve, an advisor shall:~~

18 ~~(1) register under this chapter;~~

19 ~~(2) have at least three years' experience in residential construction~~

20 ~~immediately preceding appointment; and~~

21 ~~(3) remain active in the profession during his or her service.~~

1 ~~(c) The Director of Professional Regulation shall seek the advice of the~~
2 ~~advisors in implementing this chapter.~~

3 § 5507. FEES

4 A person regulated under this chapter shall pay the following fees at initial
5 application and biennial renewal:

6 (1) Registration, individual: \$75.00.

7 (2) Registration, business organization: \$250.00.

8 (3) State certifications: \$75.00 for a first certification and \$25.00 for
9 each additional certification.

10 Subchapter 3. Registrations

11 § 5508. ELIGIBILITY

12 To be eligible for registration, the Director of Professional Regulation shall
13 find that the applicant is in compliance with the provisions of this chapter and
14 applicable State law, and has satisfied any judgment order related to the
15 provision of professional services to a homeowner.

16 § 5509. REQUIREMENTS OF REGISTRANTS

17 (a) Insurance. A person registered under this chapter shall maintain
18 liability insurance in the amount of \$300,000.00 per claim and \$1,000,000.00
19 aggregate, evidence of which may be required as a precondition to issuance or
20 renewal of a registration.

21 ~~(b) Writing.~~

1 ~~(1) A person registered under this chapter shall execute a written~~
2 ~~contract prior to receiving a deposit or commencing residential construction~~
3 ~~work if the estimated value of the labor and materials exceeds \$1,000.00.~~

4 (2) A contract shall specify:

5 (A) Price. One of the following provisions for the price of the
6 contract:

7 (i) a maximum price for all work and materials;

8 (ii) a statement that billing and payment will be made on a time
9 and materials basis, not to exceed a maximum price; or

10 (iii) a statement that billing and payment will be made on a time
11 and materials basis and that there is no maximum price.

12 (B) Work dates. Estimated start and completion dates.

13 (C) Scope of work. A description of the services to be performed
14 and a description of the materials to be used.

15 (D) Change order provision. A description of how and when
16 amendments to the contract may be approved and recorded.

17 (3) The parties shall record an amendment to the contract in a signed
18 writing.

19 (c) Down payment. Unless a contract specifies that billing and payment
20 will be made on a time and materials basis and that there is no maximum price,

1 ~~the contract may require a down payment of up to one third of the contract~~
2 price, or of the price of materials, whichever is greater.

3 § 5510. PROHIBITIONS AND REMEDIES

4 (a) A person who does not register pursuant to this chapter when required
5 engages in unauthorized practice pursuant to 3 V.S.A. § 127.

6 (b) The Office of Professional Regulation may discipline a registrant or
7 certificant for unprofessional conduct as provided in 3 V.S.A. § 129a, except
8 that 3 V.S.A. § 129a(b) does not apply to a registrant.

9 (c) The following conduct by a registrant, certificant, applicant, or person
10 who later becomes an applicant constitutes unprofessional conduct:

11 (1) failure to enter into a written contract when required by this chapter;

12 (2) failure to maintain liability or workers' compensation insurance as
13 required by law;

14 (3) committing a deceptive act in commerce in violation of 9 V.S.A.
15 § 2453;

16 (4) falsely claiming certification under this chapter, provided that this
17 subdivision does not prevent accurate and nonmisleading advertising or
18 statements related to credentials that are not offered by this State; and

19 (5) selling or fraudulently obtaining or furnishing a certificate of
20 registration, certification, license, or any other related document or record, or
21 assisting another person in doing so, including by reincorporating or altering a

1 ~~trade name for the purpose or with the effect of evading or masking~~
2 revocation, suspension, or discipline against a registration issued under this
3 chapter.

4 Sec. 4. IMPLEMENTATION

5 (a) Notwithstanding any contrary provision of 26 V.S.A. chapter 107:

6 (1) The initial biennial registration term for residential contractors
7 pursuant to 26 V.S.A. chapter 107 shall begin on April 1, 2022.

8 (2) The Secretary of State may begin receiving applications for the
9 initial registration term on December 1, 2021.

10 (3)(A) The registration fee for individuals who submit complete
11 registration requests between December 1, 2021 and March 31, 2022 is \$25.00
12 and between April 1, 2022 and March 31, 2023, the fee is \$50.00.

