

LC03275

IN GENERAL ASSEMBLY

AN ACT

Introduced By: Representatives Lima, Gallison, Melo, Wasylyk, and Moffitt

Date Introduced: June 12, 2007

Referred To: House Finance

1 SECTION 1. The title of Chapter 565 of the General Laws entitled "Contractors'
2 Registration" is hereby amended to read as follows:

~~CHAPTER 5 65~~

Contractors' Registration

CHAPTER 5-65

CONTRACTORS' REGISTRATION AND LICENSING BOARD

7 SECTION 2. Sections 5-65-1, 5-65-2, 5-65-3, 5-65-5, 5-65-8, 5-65-9, 5-65-10, 5-65-14,
8 5-65-24, 5-65-25 and 5-65-26 of the General Laws in Chapter 5-65 entitled "Contractors'
9 Registration" are hereby amended to read as follows:

10 **5-65-1. Definitions.** -- As used in this chapter:

(1) "Board" means the contractors' registration board established pursuant to the provisions of Rhode Island general laws section 5-65-14.

13 (2) "Commission" means the building code commission supportive of the contractors'
14 registration board.

(3) (i) "Contractor" means a person who, in the pursuit of an independent business, undertakes or offers to undertake or submits a bid, or for compensation and with or without the intent to sell the structure arranges to construct, alter, repair, improve, move over public highways, roads or streets or demolish a structure or to perform any work in connection with the construction, alteration, repair, improvement, moving over public highways, roads or streets or

demolition of a structure, and the appurtenances thereto. "Contractor" includes, but is not limited to, any person who purchases or owns property and constructs or for compensation arranges for the construction of one or more structures.

(ii) A certificate of registration is necessary for each "business entity" regardless of the fact that each entity may be owned by the same individual.

(4) "Dwelling unit" means a single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.

(5) "Hearing officer" means a person designated by the executive director, ~~with the approval of the director of the department of administration~~ to hear contested claims or cases, contested enforcement proceedings, and contested administrative fines, in accordance with the Administrative Procedures Act, chapter 35 of title 42.

(6) "Staff" means the executive director for the contractors' registration and licensing board, and any other staff necessary to carry out the powers, functions and duties of the board including inspectors, hearing officers and other supportive staff.

(7) "State" means the state of Rhode Island.

(8) "Structure" means (i) any commercial building; or (ii) any building containing one or more residences and their appurtenances. The board's dispute resolution process shall apply only to residential structures containing dwelling units as defined in the state building code or residential portions of other types of buildings without regard to how many units any structure may contain. The board retains jurisdiction and may conduct hearings regarding violations against all contractors required to be registered or licensed.

(9) "Substantially" means any violation, which affects the health, safety, and welfare of the general public.

5-65-2. Applications. -- The following persons shall be exempt from registration under this chapter:

(1) A person who is constructing, altering, improving, or repairing his or her own personal property.

(2) A person who is constructing, altering, improving, or repairing a structure located within the boundaries of any site or reservation under the jurisdiction of the federal government.

(3) A person who furnishes materials, supplies, equipment, or furnishes products and does not fabricate them into, or consume them, in the performance of the work of a contractor. If the person wants to file a claim pursuant to this chapter they must be registered pursuant to this chapter.

1 (4) A person working on one structure or project, under one or more contracts when the
2 price of all of that person's contracts for labor, materials, and all other items is less than five
3 hundred dollars (\$500) and the work is of a casual, minor, or inconsequential nature. This
4 subsection does not apply to a person who advertises or puts out any sign or card or other device,
5 which might indicate to the public that the person is a contractor.

6 (5) This section does not apply to a person who constructs or for compensation with the
7 intent to sell the structure, or who arranges to have constructed a structure to be sold before, upon
8 or after completion. It shall be prima facie evidence that there was intent to offer the structure for
9 sale if the person who constructed the structure or arranged to have the structure constructed does
10 not occupy the structure for one calendar year after completion.

11 (6) A person performing work on a single dwelling unit property that person owns,
12 whether occupied by that person or not, or a person performing work on that person's residence,
13 whether or not that person owns the residence. This subdivision does not apply to a person
14 performing work on a structure owned by that person if the work is performed, in the pursuit of
15 an independent business, with the intent of offering the structure for sale before, upon, or after
16 completion.

17 (7) A person who performs work subject to this chapter as an employee of a contractor.

18 (8) A manufacturer of a mobile home constructed under standards established by the
19 federal government.

20 (9) A person involved in the movement of:

21 (i) Modular buildings or structures other than mobile homes not in excess of fourteen
22 (14) feet in width.

23 (ii) Structures not in excess of sixteen (16) feet in width when these structures are being
24 moved by their owner if the owner is not a contractor required to be registered under this chapter.

25 (10) Any person or business entity licensed by the state employing licensed trades
26 persons as defined by chapters 6, 20, and 56 of this title, and 26 and 27 of title 28 and working
27 within the purview of the license issued by the governing agency shall be exempt from all the
28 provisions of this chapter except section 5-65-7, requiring insurance. A valid certificate of
29 insurance shall be required to be maintained by the licensing agency during the terms of the
30 issuance date of the license as a condition for a valid license. Failure of the licensee to maintain
31 this insurance shall result in loss of license pursuant to requirements of statutes governing the
32 licensing authority.

33 **5-65-3. Registration for work on a structure required of contractor -- Issuance of**
34 **building permits to unregistered or unlicensed contractors prohibited -- Evidence of activity**

1 **as a contractor -- Duties of contractors.** -- (a) A person shall not undertake, offer to undertake,
2 or submit a bid to do work as a contractor on a structure or arrange to have work done unless that
3 person has a current, valid certificate of registration for all construction work issued by the board.
4 A partnership, corporation, or joint venture may do the work, offer to undertake the work, or
5 submit a bid to do the work only if that partnership, corporation, or joint venture is registered for
6 the work. In the case of registration by a corporation or partnership, an individual shall be
7 designated to be responsible for the corporation's or partnership's work. The corporation or
8 partnership and its designee shall be jointly and severally liable for the payment of the
9 registration fee, as requested in this chapter, and for violations of any provisions of this chapter.
10 Disciplinary action taken on a registration held by a corporation, partnership, or sole proprietor
11 may affect other registrations held by the same corporation, partnership, or sole proprietorship,
12 and may preclude future registration by the principal of that business entity.

