



Monroe County Legislature

CYNTHIA W. KALEH

LEGISLATOR - DISTRICT 28

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July 7, 2011

To The Honorable
Monroe County Legislature
39 West Main Street
Rochester, NY 14614

RE: To Protect Homeowners and Contractors from Unscrupulous Activity

Honorable Legislators:

We have all seen horrendous media reports of unscrupulous home improvement contractors defrauding local homeowners out of their hard earned money. As the elected representatives of these homeowners, we have a duty to do everything in our ability to protect them and that is why we propose the creation of a registration program for home improvement contractors in Monroe County.

When a homeowner seeks a qualified contractor for improvements to their property, they need to be able to have confidence that the work will be performed in a satisfactory manner. Time and again, contractors have been accused and convicted of taking money for services that were never provided, or performing work that was so sub-standard that the homeowner was forced to spend additional money to hire a different contractor to complete the work.

Under the current system, homeowners face significant obstacles when either of these situations occurs. The homeowner may end up having to take the contractor to small claims court, which can cost additional time and money that the owner never expected to spend. Unfortunately, even those homeowners who take this route are sometimes awarded a judgment that never gets paid by the contractor.



rest assured that they will be held accountable. In order to ensure that no additional property taxpayer expense, when violations do occur, the contractor will be liable for civil penalties payable to the County to offset any costs of investigation or prosecution.

Therefore, we propose that this Honorable Body enact the attached local law to establish a registration system for home improvement contractors.


The Specific legislative action required is to:

1. Schedule and hold a public hearing on the attached proposed local law.
2. Enact the local law amending the Monroe County Code and Charter, as attached.

This proposed local law will have no impact on the revenues and/or expenditures of the current Monroe County Budget. This local law shall take effect January 1, 2012.

We recommend that this matter be referred to the appropriate committee(s) for favorable action by Your Honorable Body.

Respectfully Submitted,



Cynthia W. Kaleh
Legislator – District 28



Ted O'Brien
Democratic Minority Leader



Carrie M. Andrews
Assistant Minority Leader



Calvin Lee, Jr.
Assistant Minority Leader



Richard A. Beebe
Legislator – District 6



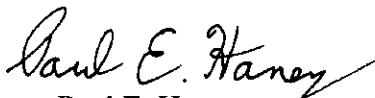
Travis R. Heider
Legislator – District 14



Vincent Esposito
Legislator - District 16



Glenn J. Gamble
Legislator – District 22



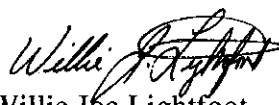
Paul E. Haney
Legislator – District 23



Joshua Bauroth
Legislator – District 24



C. Stephen Eckel
Legislator – District 26



Willie Joe Lightfoot
Legislator – District 27



Saul A. Maneiro
Legislator – District 29

By Legislators _____ and _____

Intro. No. _____

LOCAL LAW NO. _____ OF 2011

A LOCAL LAW ENTITLED "HOME IMPROVEMENT CONSUMER PROTECTION ACT"

BE IT ENACTED BY THE LEGISLATURE OF THE COUNTY OF MONROE, as follows:

Section 1. Part IV, General Local Laws of the Administrative Code and Charter of Monroe County, is hereby amended to include the following Local Law:

Chapter 381. REGISTERED CONTRACTOR ACT

§381-1. Short title

This act shall be referred to as the Registered Contractor Act.

§381-2. Definitions

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise.

"Act"

- 1) Chapter 381 of the General Local Laws of the Administrative Code and Charter of Monroe County.

"Contractor"

- 1) Any person who owns and operates a home improvement business or who undertakes, offers to undertake or agrees to perform any home improvement; including a subcontractor or independent contractor who has contracted with a home improvement retailer, regardless of the retailer's net worth, to provide home improvement services to the retailer's customers. The term does not include a person for whom the cash value of all of that person's home improvements is less than a total of \$5,000 during the previous taxable year.