13 (B) The registration fee for business organizations that submit
14 complete registration requests between December 1, 2021 and March 31, 2022
15 is \$175.00 and between April 1, 2022 and March 31, 2023, the fee is \$200.00.

16 (4) Prior to April 1, 2023, the Office of Professional Regulation shall
17 not take any enforcement action for unauthorized practice under 26 V.S.A.
18 § 5510(a) against a residential contractor who fails to register as required by
19 this act.

20 (b) On or before July 1, 2022, the Director of Professional Regulation shall
21 establish an initial set of voluntary certifications, to include at minimum

1 ~~OSHA standards on construction projects and components of energy efficient~~
2 ~~“green” building for insulators, carpenters, and heating and ventilation~~
3 ~~installers.~~

4 Sec. 5. CREATION OF POSITIONS WITHIN THE OFFICE OF
5 PROFESSIONAL REGULATION; LICENSING.

6 ~~(a) There are created within the Secretary of State’s Office of Professional~~
7 ~~Regulation two new positions in the licensing division.~~

8 ~~(b) Any funding necessary to support the positions created in subsection (a)~~
9 ~~of this section and the implementation of 26 V.S.A. chapter 107 created in~~
10 ~~Sec. 2 of this act shall be derived from the Office’s Professional Regulatory~~
11 ~~Fee fund and not from the General Fund.~~

12 Sec. 6. SECRETARY OF STATE; STATUS REPORT

13 ~~On or before January 15, 2023, the Office of Professional Regulation shall~~
14 ~~report to the House Committees on Commerce and Economic Development~~
15 ~~and on Government Operations and to the Senate Committees on Economic~~
16 ~~Development, Housing and General Affairs and on Government Operations~~
17 ~~concerning the implementation of 26 V.S.A. chapter 107, including:~~

18 ~~(1) the number of registrations and certifications;~~

19 ~~(2) the resources necessary to implement the chapter;~~

20 ~~(3) the number and nature of any complaints or enforcement actions;~~

21 ~~and~~

1 ~~(4) any other issues the Office deems appropriate.~~

2 Sec. 7. EFFECTIVE DATE

3 ~~This act shall take effect on July 1, 2021.~~

Sec. 1. FINDINGS

The General Assembly finds that:

(1) There is currently no master list of residential construction contractors operating in the State.

(2) There is no standard process for determining or adjudicating construction contract fraud complaints either on the part of contractors or consumers.

(3) Public authorities have no mechanism to contact all contractors when necessary to provide updates to public health requirements, safe working protocols, codes and standards, and available trainings and certifications.

(4) Wide dissemination of information on codes, standards, and trainings is vital to improving construction techniques throughout the State's construction industry. Since building thermal conditioning represents over one-quarter of the State's greenhouse gas emissions, improving energy performance is a key strategy for meeting the requirements of the Global Warming Solutions Act, 2020 Acts and Resolves No. 153.

(5) While registration is not licensure and confers no assurance of competence, consumers have no way of knowing whether a contractor is operating legally or has been subject to civil claims or disciplinary actions.

(6) A noncommercial, standardized public listing will provide contractors an opportunity to include in their record optional third-party, State-sanctioned certifications.

Sec. 2. 3 V.S.A. § 122 is amended to read:

§ 122. OFFICE OF PROFESSIONAL REGULATION

The Office of Professional Regulation is created within the Office of the Secretary of State. The Office of Professional Regulation shall have a director who shall be is an exempt employee appointed by the Secretary of State ~~and shall be an exempt employee.~~ The following boards or professions are attached to the Office of Professional Regulation:

* * *

(50) Residential Contractors

Sec. 3. 26 V.S.A. chapter 107 is added to read:

CHAPTER 107. RESIDENTIAL CONTRACTORS

Subchapter 1. General Provisions

§ 5501. REGISTRATION REQUIRED

(a) A person shall register with the Office of Professional Regulation prior to contracting with a homeowner to perform residential construction in

exchange for consideration of more than ~~\$2,500.00~~\$3,500.00, including labor and materials.

(b) Unless otherwise exempt under section 5502 of this title, as used in this chapter, “residential construction” means to build, demolish, or alter a residential dwelling unit, or a building or premises with four or fewer residential dwelling units, in this State, and includes interior and exterior construction, renovation, and repair; painting; paving; roofing; weatherization; installation or repair of heating, plumbing, solar, electrical, water, or wastewater systems; and other activities the Office specifies by rule consistent with this chapter.