13 (b) A registered partnership or corporation shall notify the board in writing immediately
14 upon any change in partners or corporate officers.

15 (c) A city, town, or the state shall not issue a building permit to anyone required to be
16 registered under this chapter who does not have a current, valid certificate of registration
17 identification card or valid license which shall be presented at the time of issuance of a permit
18 and shall become a condition of a valid permit. Each city, town, or the state which requires the
19 issuance of a permit as a condition precedent to construction, alteration, improvement,
20 demolition, movement or repair of any building or structure or the appurtenance to the structure
21 shall also require that each applicant for the permit file as a condition to issuing the permit a
22 written affidavit subject to the penalties of perjury, subscribed by the applicant, that the applicant
23 is registered under the provisions of this chapter, giving the number of the registration and stating
24 that the registration is in full force and effect, or, if the applicant is exempt from the provisions of
25 this chapter, listing the basis for the exemption. The city, town, or the state shall list the
26 contractor's registration number on the permit obtained by that contractor, and if a homeowner is
27 issued a permit, the building inspector or official must ascertain registration numbers of each
28 contractor on the premises and shall inform the registration board of any non-registered
29 contractors performing work at the site.

30 (d) Every city and town which requires the issuance of a business license as a condition
31 precedent to engaging, within the city or town, in a business which is subject to regulation under
32 this chapter, shall require that each licensee and each applicant for issuance or renewal of the
33 license file, or has on file, with the city or town a signed statement that the licensee or applicant is
34 registered under the provisions of this chapter and stating that the registration is in full force and

1 effect.

2 (e) It shall be prima facie evidence of doing business as a contractor when a person for
3 that person's own use performs, employs others to perform, or for compensation and with the
4 intent to sell the structure, arranges to have performed any work described in section 5-65-1(3) if
5 within any one twelve (12) month period that person offers for sale one or more structures on
6 which that work was performed.

7 (f) Registration under this chapter shall be prima facie evidence that the registrant
8 conducts a separate, independent business.

9 (g) The provisions of this chapter shall be exclusive and no city or town shall require or
10 shall issue any registrations or licenses nor charges any fee for the regulatory registration of any
11 contractor registered with the board. Nothing in this subsection shall limit or abridge the authority
12 of any city or town to license and levy and collect a general and nondiscriminatory license fee
13 levied upon all businesses, or to levy a tax based upon business conducted by any firm within the
14 city or town's jurisdiction, if permitted under the laws of the state.

15 (h) (1) Every contractor shall maintain a list which shall include the following
16 information about all subcontractors or other contractors performing work on a structure for that
17 contractor:

18 (i) Names and addresses.

19 (ii) Registration numbers or other license numbers.

20 ~~(iii) Contracts entered into must contain notice of right of rescission as stipulated in all~~
21 ~~pertinent Rhode Island consumer protection laws.~~

22 ~~(iv) The contractor must stipulate whether or not all the proper insurances are in effect~~
23 ~~for each job contracted.~~

24 ~~(v)~~ (2) The list referred to in subdivision (h) of this subsection shall be delivered to the
25 board within twenty-four (24) hours after a request is made during reasonable working hours, or a
26 fine of twenty-five dollars (\$25.00) may be imposed for each the offense.

27 (i) The following subcontractors who are not employees of a registered contractor must
28 obtain a registration certificate prior to conducting any work: (1) carpenters, including finish
29 carpenters and framers; (2) siding installers; (3) roofers; (4) foundation installers, including
30 concrete installers and form installers; (5) drywall installers; (6) plasterers; (7) insulation
31 installers; (8) ceramic tile installers; (9) floor covering installers; (10) swimming pool installers,
32 both above ground and in ground; (11) masons, including chimney installers, fireplace installers,
33 and general masonry erectors. This list is not all inclusive and shall not be limited to the above
34 referenced contractors. No subcontractor licensed by another in-state agency pursuant to section

1 5-65-2 shall be required to register, provided that said work is performed under the purview of
2 that license.

3 (j) A contractor including, but not limited to, a general contractor, shall not hire any
4 subcontractor or other contractor to work on a structure unless the contractor is registered under
5 this chapter or exempt from registration under the provisions of section 5-65-2.

6 (k) A summary of this chapter, prepared by the board and provided at cost to all
7 registered contractors, shall be delivered by the contractor to the owner when the contractor
8 begins work on a structure; failure to comply may result in a fine.

9 (l) The registration number of each contractor shall appear in any advertising by that
10 contractor. Advertising in any form by an unregistered contractor shall be prohibited, including
11 alphabetical or classified directory listings, vehicles, business cards, and all other forms of
12 advertisements. The violations could result in a penalty being assessed by the board per
13 administrative procedures established.

14 (i) The board may publish, revoke or suspend registrations and the date the registration
15 was suspended or revoked on a quarterly basis.

16 (ii) Use of the word "license" in any form of advertising when only registered may
17 subject the registrant or those required to be registered to a fine of one hundred dollars (\$100) for
18 each offense at the discretion of the board. ~~Provided, however, that fines issued for a violation of~~
19 ~~this subsection shall only be issued as a secondary offense actionable only in connection with a~~
20 ~~final order issued by the board for violations of other sections of this chapter.~~

21 (m) The contractor must see that permits required by the state building code are secured
22 on behalf of the owner prior to commencing the work involved. The contractor's registration
23 number must be affixed to the permit as required by the state building code.

24 (n) The board may assess an interest penalty when claims have been filed with the board
25 at twelve percent (12%) annually.

26 (o) ~~Effective October 1, 2006, all~~ All work performed, including labor and materials, in
27 excess of one thousand dollars (\$1,000) shall be accompanied by a contract in writing. Contracts
28 required pursuant to this subsection shall include a location on or near the signature line location
29 on or in which the parties to the contract shall initial to evidence the receipt of certain consumer
30 education materials or information approved and provided by the board to the contractor. Said
31 educational materials and/or information shall include, but not be limited to, the following notice
32 and shall be provided by the contractor to the homeowner:

33 NOTICE OF POSSIBLE MECHANIC'S LIEN

34 To: Insert name of owner, lessee or tenant, or owner of less than the simple fee. The

undersigned is about to perform work and/or furnish materials for the construction, erection, alterations or repair upon the land at (INSERT ADDRESS) under contract with you. This is a notice that the undersigned and any other persons who provide labor and materials for the improvement under contract with the undersigned may file a mechanic's lien upon the land in the event of nonpayment to them. It is your responsibility to assure yourself that those other persons under contract with the undersigned receive payment for their work performed and materials furnished for the construction, erection, alteration or repair upon the land. ~~Failure to adhere to the provisions of this subsection may result in a one thousand dollars (\$1,000) fine against the contractor.~~

(p) Contractors who are in compliance with the provisions of this subsection shall be exempt from the requirements of section 34-28-4.1.