"Home Improvement"

- 1) The term Home Improvement shall include all of the following done in connection with the land or a portion of the land adjacent to a private residence or a building or a portion of the building which is used as a private residence for which the total cash price of all work agreed upon between the contractor and the owner is more than \$500:
 - a) Repair, replacement, remodeling, demolition, removal, renovation, installation, alteration, conversion, modernization, improvement or rehabilitation.
 - b) Construction, replacement, installation or improvement of driveways, swimming pools, porches, garages, roofing, siding, insulation, solar energy systems, security systems, flooring, patios, fences, gazebos, sheds, decks, landscaping, tree work, painting, doors, windows, waterproofing, lead and asbestos abatement, heating & AC, awnings, snow plowing, lawn cutting, bathrooms, kitchens, masonry, handyman services, pest control, tile work, electrical, plumbing, overhead doors, gutters, drywall, central vacuum, closet specialties, septic systems, counter tops, railings, pet containment, glass block, window

cleaning, window treatments, driveway sealing, generators, retaining walls, fountains or drainage systems.

- c) The term Home Improvement does not include the following:
- i) Construction of a new home.
 - ii) The sale of goods or materials by a seller who neither arranges to nor performs directly or indirectly any work or labor in connection with the installation or application of the goods or materials.
 - iii) The sales of services furnished for residential use or for resale if the service takes place somewhere other than at a private residence.
 - iv) The sale of appliances that is designed for and easily removable from the premises without material alteration.
 - v) Any work performed by a contractor at his own residence.
 - vi) Emergency work such as fire damage protection and tree removal.
 - vii) Any commercial work or conversions of residential to commercial.

“Home Improvement contract”

- 1) An agreement between a contractor and an owner for the performance of a home improvement, and includes all labor, services and materials to be performed thereunder.

“Owner”

- 1) An owner of a private residence, including any person authorized by an owner to act on the owner’s behalf to order, contract for or purchase home improvements; or
- 2) A person entitled to the performance of the work of a contractor pursuant to a home improvement; or
- 3) An owner of a private residence shall not be required to reside in the residence to be deemed an owner under this act.

“Person”

- 1) An individual, firm, partnership, association or corporation.

“Private residence”

- 1) A single family residence; or
- 2) A multifamily dwelling consisting of not more than two units; or
- 3) A single unit located within any multifamily dwelling, including condominiums and cooperative units.

“Bureau”

- 1) The Monroe County Department of Public Safety, division of Weights and Measures, or such other department as designated by the County Executive subject to approval by the County Legislature.

§381-3. Registration of contractors

- 1) General rule. No person shall hold himself or herself out as a contractor, nor shall a person perform any home improvement without first registering with the bureau, as provided for in this act.
- 2) Public access to registration information. The bureau shall create a policy for the disclosure of information to the public as to whether a contractor is registered with the bureau in accordance with the New York State Freedom of Information Law, as amended from time to time.