§ 5502. EXEMPTIONS

This chapter does not apply to:

(1) an employee acting within the scope of his or her employment for a business organization registered under this chapter;

(2) a professional engineer, licensed architect, or a tradesperson licensed by the Department of Public Safety acting within the scope of his or her license, or a person performing work for the installation of a net-metered solar system pursuant to a certificate of public good issued by the Public Utilities Commission;

(3) delivery or installation of consumer appliances, audio-visual equipment, telephone equipment, or computer network equipment;

(4) landscaping;

(5) work on a structure that is not attached to a residential building; or

(6) work that would otherwise require registration that a person performs in response to an emergency, provided the person applies for registration within a reasonable time after performing the work.

§ 5503. MANDATORY REGISTRATION AND VOLUNTARY

CERTIFICATION DISTINGUISHED

(a)(1) The system of mandatory registration established by this chapter is intended to protect against fraud, deception, breach of contract, and violations of law, but is not intended to establish standards for professional qualifications or workmanship that is otherwise lawful.

(2) The provisions of 3 V.S.A. § 129a, with respect to a registration, shall be construed in a manner consistent with the limitations of this subsection.

(b) The system of voluntary certification established in this chapter is intended to provide consumers and contractors with a publicly available, noncommercial venue for contractors to list optional approved certifications. The Director of Professional Regulation, in consultation with public safety officials and recognized associations or boards of builders, remodelers, architects, and engineers, may:

(1) adopt rules providing for the issuance of voluntary certifications, as defined in subdivision 3101a(1) of this title, that signify demonstrated competence in particular subfields and specialties related to residential construction;

(2) establish minimum qualifications, and standards for performance and conduct, necessary for certification; and

(3) discipline a certificant for violating adopted standards or other law, with or without affecting the underlying registration.

Subchapter 2. Administration

§ 5505. DUTIES OF THE DIRECTOR

(a) The Director of Professional Regulation shall:

(1) provide information to the public concerning registration, certification, appeal procedures, and complaint procedures;

(2) administer fees established under this chapter;

(3) receive applications for registration or certification, issue registrations and certifications to applicants qualified under this chapter, deny or renew registrations or certifications, and issue, revoke, suspend, condition, and reinstate registrations and certifications as ordered by an administrative law officer; and

(4) prepare and maintain a registry of registrants and certificants.

(b) The Director, after consultation with an advisor appointed pursuant to section 5506 of this title, may adopt rules to implement this chapter.

§ 5506. ADVISORS

(a) The Secretary of State shall appoint two persons pursuant to 3 V.S.A. § 129b to serve as advisors in matters relating to residential contractors and construction.

(b) To be eligible to serve, an advisor shall:

(1) register under this chapter;

(2) have at least three years' experience in residential construction immediately preceding appointment; and

(3) remain active in the profession during his or her service.

(c) The Director of Professional Regulation shall seek the advice of the advisors in implementing this chapter.

§ 5507. FEES

A person regulated under this chapter shall pay the following fees at initial application and biennial renewal:

(1) Registration, individual: \$75.00.

(2) Registration, business organization: \$250.00.

(3) State certifications: \$75.00 for a first certification and \$25.00 for each additional certification.

Subchapter 3. Registrations

§ 5508. ELIGIBILITY

To be eligible for registration, the Director of Professional Regulation shall find that the applicant is in compliance with the provisions of this chapter and applicable State law and has satisfied any judgment order related to the provision of professional services to a homeowner.

§ 5509. REQUIREMENTS OF REGISTRANTS

(a) Insurance. A person registered under this chapter shall maintain minimum liability insurance coverage in the amount of \$300,000.00 per claim and \$1,000,000.00 aggregate, evidence of which may be required as a precondition to issuance or renewal of a registration.

(b) Writing.

(1) A person registered under this chapter shall execute a written contract prior to receiving a deposit or commencing residential construction work if the estimated value of the labor and materials exceeds ~~\$2,500.00~~ \$3,500.00.

(2) A contract shall specify:

(A) Price. One of the following provisions for the price of the contract:

(i) a maximum price for all work and materials;

(ii) a statement that billing and payment will be made on a time and materials basis, not to exceed a maximum price; or

(iii) a statement that billing and payment will be made on a time and materials basis and that there is no maximum price.