(q) Failure to adhere to the provisions of this subsection may result in a one thousand dollar (\$1,000) fine against the contractor and shall not affect the right of any other person performing work or furnishing materials of claiming a lien pursuant to Chapter 34-28. However, such person failing to provide such notice shall indemnify and hold harmless any owner, lessee or tenant, or owner of less than the fee simple from any payment or costs incurred on account of any liens claims by those not in privity with them, unless such owner, lessee or tenant, or owner of less than the fee simple shall not have paid such person.

(r) Contracts entered into must contain notice of right of rescission as stipulated in all pertinent Rhode Island consumer protection laws.

(s) The contractor must stipulate whether or not all the proper insurances are in effect for each job contracted.

5-65-5. Registered application. -- (a) A person who wishes to register as a contractor shall submit an application, under oath, upon a form prescribed by the board. The application shall include:

(1) Workers' compensation insurance account number, or company name if a number has not yet been obtained, if applicable;

(2) Unemployment insurance account number if applicable;

(3) State withholding tax account number if applicable;

(4) Federal employer identification number, if applicable, or if self-employed and participating in a retirement plan;

(5) The individual(s) name and business address and residential address of:

(i) Each partner or venturer, if the applicant is a partnership or joint venture;

(ii) The owner, if the applicant is an individual proprietorship;

(iii) The corporation officers and a copy of corporate papers filed with the Rhode Island secretary of state's office, if the applicant is a corporation;

(iv) Post office boxes are not acceptable as the only address.

(6) A signed affidavit subject to the penalties of perjury of whether or not the applicant has previously applied for registration, or is or was an officer, partner, or venturer of an applicant who previously applied for registration and if so, the name of the corporation, partnership, or venture.

(7) Valid insurance certificate for the type of work being performed.

(b) A person may be prohibited from registering or renewing registration as a contractor under the provisions of this chapter or his or her registration may be revoked or suspended if he or she has any unsatisfied or outstanding judgments from arbitration, bankruptcy, courts and/or administrative agency against him or her relating to their work as a contractor, and provided, further, that an affidavit subject to the penalties of perjury shall be provided to the board attesting to the information herein.

(c) Falsified information on, or failure to provide any document required by this chapter is punishable by a fine not to exceed ten thousand dollars (\$10,000).

(d) Applicant must be at least eighteen (18) years of age.

(e) Satisfactory proof shall be provided to the board evidencing the completion of certain continuing education units per year which will be required to be maintained as a condition of registration as determined by the board pursuant to established regulations.

(f) An affidavit issued by the board shall be completed upon registration or renewal to assure contractors are aware of certain provisions of this law and shall be signed by the registrant before a registration can be issued or renewed.

5-65-8. Term of registration -- Renewal -- Registration identification card. -- (a) A certificate of registration shall be valid for two (2) years from the date of issuance unless the registration is revoked or suspended as described in section 5-65-10. It may be renewed by the same procedure provided for an original registration upon application and furnishing of any additional supplemental information that the board may require by rule.

(b) The board shall issue a pocket-card certificate of registration to a contractor registered under this chapter: including a picture of the registrant as prescribed by the board in the rules and regulations. The Rhode Island department of administration, division of motor vehicles shall, upon the board's request, provide electronic copies of the digital photos of any registrant under this chapter on record to be incorporated into the contractors' registration data bank to match the drivers licenses or ID's provided by registrants or applicants.

(c) The board may vary the dates of registration renewal by giving to the registrant written notice of the renewal date assigned and by making appropriate adjustments in the renewal fee.

(d) The presentation of the registration or license identification card shall be mandatory at the time of permit application.

(e) If a registrant files in bankruptcy court, the board must be notified in writing by the registrant and kept informed of the status of the case until dismissed, discharged or resolved in court.

5-65-9. Registration fee. -- (a) Each applicant shall pay to the board:

(1) For original registration or renewal of registration, a fee of ~~one hundred twenty dollars (\$120).~~ two hundred dollars (\$200).

(2) A fee for all changes in the registration, as prescribed by the board, other than those due to clerical errors.

(b) All fees and fines collected by the board shall be deposited ~~as general revenues to support the activities set forth in this chapter.~~ into a restricted receipt account controlled and administered by the board for the exclusive use of supporting programs established by this chapter.

(c) Each year, the executive director shall prepare a proposed budget to support the programs approved by the board. The proposed budget shall be submitted to the board for its review. A final budget request shall be submitted to the legislature as part of the capital projects and property management annual request.

(d) New or renewal registrations may be filed online or with a third-party approved by the board, with the additional cost incurred to be borne by the registrant.

5-65-10. Grounds for discipline -- Injunctions. --

(a) The board or commission may revoke, suspend, or refuse to issue, reinstate, or reissue a certificate of registration if the board or commission determines after notice and opportunity for a hearing:

(1) That the registrant or applicant has violated section 5-65-3.

(2) That the insurance required by section 5-65-7 is not currently in effect.

(3) That the registrant, licensee or applicant has engaged in conduct as a contractor that is dishonest or fraudulent that the board finds injurious to the welfare of the public.

(4) Has violated a rule or order of the board.

(5) That the registrant has knowingly assisted an unregistered person to act in violation of this chapter.

(6) That a lien was filed on a structure under chapter 28 of title 34 because the registrant

1 or applicant wrongfully failed to perform a contractual duty to pay money to the person claiming
2 the lien.

3 (7) That the registrant has substantially violated state or local building codes.

4 (8) That the registrant has made false or fraudulent statements on his or her application.

5 (9) That a registrant has engaged in repeated acts in violation of this chapter and the
6 board's rules and regulations inclusive of substandard workmanship and any misuse of
7 registration.

8 (10) The board may take disciplinary action against a contractor who performed work or
9 arranged to perform, while the registration was suspended, invalidated or revoked. Deposits
10 received by a contractor and ordered returned are not considered a monetary award when no
11 services or supplies have been received.

