

1 TO THE HONORABLE SENATE:

2 The Committee on Economic Development, Housing and General Affairs to
3 which was referred House Bill No. 157 entitled “An act relating to registration
4 of construction contractors” respectfully reports that it has considered the same
5 and recommends that the Senate propose to the House that the bill be amended
6 by striking out all after the enacting clause and inserting in lieu thereof the
7 following:

8 Sec. 1. FINDINGS

9 The General Assembly finds that:

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

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

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

18 (4) Wide dissemination of information on codes, standards, and
19 trainings is vital to improving construction techniques throughout the State’s
20 construction industry. Since building thermal conditioning represents over
21 one-quarter of the State’s greenhouse gas emissions, improving energy

1 performance is a key strategy for meeting the requirements of the Global
2 Warming Solutions Act, 2020 Acts and Resolves No. 153.

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

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

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

10 § 122. OFFICE OF PROFESSIONAL REGULATION

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

16 * * *

17 (50) Residential Contractors

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

19 CHAPTER 107. RESIDENTIAL CONTRACTORS

20 Subchapter 1. General Provisions

21 § 5501. REGISTRATION REQUIRED

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

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

13 § 5502. EXEMPTIONS

14 This chapter does not apply to:

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

17 (2)(A) a professional engineer, licensed architect, or tradesperson
18 licensed, registered, or certified by the Department of Public Safety acting
19 within the scope of his or her license, registration, or certification; or

1 (B) a business that performs residential construction exclusively
2 through employees who are individually exempt from registration under
3 subdivision (2)(A) of this section;

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

6 (4) landscaping;

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

8 (6) work that would otherwise require registration that a person
9 performs in response to an emergency, provided the person applies for
10 registration within a reasonable time after performing the work, as specified by
11 rule.

12 § 5503. MANDATORY REGISTRATION AND VOLUNTARY

13 CERTIFICATION DISTINGUISHED

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

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

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

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

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

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

15 **Subchapter 2. Administration**

16 **§ 5505. DUTIES OF THE DIRECTOR**

17 **(a) The Director of Professional Regulation shall:**

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

20 **(2) administer fees established under this chapter;**

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

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

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

9 § 5506. ADVISORS

10 (a) The Secretary of State shall appoint two persons pursuant to 3 V.S.A.
11 § 129b to serve as advisors in matters relating to residential contractors and
12 construction.

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

14 (1) register under this chapter;

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

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

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

1 § 5507. FEES

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

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

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

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

8 Subchapter 3. Registrations

9 § 5508. ELIGIBILITY

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

14 § 5509. REQUIREMENTS OF REGISTRANTS

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

19 (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 \$2,500.00.

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 and
14 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 documented, as agreed by
17 the parties.

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

20 (c) Down payment.

1 (1) If a contract specifies a maximum price for all work and materials or
2 a statement that billing and payment will be made on a time and materials
3 basis, not to exceed a maximum price, the contract may require a down
4 payment of up to one-half of the cost of labor to the consumer, or one-half of
5 the price of materials, whichever is greater.

6 (2) If a contract specifies that billing and payment will be made on a time
7 and materials basis and that there is no maximum price, the contract may
8 require a down payment as negotiated by the parties.

9 § 5510. PROHIBITIONS AND REMEDIES

10 (a) A person who does not register as required pursuant to this chapter may
11 be subject to an injunction or a civil penalty, or both, for unauthorized practice
12 as provided in 3 V.S.A. § 127(b).

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

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

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

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

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

2 § 2453;

3 (4) falsely claiming certification under this chapter, provided that this

4 subdivision does not prevent accurate and nonmisleading advertising or

5 statements related to credentials that are not offered by this State; and

6 (5) selling or fraudulently obtaining or furnishing a certificate of

7 registration, certification, license, or any other related document or record, or

8 assisting another person in doing so, including by reincorporating or altering a

9 trade name for the purpose or with the effect of evading or masking revocation,

10 suspension, or discipline against a registration issued under this chapter.

11 Sec. 4. IMPLEMENTATION

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

13 (1) The initial biennial registration term for residential contractors

14 pursuant to 26 V.S.A. chapter 107 shall begin on April 1, 2022.

15 (2) The Secretary of State may begin receiving applications for the

16 initial registration term on December 1, 2021.

17 (3)(A) The registration fee for individuals who submit complete

18 registration requests between December 1, 2021 and March 31, 2022 is \$25.00

19 and between April 1, 2022 and March 31, 2023, the fee is \$50.00.

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

4 (4) Prior to April 1, 2023, the Office of Professional Regulation shall
5 not take any enforcement action for unauthorized practice under 26 V.S.A.
6 § 5510(a) against a residential contractor who fails to register as required by
7 this act.

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

13 (c) The Office of Professional Regulation shall adopt and publish model
14 contract provisions to be available to residential contractors and consumers.

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

16 PROFESSIONAL REGULATION; LICENSING

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

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

1 Sec. 6. SECRETARY OF STATE; STATUS REPORT

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

- 7 (1) the number of registrations and certifications;
8 (2) the resources necessary to implement the chapter;
9 (3) the number and nature of any complaints or enforcement actions;
10 (4) the potential design and implementation of a one-stop portal for
11 contractors and consumers; and
12 (5) any other issues the Office deems appropriate.

13 Sec. 7. EFFECTIVE DATE

14 This act shall take effect on July 1, 2021.

15

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17 (Committee vote: _____)

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19

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Representative _____

FOR THE COMMITTEE