(B) Work dates. Estimated start and completion dates.

(C) Scope of work. A description of the services to be performed and a description of the materials to be used.

(D) Change order provision. A description of how and when amendments to the contract may be approved and recorded.

(3) The parties shall record an amendment to the contract in a signed writing.

(c) Down payment. Unless a contract specifies that billing and payment will be made on a time and materials basis and that there is no maximum price, the contract may require a down payment of up to one-half of the contract price, or of the price of materials, whichever is greater.

§ 5510. PROHIBITIONS AND REMEDIES

(a) A person who does not register pursuant to this chapter when required engages in unauthorized practice pursuant to 3 V.S.A. § 127.

(b) The Office of Professional Regulation may discipline a registrant or certificant for unprofessional conduct as provided in 3 V.S.A. § 129a, except that 3 V.S.A. § 129a(b) does not apply to a registrant.

(c) The following conduct by a registrant, certificant, applicant, or person who later becomes an applicant constitutes unprofessional conduct:

(1) failure to enter into a written contract when required by this chapter;

(2) failure to maintain liability or workers' compensation insurance as required by law;

(3) committing a deceptive act in commerce in violation of 9 V.S.A. § 2453;

(4) falsely claiming certification under this chapter, provided that this subdivision does not prevent accurate and nonmisleading advertising or statements related to credentials that are not offered by this State; and

(5) selling or fraudulently obtaining or furnishing a certificate of registration, certification, license, or any other related document or record, or assisting another person in doing so, including by reincorporating or altering a trade name for the purpose or with the effect of evading or masking revocation, suspension, or discipline against a registration issued under this chapter.

Sec. 4. IMPLEMENTATION

(a) Notwithstanding any contrary provision of 26 V.S.A. chapter 107:

(1) The initial biennial registration term for residential contractors pursuant to 26 V.S.A. chapter 107 shall begin on April 1, 2022.

(2) The Secretary of State may begin receiving applications for the initial registration term on December 1, 2021.

(3)(A) The registration fee for individuals who submit complete registration requests between December 1, 2021 and March 31, 2022 is \$25.00 and between April 1, 2022 and March 31, 2023, the fee is \$50.00.

(B) The registration fee for business organizations that submit complete registration requests between December 1, 2021 and March 31, 2022 is \$175.00 and between April 1, 2022 and March 31, 2023, the fee is \$200.00.

(4) Prior to April 1, 2023, the Office of Professional Regulation shall not take any enforcement action for unauthorized practice under 26 V.S.A. § 5510(a) against a residential contractor who fails to register as required by this act.

(b) On or before July 1, 2022, the Director of Professional Regulation shall establish an initial set of voluntary certifications, to include at minimum OSHA standards on construction projects and components of energy-efficient “green” building for insulators, carpenters, and heating and ventilation installers.

~~Sec. 5. CREATION OF POSITIONS WITHIN THE OFFICE OF~~

~~PROFESSIONAL REGULATION; LICENSING.~~

~~(a) There are created within the Secretary of State’s Office of Professional Regulation one new position in licensing and one position in enforcement.~~

~~(b) Any funding necessary to support the positions created in subsection (a) of this section and the implementation of 26 V.S.A. chapter 107 created in Sec. 2 of this act shall be derived from the Office's Professional Regulatory Fee Fund and not from the General Fund.~~

*Sec. 5. CREATION OF POSITIONS WITHIN THE OFFICE OF
PROFESSIONAL REGULATION; LICENSING.*

(a) There are created within the Secretary of State's Office of Professional Regulation one new position in licensing and one new position in enforcement.

(b) In fiscal year 2022, the amount of \$200,000.00 in special funds is appropriated to the Secretary of State to fund the positions created in subsection (a) of this section.

Sec. 6. SECRETARY OF STATE; STATUS REPORT

On or before January 15, 2023, the Office of Professional Regulation shall report to the House Committee on General, Housing and Military Affairs and on Government Operations and to the Senate Committees on Economic Development, Housing and General Affairs and on Government Operations concerning the implementation of 26 V.S.A. chapter 107, including:

(1) the number of registrations and certifications;

(2) the resources necessary to implement the chapter;

(3) the number and nature of any complaints or enforcement actions;

and

(4) any other issues the Office deems appropriate.

Sec. 7. EFFECTIVE DATE

This act shall take effect on July 1, 2021.