12 (11) That the registrant breached a contract.

13 (12) That the registrant performed negligent and/or improper work.

14 (13) That the registrant has advertised with a license number instead of using a
15 registration number.

16 (14) That the registrant has failed to complete a project(s) for construction or a willful
17 failure to comply with the terms of a contract or written warranty.

18 (15) That the registrant has misrepresented his registration status as valid when said
19 registration is suspended, revoked, invalidated, inactive or unregistered as required by the board.

20 (16) That the registrant has failed to pay a fine or respond to any order issued by the
21 board.

22 (17) That the registrant has failed to obtain or maintain the required continuing education/
23 units required by the board, or failed to sign the affidavit required by the board for registration or
24 renewal.

25 (18) When a violation for hiring a non-registered contractor, working as a non-registered
26 contractor, or not maintaining the insurance required is issued, the registration will become
27 invalidated immediately until the violation is resolved or hearing is requested on this offense.

28 (b) In addition to all other remedies, when it appears to the board that a person has
29 engaged in, or is engaging in, any act, practice or transaction which violates the provisions of this
30 chapter, the board may direct the attorney general to apply to the court for an injunction
31 restraining the person from violating the provisions of this chapter. An injunction shall not be
32 issued for failure to maintain the list provided for in section 5-65-3(h) unless the court determines
33 that the failure is intentional.

34 (c) (1) The board at its discretion may, after a hearing, impose a fine up to but not to

1 exceed the face value of the contract or the actual damages caused by the contractor, whichever
2 shall be greater. Where the claim is for actual damages the board shall require proof satisfactory
3 to the board indicating said damages. Where corrective work is completed as ordered by the
4 board, the fine assessed may be reduced as determined by the board. Fines and decisions on
5 claims or violations can be imposed against registered as well as contractors required to be
6 registered by the board.

7 (2) For each subsequent violation of a particular subsection of this chapter or of a rule or
8 regulation promulgated by the board, a fine not to exceed ten thousand dollars (\$10,000) may be
9 imposed after a hearing by the board. All fines collected by the board shall be deposited ~~as~~
10 ~~general revenues~~ into a restricted receipt account administered by the board to be used to enforce
11 the provisions of this chapter.

12 (3) For the first violation of section 5-65-3, only for non-registered contractors, a fine of
13 up to five thousand dollars (\$5,000) for a first offense and up to ten thousand dollars (\$10,000)
14 for each subsequent offense shall be imposed.

15 (d) The hearing officer, upon rendering a conclusion may require the registrant, in lieu of
16 a fine, to attend continuing education courses as appropriate. Failure to adhere to the requirement
17 could result in immediate revocation of registration.

18 (e) The expiration of a registration by operation of law or by order or decision of the
19 board or a court, or the voluntary surrender of registration by the registrant, does not deprive the
20 board of jurisdiction, an action or disciplinary proceeding against the registrant or to render a
21 decision suspending or revoking a registration.

22 (f) In emergency situations, when a registrant is acting to the detriment of the health,
23 welfare and safety of the general public, the board's executive director may revoke or suspend a
24 registration without a hearing for just cause for a period of thirty (30) days.

25 (g) A registrant may petition the board to partially or completely expunge his or her
26 record.

27 (h) Any person or contractor, registered or not, who uses another contractor's
28 registration, contractor's registration identification card, or allows another person to use their
29 contractor's registration fraudulently in any way, will be subject to a fine not exceeding ten
30 thousand dollars (\$10,000).

31 (i) When the use of fraudulent advertising entices an individual to hire an unregistered
32 contractor, a fine of up to ten thousand dollars (\$10,000) may be imposed by the board.

33 (j) It shall be unlawful to retain a social security number or copy of the driver's license
34 from a registrant by a building official as a condition of obtaining a permit.

- 1 (k) The board is further authorized upon certain findings or violations to:
- 2 (1) Put a lien on property held by a contractor.
- 3 (2) Take action on registrant when the continuing education requirements have failed to
- 4 be attained as required in rules and regulations.
- 5 (3) When upon investigation a complaint reveals: serious code infractions; unsatisfied
- 6 mechanic's liens; abandonment of a job for a substantial period of time without apparent cause; or
- 7 any other conduct detrimental to the public, the board can double the fines.
- 8 (4) Suspend, revoke or refuse to issue, reinstate or reissue a certificate of registration to
- 9 any registrant who has contracted, advertised, offered to contract or submitted a bid when the
- 10 contractor's registration is suspended, revoked, invalidated or inactive or unregistered as required
- 11 by the board.

12 **5-65-14. Builder board -- Member -- Terms -- Confirmation -- Vacancies --**

13 **Qualification.** -- (a) The board shall consist of thirteen (13) members appointed by the governor,

14 eight (8) of whom shall be registered contractors, of which two (2) shall be licensed roofers; one

15 shall be a current member of the building codes standards committee pursuant to section 23-27.3-

16 100.1.4; one shall be a representative of the general public; one shall be a licensed and practicing

17 architect; and two (2) shall be licensed home inspectors. The building code standards committee

18 member shall be designated by the state building commissioner, and shall be appointed as

19 provided in subsection (b) of this section. ~~This board shall report to the state building~~

20 ~~commissioners department.~~

21 (b) Except for the commissioner's designee the governor shall appoint seven (7)

22 members for a term of three (3) years and five (5) members for a term of two (2) years. The

23 governor shall appoint the member designated by the state building commissioner for a term of

24 two (2) years. Each member reappointed by the governor shall serve for the term of his or her

25 original appointment. Before the expiration of the term of a member, the governor shall appoint a

26 successor. A member is eligible for reappointment. If there is a vacancy for any cause, the

27 governor shall make an appointment immediately effective for the unexpired term. At the

28 expiration of their terms, members shall remain and shall continue in their official capacity until a

29 new member is appointed and confirmed.

30 (c) In order to be eligible for board membership, the six (6) contractor members of the

31 board must be registered and/or licensed under this chapter and maintain their registrations and/or

32 licenses in good standing during their term of office. In order to be eligible for board

33 membership, the two (2) home inspector members shall be licensed pursuant to chapter 65.1 of

34 this title and shall maintain their license in good order during their terms of office.