§381-4. Procedures for registration as a contractor

- 1) Application.
 - a) A person shall apply to the bureau in writing, or via the Internet if permitted by the bureau, on a form provided by the bureau and approved by the County Attorney. At a minimum, the application shall include the following:
 - i) For an individual or DBA applicant, all of the following:
 - (1) Name
 - (2) Date of Birth (DOB)
 - (3) Home address and home phone number
 - (4) Driver's license number
 - (5) Business name, address and phone number including cell phone
 - (6) Federal employer identification number, if applicable.
 - (7) Social Security number.
 - (8) All prior business names and addresses of any home improvement business ever operated by the individual.
 - ii) For a general partnership applicant, all of the following:
 - (1) Name of each partner.
 - (2) Date of birth of each partner.
 - (3) Home address and home phone number of each partner.
 - (4) Driver's license number of each partner.
 - (5) Partnership name, address and phone number.
 - (6) Federal employer identification number, if applicable.
 - (7) Social Security number of each partner.
 - (8) All prior business names and addresses of any prior owned home improvement businesses operated by each partner.
 - iii) For a corporation or limited liability company, all of the following:
 - (1) Name of each officer.
 - (2) Date of birth of each officer.
 - (3) Home address and home phone number of each officer.
 - (4) Driver's license number of each officer.
 - (5) Business name, address and phone number.
 - (6) Federal identification number.
 - (7) Social Security number of each officer.
 - (8) Name of each director or individual holding greater than a 5% equity interest.
 - (9) Any prior or current business names and addresses of a home improvement business previously owned by each officer.
 - iv) For all applicants:
 - (1) A statement whether
 - (a) The person making application has been ever convicted of a criminal offense related to a home improvement transaction, fraud, theft, a crime of deception or a crime involving fraudulent business practices, as well as a statement whether the applicant has ever filed a petition in bankruptcy or, within the last ten years, received a final civil judgment entered against the person in which the applicant held an interest that was related to a home improvement transaction.
 - (b) The applicant's certification or similar certification or license issued by any other jurisdiction has ever been revoked or suspended pursuant to an order

issued by a court of competent jurisdiction and, if so, the current status. The statement required by this clause shall include the same information with respect to any other business in which the person making application has ever had an interest.

- (c) Whether the applicant within the last ten years has ever been suspended or denied from participating in any Federal, State, local or not-for-profit program through which public funding grants are provided to owners for home improvements.

§381-6. Insurance

- 1) The applicant must provide proof of liability insurance covering personal injury in an amount not less than \$100,000 and insurance covering property damage caused by the work of a home improvement contractor in an amount not less than \$100,000. The applicant must provide Workmen's Compensation for all employees, as required by New York State.

§381-7. Reporting of multiple registrations or licenses

- 1) Any registered contractor in Monroe County who is registered or licensed as a home improvement contractor in any other state shall report this information to the bureau on the initial registration application along with any disciplinary action taken in such other jurisdictions.

§381-8. Application fees

- 1) A fee of \$200 shall accompany each application for a registration certificate for a home improvement contractor or renewal of that certificate. After satisfactory completion of the application and payment of the fee, the bureau shall issue the home improvement contractor a registration certificate identifying the name of the individual contractor, address of the business and a registration number. Renewals shall be on a biennial basis.

§381-9. Proof of registration

- 1) A contractor shall include its registration number in all advertisements, on all contracts, estimates and proposals within Monroe County.

§381-10. Home improvement contracts:

- 1) Requirements- No home improvement contract shall be valid or enforceable against an owner unless it:
 - a) Is in writing and legible and contains the home improvement contractor's registration number, approximate starting and completion dates, business name, address and telephone number. A post office box number shall not be considered an address.
 - b) Is signed by the homeowner involved including the contractor or a salesperson on behalf of the contractor.
 - c) Contains all the requirements under Article 36A of the New York State Business law including the owner's 3 business days right of rescission.
 - d) Contains a description and specifications of the work to be performed, the materials used that cannot be changed without a written change order signed by the owner and contractor.
 - e) Includes the total sales price due under the contract and payment schedule. Including down payment and draws.

- f) The contract may not contain a clause in which the owner relieves the contractor from liability for acts committed by the contractor or the contractor's agents in the collection of any payments or in the repossession of goods.
- g) The contract shall be voidable by the owner if it contains any of the following:
 - (a) A hold harmless clause.
 - (b) A waiver of health, life, safety or building code requirements.
 - (c) A confession of judgment clause.
 - (d) A waiver of any right to a jury trial brought by or against the owner.
 - (e) A provision that the contractor shall be awarded attorney fees and costs.
 - (f) A waiver of the owner's 3-day right to cancel the contract.
 - (g) Contractor's recovery right- Nothing in this section shall preclude a contractor who has complied with subsection (a) from the recovery of payment for work performed based on the reasonable value of services which were requested by the owner if a court determines that it would be inequitable to deny such recovery.

