

LC02195

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2006

A N A C T

RELATING TO BUSINESSES AND PROFESSIONS -- CONTRACTORS' REGISTRATION

Introduced By: Representatives Kennedy, Lewiss, E Coderre, San Bento, and Kilmartin

Date Introduced: February 15, 2006

Referred To: House Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 5-65-1, 5-65-2, 5-65-3, 5-65-4, 5-65-5, 5-65-6, 5-65-7, 5-65-8, 5-
2 65-9, 5-65-10, 5-65-11, 5-65-12, 5-65-13, 5-65-19 and 5-65-22 of the General Laws in Chapter 5-
3 65 entitled "Contractors' Registration" are hereby amended to read as follows:

4 **5-65-1. Definitions.** -- As used in this chapter:

5 (1) "Actual losses" means amounts payable for the cost of repair, replacement,
6 completion or performance under the terms of a residential contracting agreement with respect to
7 which a claim is made

8 ~~(1)~~ (2) "Board" means the contractors' registration board established pursuant to the
9 provisions of Rhode Island general laws section 5-65-14.

10 (3) "Claimant" means an owner and resident of a residential building, containing at least
11 one, but not more than, four (4) dwelling units, who has entered into a construction contract with
12 a contractor to carry out construction work on said building, and who is making a claim against
13 said contractor for failure of performance under said contract.

14 ~~(2)~~ (4) "Commission" means the building code commission supportive of the contractors'
15 registration board.

16 (5) "Contract" means a written agreement contained in one or more documents for the
17 performance of certain residential contracting work, including all labor, goods and services set
18 forth under said agreement.

19 ~~(3)~~ (6) (i) "Contractor" means a person who, in the pursuit of an independent business,

1 undertakes or offers to undertake or submits a bid, or for compensation and with or without the
2 intent to sell the structure arranges to construct, alter, repair, improve, move over public
3 highways, roads or streets or demolish a structure or to perform any work in connection with the
4 construction, alteration, repair, improvement, moving over public highways, roads or streets or
5 demolition of a structure, and the appurtenances thereto. "Contractor" includes, but is not limited
6 to, any person who purchases or owns property and constructs or for compensation arranges for
7 the construction of one or more structures.

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

10 ~~(4)~~ (7) "Dwelling unit" means a single unit providing complete independent living
11 facilities for one or more persons, including permanent provisions for living, sleeping, eating,
12 cooking, and sanitation.

13 (8) "Fund" means the Residential Contractor's Guaranty Fund.

14 (9) "Fund Administrator" means the administrator of the Residential Contractor's
15 Guaranty Fund, who shall be the executive director of the board or his/her designee.

16 ~~(5)~~ (10) "Hearing officer" means a person designated by the executive director, with the
17 approval of the director of the department of administration to hear contested claims or cases,
18 contested enforcement proceedings, and contested administrative fines, in accordance with the
19 Administrative Procedures Act, chapter 35 of title 42.

20 (11) "Owner" means any homeowner of a pre-existing owner-occupied building
21 containing at least one, but not more than four (4) dwelling units, or tenant thereof, who orders,
22 contracts for, or purchases the services of a contractor.

23 ~~(6)~~ (12) "Staff" means the executive director for the contractors' registration board, and
24 any other staff necessary to carry out the powers, functions and duties of the board including
25 inspectors, hearing officers and other supportive staff.

26 ~~(7)~~ (13) "State" means the state of Rhode Island.

27 ~~(8)~~ (14) "Structure" means a residence or commercial building, including a site-built
28 home, a modular home constructed off-site, a condominium, a manufactured home, a mobile
29 home, and duplex or multi-unit residential building, consisting of four (4) dwelling units or less.
30 This definition includes and is preempted by the regulations promulgated by the state building
31 code commission rules and regulations for family dwellings and multi-family dwellings.

32 ~~(9)~~ (15) "Substantially" means any violation, which affects the health, safety, and
33 welfare of the general public.

34 **5-65-2. Applications.** -- The following persons shall be exempt from ~~registration~~

1 [licensure](#) under this chapter:

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

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

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

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

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

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

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

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

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

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

32 (ii) Structures not in excess of sixteen (16) feet in width when these structures are being
33 moved by their owner if the owner is not a contractor required to be ~~registered~~ [licensed](#) under this
34 chapter.

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

9 ~~5-65-3. Registration for work on a structure required of contractor -- Issuance of~~
10 ~~building permits to unregistered or unlicensed contractors prohibited -- Evidence of activity~~
11 ~~as a contractor -- Duties of contractors.~~ Licensure for work on a structure required of
12 contractor – Issuance of building permits to unlicensed contractors prohibited – Evidence
13 of activity as a contractor – Duties of contractors. -- (a) A person shall not undertake, offer to
14 undertake, or submit a bid to do work as a contractor on a structure or arrange to have work done
15 unless that person has a current, valid ~~certificate of registration~~ license for all construction work
16 issued by the board. A partnership, corporation, or joint venture may do the work, offer to
17 undertake the work, or submit a bid to do the work only if that partnership, corporation, or joint
18 venture is ~~registered~~ licensed for the work. In the case of ~~registration~~ licensure by a corporation or
19 partnership, an individual shall be designated to be responsible for the corporation's or
20 partnership's work. The corporation or partnership and its designee shall be jointly and severally
21 liable for the payment of the ~~registration~~ license fee and fund fee, as requested in this chapter, and
22 for violations of any provisions of this chapter. Disciplinary action taken on a ~~registration~~ license
23 held by a corporation, partnership, or sole proprietor may affect other ~~registrations~~ licenses held
24 by the same corporation, partnership, or sole proprietorship, and may preclude future ~~registration~~
25 licensure by the principal of that business entity.