1 **5-65-24. Limited applicability of chapter to non-residential contractors. --** (a)

2 Notwithstanding anything set forth in this chapter to the contrary, the provisions of the following
3 sections of this chapter shall not apply to any contractor who does not regularly in the course of
4 his or her or its business as a contractor engage in construction activities as contemplated under
5 this chapter on residential structures:

6 (1) section 5-65-3(p);

7 ~~(1)~~ (2) section 5-65-3(k);

8 ~~(2)~~ (3) section 5-65-4;

9 ~~(3)~~ (4) section 5-65-11;

10 ~~(4)~~ (5) section 5-65-12; and

11 ~~(5)~~ (6) section 5-65-18.

12 (b) Notwithstanding anything set forth in this chapter to the contrary, the provisions of
13 the following sections of this chapter shall have only the limited applicability set forth below
14 respecting any contractor who does not regularly in the course of his or her or its business as a
15 contractor engage in construction activities as contemplated under this chapter on residential
16 structures:

17 (1) the provisions of section 5-65-3(a) concerning the joint and several liability of
18 applicable corporations or partnerships and their respective designees for the payment of the
19 registration fee as requested in this chapter and for violations of any provisions of this chapter
20 shall apply; and

21 (2) the provisions of section 5-65-10(a)(4) concerning violation of a rule or order of the
22 board shall only apply to the extent that any such rule or order does not relate to or is not derived
23 from one of the inapplicable provisions referenced in this section.

24 **5-65-25. Violations -- Notice. --** The board shall provide, by way of the contractors'
25 registration and licensing board website, by request, or by any other means approved by the
26 board, a posting of all final orders issued by the board, all proposed orders of the board, and any
27 and all hearing notices issued by the board. Provided, however, that all claims adjudicated in
28 favor of the contractor shall be removed from the website or publications as soon as practicable.

29 Provided however, this shall not prevent the board from expunging a contractor's record
30 pursuant to established rules and regulations.

31 **5-65-26. Notice of final order -- Service of process -- Restitution for homeowner**

32 **contributions. --** The board is hereby authorized to assess against any contractor a monetary ~~fine~~
33 award to the claimant up to but not to exceed one thousand dollars (\$1,000) for the costs of
34 service of process for any final orders of the board when the funds for said service of process

1 were provided by an aggrieved party under this chapter. The aggrieved party's claim shall be
2 limited to the actual cost of the service of process or one thousand dollars (\$1,000), whichever is
3 less. The board shall require proof of costs from the aggrieved party evidencing said expense for
4 the service of process.

5 SECTION 3. Sections 5-65.1-2, 5-65.1-4, 5-65.1-10, 5-65.1-11, 5-65.1-13 and 5-65.1-14
6 of the General Laws in Chapter 5-65.1 entitled "Home Inspectors" are hereby amended to read as
7 follows:

8 **5-65.1-2. Definitions. --** When used in this chapter:

9 (1) "Associate home inspector" means a person who is employed by a licensed home
10 inspector to conduct a home inspection of a residential building on behalf of a client for a fee
11 under the direct supervision of the licensed home inspector and is licensed pursuant to the
12 provisions of this chapter.

13 (2) "Board" means the contractors' registration board.

14 (3) "Client" means any person who engages, or seeks to engage, the services of a home
15 inspector for the purpose of obtaining an inspection of, and written report upon, the condition of a
16 residential building.

17 (4) "Home inspector" means any person licensed as a home inspector to conduct a home
18 inspection of a residential building on behalf of a client for a fee pursuant to the provisions of this
19 chapter.

20 (5) "Home inspection" means an inspection and a written evaluation of the following
21 readily visible and accessible components of a residential building: heating, cooling, plumbing,
22 and electrical systems, structural components, foundation, roof, masonry structure, exterior and
23 interior components and any other related residential housing components, unless the scope of the
24 inspection is otherwise clearly limited, in writing, in the inspection report. Unless otherwise
25 expressly agreed to, in writing, a home inspection shall be based solely on observation of the
26 readily visible and apparent condition of the foregoing components of a residential building as
27 they exist on the date of the inspection, and it is not the purpose of the inspection to identify
28 violations of or noncompliance with governmental codes or regulation. A home inspection shall,
29 at a minimum, conform to any standards of practice promulgated by the board.

30 (6) "Public body" or "agency" means any executive, legislative, judicial, regulatory or
31 administrative body of the state or any political subdivision thereof; including, but not limited to,
32 public officials elected or appointed and any department, division, agency, commission, board,
33 office, bureau, authority, any school, fire, or water district, or other agency or quasi-public agency
34 of state or local government which exercises governmental functions.

(7) "Residential building" means a structure consisting of one ~~to four (4) family dwelling units that has been occupied as a dwelling prior to the time when a home inspection is requested or contracted for in accordance with this chapter, but shall not include any structure newly constructed and not previously occupied.~~ or more residences and their appurtenances.

5-65.1-4. Eligibility for licensure as home inspector. -- (a) To be eligible for licensure as a home inspector, an applicant shall fulfill the following requirements:

(1) Be of good moral character;

(2) Have successfully completed high school or its equivalent;

(3) Have been engaged as a licensed associate home inspector for no less than one year, and have performed not less than one hundred (100) home inspections for compensation, or have been a registered/licensed contractor in good standing in any state for an aggregate of not less than five (5) years; and

(4) Have passed an examination approved or administered by the board. The examination may have been passed before the effective date of this chapter. ~~July 1, 2001.~~

(b) ~~For the first three hundred and sixty five (365) days after July 1, 2001,~~ After the effective date of this chapter the board shall issue a license to any person upon application, provided that the applicant meets:

(1) The requirements of subdivisions (a)(1), (2) and (4) of this section, and either:

(i) Has been engaged in the practice of home inspections for compensation for not less than one year prior to ~~July 1, 2003,~~ the effective date of this chapter and has performed not less than one hundred (100) home inspections for compensation prior to ~~July, 2003;~~ the effective date of this chapter; or

(ii) Is a registered/licensed contractor in good standing in any state for an aggregate of not less than five (5) years; or

(2) The requirements of subdivisions (a)(1) and (2) of this section, and has been engaged in the practice of home inspections for compensation for not less than two (2) years and performed not less than one hundred fifty (150) home inspections for compensation prior to July 1, ~~2003.~~ 2006.