§381-11. Arbitration

- 1) The registrant must agree to formal binding arbitration and agree to any decision made as part of the application process and shall be notified of this requirement. Nothing in this clause shall preclude a court from setting aside an arbitration clause based on the law. The clause shall not be effective unless both parties indicate their assent to be bound thereby.

§381-12. Home improvement fraud

- 1) Offense defined - A person violates this Act if the person, with intent to defraud or injure anyone or with knowledge that he or she is facilitating a fraud or injury to be perpetrated:
 - a) Makes a false or misleading statement to induce, encourage or solicit a person to enter into any written or oral agreement for home improvement services or provision of home improvement materials or to justify an increase in the previously agreed upon price.
 - b) Receives any advance payment for performing home improvement services or providing materials and fails to perform or provide such services or materials when specified in the contract taking into account any force or unforeseen labor strike or circumstance that would extend the time frame or unless extended by an agreement with the owner and fails to return the payment received for such services or materials which were not provided by the date
 - c) While soliciting a person to enter into an agreement for home improvement services or materials, misrepresents or conceals the contractor's or salesperson's real name, the name of the contractor's business, the contractor's business address or any other identifying information.
 - d) Misrepresents himself or herself or another as an employee or agent of any municipal government or public utility with the intent to cause a person to enter into any agreement for performing home improvement services or providing materials.
 - e) Damages a person's property purposely with the intent to induce, encourage or solicit that person to enter into a written or oral agreement for performing home improvement services or providing home improvement materials.
 - f) Misrepresents an item as a special order material or to misrepresent the cost of the special order material.

- g) Alters a home improvement agreement, mortgage, promissory note or other document incident to performing or selling a home improvement without the consent of the consumer or
 - h) Directly or indirectly publishes a false or deceptive advertisement.
- 2) Violations-
- a) The violation of any provision of this Act or of any rule or regulation promulgated hereunder shall render the violator liable for the payment to the County of a civil penalty, recoverable in a civil action, in a sum not to exceed \$2,500 for the first violation, and in a sum not less than \$2,500 and not more than \$25,000 for the second and subsequent violations, together with, in each instance, the cost of any investigation or proceedings incurred by the County.
 - b) In addition to any other penalty imposed by this act, the court, upon application by the Monroe County Attorney, may revoke or suspend the certificate of registration. A person whose registration has been revoked or suspended may petition the court of original jurisdiction for reinstatement after a period of five (5) years from the date of such revocation or suspension, or as specified in the court's order. The administrative office of the court shall report to the bureau any suspension or revocation of a certificate ordered by the court.
 - c) Whenever any person has engaged in any acts or practices which constitute repeated, persistent or multiple violations of any provision of this Act or of any rule or regulation promulgated hereunder, the County Attorney, upon request of the County Executive, may make application to the Supreme Court for a temporary or permanent injunction, restraining order, or other equitable relief.
- 3) Jurisdiction. –
- a) The New York State Attorney General, Monroe County District Attorney, Monroe County Attorney or the municipal attorneys of any village, town, or city within Monroe County shall have the authority to investigate and to institute civil proceedings for any violation of this Act.

§381-13. Prohibited acts

- 1) No person shall:
 - a) Fail to register as required by this act.
 - b) Fail to refund the amount paid for a home improvement within ten (10) days of either the acceptance and execution of a return receipt for certified mail containing a written request to cancel a contract under the three (3) day right to cancel or the refusal to accept the certified mail sent to the contractor's last known address if all of the following apply:
 - i) No substantial portion of the contracted work has been performed at the time of the request.
 - ii) More than 45 days have elapsed since the starting date specified in the written contract.
 - c) Accept a municipal certificate of occupancy (C of O) or other proof that performance of a home improvement contract is complete or satisfactorily concluded with knowledge that the document or proof is false and the performance is incomplete.

- d) Utter, offer or use a completion certificate or other proof that a home improvement contract is complete or satisfactorily concluded when the person knows or has reason to know that the document or proof is false and is made to accomplish the following:
 - i) Make or accept an assignment or negotiation of the right to receive payment under a home improvement contract.
 - ii) Receive or grant credit or a loan on security of the right to receive payment under a home improvement contract.
- e) Abandon or fail to perform, without justification, any home improvement contract or project engaged in or undertaken by a contractor. For the purpose of this paragraph, the term "justification" shall include nonpayment by the owner as required under the contract or any other violation of the contract by the owner.
- f) Deviate from or disregard plans or specifications, in any material respect, without a written change order dated and signed by both the contractor and the owner, which contains the accompanying price changes for each deviation.
- g) Prepare, arrange, accept or participate in the financing of a home improvement contract with knowledge that the home improvement states a greater monetary obligation than the actual price of the home improvement.
- h) Advertise or offer, by any means, to perform a home improvement if the person does not intend to do any of the following:
 - i) Accept a home improvement contract.
 - ii) Perform the home improvement.
 - iii) Charge for the home improvement at the price advertised or offered.
- i) Demand or receive any payment for a home improvement before the contract is signed.
- j) For a home improvement contract in which the total price is more than \$1,000, receive a deposit in excess of:
 - i) One-third of the home improvement contract price; or
 - ii) One-third of the home improvement contract price plus the cost of special order materials that have been ordered.
- k) While acting as a salesperson, fail to account for or remit to the contractor whom the salesperson represents a payment received in connection with a home improvement.
- l) Subsequent to entering into a an agreement for home improvement services or materials, changes the name of the contractor's business, liability insurance information, address or any other identifying information in a fraudulent or deceptive manner likely to cause confusion or misunderstanding without advising the owner in writing within ten days following any such change.

§381-14. Preemption of local registration or licensing

- 1) This Act does not affect existing licensing standards in effect on the effective date of this Act, with respect to electricians and plumbers and any other trades, where licensing is conditioned on requirements of testing or possession of certificates obtained through specific training in those trades. This provision does not affect local regulations or standards for liability insurance or permits required by any local municipalities which are in effect on the effective date of this section.
- 2) A license issued pursuant to this Act may not be construed to authorize the licensee to perform any particular type of work or kind of business which is reserved to qualified

licensees under separate provisions of state or local law; nor shall any license or authority other than as is issued or permitted pursuant to this Act authorize engaging in the home improvement business.

- 3) Nothing in this Act shall be construed to limit or restrict the power of a city, town or village to regulate the quality, performance, or character of the work of contractors including a system of permits and inspections which are designed to secure compliance with and aid in the enforcement of applicable state and local building laws, or to enforce other laws necessary for the protection of the public health and safety. Nothing in this Act limits the power of a city, town or village to adopt any system of permits requiring submission to and approval by the city, town or village of plans and specifications for an installation prior to the commencement of construction of the installation or of inspection of work done.

§381-15. Legislative Intent

- 1) It is the intent of the Legislature in enacting this Local Law to safeguard and protect the homeowner against abuses on the part of home improvement contractors by regulating the home improvement, remodeling and repair business and by licensing of persons engaged in such business.

Section 2. If any clause, sentence, paragraph, section or article of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such determination shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or article thereof directly involved in the proceeding in which such adjudication shall have been rendered.

Section 3. The clerk of the Monroe County Legislature is hereby authorized and directed to cause a copy of the foregoing local law to be published in the county's official newspapers.

Section 4. This local law shall take effect immediately upon filing with the Secretary of State pursuant to Section 27 of the New York State Municipal Home Rule Law.

File No. 11-0_____LL

ADOPTION: Date: _____ Vote: _____

ACTION BY THE COUNTY EXECUTIVE

APPROVED: _____ VETOED: _____

SIGNATURE: _____ DATE: _____

EFFECTIVE DATE OF LOCAL LAW: _____

Added Language is underlined
Deleted Language is ~~stricken~~