5-65.1-10. Insurance requirements. -- (a) Every licensed home inspector and associate home inspector shall secure, maintain, and file with the board a certificate of insurance for an errors and omissions policy and a certificate of insurance for a general liability policy; both shall be for a minimum amount of ~~two hundred and fifty thousand dollars (\$250,000) per occurrence,~~ ~~and~~ five hundred thousand dollars (\$500,000) in the aggregate. These certificates must be valid from the date a license is issued until the license expires. This proof shall be deemed satisfactory

1 if the policy is carried by the corporation, partnership or franchise for which the home inspector is
2 a contracted employee and the home inspector or associate home inspector is specifically covered
3 by such policy.

4 (b) Every proof of an errors and omissions or general liability policy required to be filed
5 with the board shall not be effective unless it provides that the insurance may not be canceled
6 until at least ten (10) days notice of intention to cancel or to not renew has been received in
7 writing by the board.

8 (c) Failure of the licensee or corporation or partnership to maintain this insurance will
9 result in the immediate loss of his or her license.

10 **5-65.1-11. Grounds for discipline -- Injunctions. --** (a) After a hearing in accordance
11 with the administrative regulations promulgated by the board, the board may revoke, suspend, or
12 refuse to issue, reinstate, or reissue a license if the board determines that a licensee or applicant
13 has:

14 (1) Disclosed any information concerning the results of the home inspection without the
15 approval of a client or the client's representatives;

16 (2) Accepted compensation from more than one interested party for the same service
17 without the consent of all interested parties;

18 (3) Accepted commissions or allowances, directly or indirectly, from other parties
19 dealing with their client in connection with the inspection for which the licensee is responsible;

20 (4) Failed to promptly disclose to a client information about any business interest of the
21 licensee which may affect the client in connection with the home inspection;

22 (5) Obtained a license or authorization to sit for an examination, as the case may be,
23 through fraud, deception, or misrepresentation;

24 (6) Engaged in the use or employment of dishonesty, fraud, deception,
25 misrepresentation, false promise, or false pretense;

26 (7) Engaged in gross negligence, gross malpractice, or gross incompetence;

27 (8) Engaged in repeated acts of negligence, malpractice, or incompetence;

28 (9) Engaged in professional or occupational misconduct as may be determined by the
29 board;

30 (10) Been convicted of any crime involving moral turpitude or any crime relating
31 adversely to the activity regulated by the board. For the purpose of this subsection a plea of
32 guilty, or nolo contendere shall be deemed a conviction;

33 (11) Had his or her authority to engage in the activity regulated by the board revoked or
34 suspended by any other state, agency or authority for reasons consistent with this section;

(12) Attempted to limit liability for negligent or wrongful errors or omissions by use of a clause within a performance contract that limits the damages for negligent or wrongful errors or omissions;

(13) Failed to provide a written report of the completed home inspection;

(14) Violated or failed to comply with any order of the board or provisions of this chapter or any rule or regulation promulgated and administered by the board pursuant to this chapter;

(15) Become incapable, for medical or any other material reason, of discharging the functions of a licensee in a manner consistent with the public's health, safety, and welfare;

(16) Failed to obtain or maintain the insurance required by section 5-65.1-10;

(17) Knowingly assisted an unlicensed person to act in violation of this chapter; or

(18) Failed to comply with the provisions of section 5-20.8-8.

(b) In addition to all other remedies, when it appears to the board that a person has engaged in, or is engaging in, any act, practice or transaction which violates the provisions of this chapter, the board may direct the attorney general to apply to the court for an injunction restraining the person from violating the provisions of this chapter.

(c) (1) The board may, after a hearing, impose a fine in an amount not to exceed ~~five hundred dollars (\$500)~~ five thousand dollars (\$5,000) for the first violation of this chapter, or any rules or regulations promulgated by the board.

(2) For each second violation of a particular subsection of this chapter or of a rule or regulation promulgated by the board, a fine not to exceed ~~one thousand dollars (\$1,000)~~ ten thousand dollars (\$10,000) may be imposed after a hearing by the board.

(d) The board, may, in lieu of a fine or other sanction, order a licensee to attend continuing education courses as appropriate. Failure to adhere to the requirement could result in immediate revocation of a license.

5-65.1-13. Violations -- Penalties. -- (a) Any person who violates a final order of the board is deemed guilty of a misdemeanor and, upon conviction, may be imprisoned for a term not exceeding one year, or fined not more than ~~one thousand dollars (\$1,000)~~ ten thousand dollars (\$10,000) for each offense.

(b) In addition to any sentence or fine imposed by the court under subsection (a) of this section, the court may order a defendant to comply with any outstanding fine or fines previously imposed by the board pursuant to this chapter. A final order of the board may also be enforced in a civil contempt proceeding brought upon complaint in the district court.

5-65.1-14. Home inspector appointments to the board. -- Notwithstanding any

provisions in section 5-65-14 to the contrary, for a period of one year after ~~July 1, 2001, the~~
effective date of this chapter the initial two (2) home inspectors appointed to the board shall not
be required, at the time of their initial appointment, to be licensed under the provisions of this
chapter, provided the appointed home inspectors have been engaged as home inspectors in this
state for not less than five (5) years immediately preceding their appointment, and have
performed not less than one thousand (1000) home inspections for compensation. Subsequent
appointees to the board shall be licensed pursuant to this chapter and shall possess the foregoing
minimum qualifications.

~~SECTION 4. Section 5-6-4 of the General Laws in Chapter 5-6 entitled "Electricians" is
hereby amended to read as follows:~~

~~**5-6-4. Board of examiners -- Composition -- Appointment of members -- Policy-
making role.** -- (a) (1) There is created in the division of professional regulation, in the
department of labor and training, a state board of examiners of electricians which at all times
consists of seven (7) qualified electors of the state as follows:~~

- ~~(i) A member of an electrical inspection department of any city or town with, at least,
five (5) years' experience as an electrical inspector to represent the general public;~~
- ~~(ii) A qualified electrical contractor, to represent employers;~~
- ~~(iii) A journeyman electrician to represent labor;~~
- ~~(iv) The state fire marshal, who is ex officio, or his or her designee;~~
- ~~(v) A qualified employee of any electric utility company to represent the utility
companies;~~
- ~~(vi) A journeyman electrician to represent organized labor selected from a list of three
(3) persons submitted to the governor by the American Federation of Labor -- Congress of
Industrial Organizations (AFL-CIO); and~~
- ~~(vii) A member of the Rhode Island Sign Contractors Association.~~

~~(2) On or before January 31, the governor shall annually appoint a member or members
of the board to succeed the member or members whose term is at that time expiring who shall
serve for four (4) years or until his or her successor is elected and qualified. Any vacancy that
occurs in the board from any cause shall be filled by the governor for the remainder of the
unexpired term.~~

~~(b) The board has a policy making role in the preparation and composition of the
examinations to be administered by the division. Subsequent to the administration of the
examinations, the board of examiners shall review the examinations to evaluate their
effectiveness. The board shall supervise the operation of the division in an advisory capacity in~~

~~promulgating any policy that is necessary to improve the operation of the division in their area of expertise. The promulgation of that policy is subject to the approval of the director of the department. Members of the board are subject to the provisions of chapter 14 of title 36.~~

~~-(e) The director of labor and training has the power to revoke or suspend the certificate or license or impose a fine upon the certificate or license holder, for all certificates and licenses issued by the division of professional regulation, after a hearing before and upon the recommendation of the board of examiners of electricians. Provided, further, that the board and/or director of the department of labor and training shall establish a dispute resolution process for all licensees performing work on residential structures as defined in section 5-65-1~~

~~SECTION 5. Section 5-20-27 of the General Laws in Chapter 5-20 entitled "Plumbers and Irrigators" is hereby amended to read as follows:~~

~~**5-20-27. Grounds for revocation of license.** --- The director of labor and training shall revoke the license of any master plumber or master irrigator or journeyman plumber or journeyman irrigator after a hearing when the weight of the evidence establishes any one or more of the following specific violations:~~

~~-(1) For having obtained or conspired with others to obtain a license by inducing the issuance of that license in consideration of the payment of money or any other things of value, or by and through a willful or fraudulent misrepresentation of facts in the procurement of the license;~~

~~-(2) Willful violation of any plumbing ordinance, or rules of any city, or town, or of any law of this state regulating the conduct of plumbing or irrigation work;~~

~~-(3) On account of knowingly aiding or assisting any person to engage in the work specified for a master plumber, master irrigator or journeyman plumber or journeyman irrigator when that person does not have a license as provided in this chapter;~~

~~-(4) Because of any master plumber, master irrigator or journeyman plumber or journeyman irrigator willfully and fraudulently loaning his or her license to any other person for the purpose of permitting that person to engage in any plumbing or irrigation work in violation of the provisions of this chapter;~~

~~-(5) If any licensee, as provided in this chapter, is convicted of a felony; or~~

~~-(6) On account of any willful violation of any of the provisions of this chapter.~~

~~-(7) The board and/or the director of the department of labor and training shall establish a dispute resolution process for all licensees performing work on residential structures as defined in section 5-65-1.~~

~~SECTION 6. Section 5-26-2 of the General Laws in Chapter 5-26 entitled "Division of~~

Professional Regulation" is hereby amended to read as follows:

~~**5-26-2. Boards of examiners appointed by director of health.** -- The director of health, with the approval of the governor, shall also appoint to the division of professional regulation a board of nursing registration and education as provided by chapter 34 of this title, and a board of examiners of each of the following arts, practices, sciences, or callings: barbering, podiatry, chiropractic, (except as provided in section 5-30-1.1) psychology, optometry, electrolysis, and physical therapy; and a board of five (5) examiners in speech pathology, audiology, and embalming. Those boards shall perform the duties prescribed by chapters 10, 29, 30, (except as provided in section 5-30-1.1), 32, 33, 34, 35, 40, 44, and 48 of this title. Provided, further, that the board, or the director of the department of labor and training shall establish a dispute resolution process for all licensees performing work on residential structures as defined in section 5-65-1.~~

SECTION 7. Section 5-56-5 of the General Laws in Chapter 5-56 entitled "Installers of Individual Sewage Disposal Systems" is hereby amended to read as follows:

~~**5-56-5. Denial, suspension and revocation of licenses.** -- (a) An application for a license may be denied, or a license may be suspended or revoked when the director has determined that the operation is not being and/or will not be conducted in a manner prescribed in these regulations.~~

~~-(b) When an application for a license is denied or when a license is suspended or revoked, a hearing shall be granted if a hearing is requested, in writing, by the aggrieved applicant within ten (10) days of the denial, suspension or revocation.~~

~~-(c) The board or the director of the department of labor and training shall establish a dispute resolution process for all licensees performing work on residential structures as defined in section 5-65-1.~~

~~be authorized to act upon a licensee who has been before the contractors' registration board for an administrative hearing regarding residential construction. If at a hearing with the contractors' registration board, action was taken on the registration held by the licensee, the board will forward a copy of the order to the director of labor and training so the appropriate action can be taken on the license holder. The department of labor and training will inform the contractors' registration board of any such action taken.~~

SECTION 8. Section 28-26-12 of the General Laws in Chapter 28-26 entitled "Hoisting Engineers" is hereby amended to read as follows:

~~**28-26-12. Investigation and prosecution of violations.** -- The chief of the section shall act as an investigator with respect to the enforcement of all provisions of law relative to the~~

1 ~~licensing of hoisting engineers and to this effect whenever a complaint is made by the chief of the~~
2 ~~section to the director of labor and training that the provisions of this chapter are being violated,~~
3 ~~the director of labor and training shall issue an order to cease and desist from the violation and~~
4 ~~impose the penalties provided in section 28-26-11 against the violator, against the operator,~~
5 ~~against the contractor, and against the project developers. A cease and desist order may also be~~
6 ~~issued against the owner of equipment, against the contractor, and against the project developers~~
7 ~~whenever the chief complains to the director that operating equipment does not meet OSHA~~
8 ~~standards for construction equipment as contained in 29 CFR Part 1910 and 29 CFR 1926.~~

9 ~~Provided, further, that the board or the director of labor and training shall establish a~~
10 ~~dispute resolution process for all licensees performing work on residential structures as defined in~~
11 ~~section 5-65-1 establish a dispute resolution. be authorized to act upon a licensee who has been~~
12 ~~before the contractors' registration board for an administrative hearing regarding residential~~
13 ~~construction. If at a hearing with the contractors' registration board, action was taken on the~~
14 ~~registration held by the licensee, the board will forward a copy of the order to the director of labor~~
15 ~~and training so the appropriate action can be taken on the license holder. The department of labor~~
16 ~~and training will inform the contractors registration board of any such action taken.~~

17 ~~SECTION 9. Sections 28-27-5.1 and 28-27-21 of the General Laws in Chapter 28-27~~
18 ~~entitled "Mechanical Trades" are hereby amended to read as follows:~~

19 ~~**28-27-5.1. Practices for which a journeyperson or apprentice license required.** -- (a)~~
20 ~~No person shall engage to work as a pipefitter, refrigeration/air conditioning, or sprinkler fitter~~
21 ~~journeyperson or apprentice, or journeyperson sheet metal worker or apprentice, or shall advertise~~
22 ~~or represent in any form or matter that he or she is a journeyperson or apprentice, unless that~~
23 ~~person possesses and carries on his or her person at all times while so engaged a valid license~~
24 ~~issued by the department of labor and training qualifying that person as a journeyperson or~~
25 ~~apprentice.~~

26 ~~-(b) A person holding a valid license under this chapter shall not be required to obtain an~~
27 ~~additional license under this chapter to perform sheet metal work when AC air handling~~
28 ~~equipment is ten (10) tons or less or when heating equipment does not exceed 250,000 BTUs.~~

29 ~~-(c) A holder of a journeyperson license shall only be entitled to work as an employee of~~
30 ~~the properly licensed master permit holder in accordance with this chapter.~~

31 ~~(d) The board or the director of the department of labor and training shall establish a~~
32 ~~dispute resolution process for all licensees performing work on residential structures as defined in~~
33 ~~section 5-65-1.~~

34 ~~**28-27-21. Grounds for revocation of license.** -- The director of labor and training shall~~

1 ~~revoke or suspend the license or impose a fine on any pipefitter or refrigeration/air conditioning~~
2 ~~or fire protection sprinkler contractor/sprinkler fitter master or journeyman or sheet metal~~
3 ~~contractor or journeyman sheet metal worker after hearing before and recommendation of the~~
4 ~~board, when the weight of the evidence establishes any one or more of the following specific~~
5 ~~violations:~~

6 ~~-(1) Obtaining or conspiring with others to obtain a license by inducing the issuance of~~
7 ~~that license in consideration of the payment of money, or any other thing of value, or by and~~
8 ~~through a willful or fraudulent misrepresentation of facts or the procurement thereof.~~

9 ~~-(2) Willfully violating any ordinances or rules of any cities or towns or of any laws in~~
10 ~~this state regulating the conduct of pipefitting or refrigeration/air conditioning or fire protection~~
11 ~~sprinkler systems or air distribution systems work.~~

12 ~~-(3) Knowingly hiring, directly aiding or assisting any person to engage in the work~~
13 ~~specified for a pipefitter or refrigeration/air conditioning or fire protection sprinkler~~
14 ~~contractor/sprinkler fitter master or journeyman or sheet metal contractor or journeyman~~
15 ~~sheet metal worker when that person does not have a license as provided in this chapter.~~

16 ~~-(4) Any pipefitter or refrigeration/air conditioning or fire protection sprinkler~~
17 ~~contractor/sprinkler fitter master or journeyman or sheet metal contractor or journeyman~~
18 ~~sheet metal worker willfully and fraudulently loaning his or her license to any other person for the~~
19 ~~purpose of permitting that person to engage in any work in violation of this chapter.~~

20 ~~-(5) Being convicted of a felony.~~

21 ~~-(6) Willfully violating any of the provisions of this chapter including the rules,~~
22 ~~regulations, and licensing criteria guide promulgated under this chapter.~~

23 ~~(7) The board or the director of labor and training shall establish or dispute resolution~~
24 ~~process for all licensees performing work on residential structures as defined in section 5 65 1.~~

25 ~~SECTION 10. Section 34 28 4.1 of the General Laws in Chapter 34 28 entitled~~
26 ~~"Mechanics' Liens" is hereby amended to read as follows:~~

27 ~~**34-28 4.1. Contractors.** -- No person contracting directly with either the owner of the~~
28 ~~land, lessee, or tenant of the land, or owner of less than the fee simple, other than material~~
29 ~~suppliers, as those terms are referred to in sections 1, 2 and 3 [sections 34 28 1, 34 28 2, 34 28~~
30 ~~3]of this chapter, shall be entitled to claim a lien under this chapter unless that person shall have~~
31 ~~given the following notice to the owner, lessee or tenant, or owner of less than the fee simple in~~
32 ~~writing, by certified mail, return receipt requested, within ten (10) business days of commencing~~
33 ~~work or delivery of materials for construction, erection, alteration or repair as set forth in this~~
34 ~~chapter. The failure of such person contracting directly to give such notice shall not affect the~~

1 ~~right of any other person performing work or furnishing materials of claiming a lien pursuant to~~
2 ~~this chapter, provided that the procedures set forth in this chapter are followed. However, such~~
3 ~~person failing to file such notice shall indemnify and hold harmless any owner, lessee or tenant,~~
4 ~~or owner of less than the fee simple from any payment or costs incurred on account of any liens~~
5 ~~claims by those not in privity with them, unless such owner, lessee or tenant, or owner of less than~~
6 ~~the fee simple shall not have paid such person. The notice shall provide the following:~~

7 ~~NOTICE OF POSSIBLE MECHANIC'S LIEN To: Insert name of owner, lessee or~~
8 ~~tenant, or owner of less than the fee simple. The undersigned is about to perform work and/or~~
9 ~~furnish materials for the construction, erection, alterations or repair upon the land at (INSERT~~
10 ~~ADDRESS) under contract with you. This is a notice that the undersigned and any other persons~~
11 ~~who provide labor and materials for the improvement under contract with the undersigned may~~
12 ~~file a mechanic's lien upon the land in the event of nonpayment to them. It is your responsibility~~
13 ~~to assure yourself that those other persons under contract with the undersigned receive payment~~
14 ~~for their work performed and materials furnished for the construction, erection, alteration or~~
15 ~~repair upon the land.~~

16 SECTION 4. This act shall take effect upon passage.

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LC03275
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO BUSINESSES AND PROFESSIONS - CONTRACTORS REGISTRATION

- 1 This act would amend various sections of law relative to contractors.
- 2 This act would take effect upon passage.

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LC03275

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