26 (b) A ~~registered~~ licensed partnership or corporation shall notify the board immediately
27 upon any change in partners or corporate officers.

28 (c) A city, town, or the state shall not issue a building permit to anyone required to be
29 ~~registered~~ licensed under this chapter who does not have a current, valid ~~certificate of registration~~
30 ~~identification card or valid~~ license which shall be presented at the time of issuance of a permit
31 and shall become a condition of a valid permit. Each city, town, or the state which requires the
32 issuance of a permit as a condition precedent to construction, alteration, improvement,
33 demolition, movement or repair of any building or structure or the appurtenance to the structure
34 shall also require that each applicant for the permit file as a condition to issuing the permit a

1 written statement, subscribed by the applicant, that the applicant is ~~registered~~ licensed under the
2 provisions of this chapter, giving the number of the ~~registration~~ license and stating that the
3 ~~registration~~ license is in full force and effect, or, if the applicant is exempt from the provisions of
4 this chapter, listing the basis for the exemption. The city, town, or the state shall list the
5 contractor's ~~registration~~ license number on the permit obtained by that contractor, and if a
6 homeowner is issued a permit, the building inspector or official must ascertain ~~registration~~ license
7 numbers of each contractor on the premises and shall inform the ~~registration~~ license board of any
8 non-~~registered~~ licensed contractors performing work at the site.

9 (d) Every city and town which requires the issuance of a business license as a condition
10 precedent to engaging, within the city or town, in a business which is subject to regulation under
11 this chapter, shall require that each licensee and each applicant for issuance or renewal of the
12 license file, or has on file, with the city or town a signed statement that the licensee or applicant is
13 ~~registered~~ licensed under the provisions of this chapter and stating that the ~~registration~~ license is
14 in full force and effect.

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

20 (f) ~~Registration~~ Licensure under this chapter shall be prima facie evidence that the
21 ~~registrant~~ licensee conducts a separate, independent business.

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

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

31 (i) Names and addresses.

32 (ii) ~~Registration~~ License numbers or other license numbers.

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

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

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

6 (i) The following subcontractors who are not employees of a ~~registered~~ licensed
7 contractor must obtain a ~~registration certificate~~ license prior to conducting any work: (1)
8 carpenters, including finish carpenters and framers; (2) siding installers; (3) roofers; (4)
9 foundation installers, including concrete installers and form installers; (5) drywall installers; (6)
10 plasterers; (7) insulation installers; (8) ceramic tile installers; (9) floor covering installers; (10)
11 swimming pool installers, both above ground and in ground; (11) masons, including chimney
12 installers, fireplace installers, and general masonry erectors. This list is not all inclusive and shall
13 not be limited to the above referenced contractors. No subcontractor licensed by another state
14 agency pursuant to section 5-65-2 shall be required to register.

15 (j) A contractor including, but not limited to, a general contractor, shall not hire any
16 subcontractor or other contractor to work on a structure unless the contractor is ~~registered~~
17 licensed under this chapter or exempt from ~~registration~~ licensure under the provisions of section
18 5-65-2.

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

22 (l) The ~~registration~~ license number of each contractor shall appear in any advertising by
23 that contractor. Advertising in any form by an ~~unregistered~~ unlicensed contractor shall be
24 prohibited, including alphabetical or classified directory listings, vehicles, business cards, and all
25 other forms of advertisements. The violations could result in a penalty being assessed by the
26 board per administrative procedures established.

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

30 ~~5-65-4. Registration required to obtain judicial or administrative remedy --~~
31 ~~Exception. -- License required to obtain judicial or administrative remedy -- Exception. --~~

32 (a) A contractor may not file a lien, file a claim with the board, or bring or maintain in any court
33 of this state a suit or action for compensation for the performance of any work on any structure or
34 for the breach of any contract for work on any structure which is subject to this chapter, unless

1 the contractor was:

2 (1) ~~Registered~~ Licensed under this chapter at the time the contractor bid or entered into
3 the contract for performance of the work unless the bid or contract predated ~~July 1, 1990~~ January
4 1, 2007; and

5 (i) If the bid or contract predated January 1, 2007, the contractor must have been
6 registered under this chapter at the time the contractor bid or entered into the contract for
7 performance of the work unless the bid or contract predated July 1, 1990.

8 (2) ~~Registered~~ Licensed continuously while performing the work for which
9 compensation is sought.

10 (b) A court may choose not to apply this section if the court finds that to do so would
11 result in a substantial injustice to the ~~unregistered~~ unlicensed contractor.

12 **5-65-5. Registered application. – License application. – (a)** A person who wishes to
13 ~~register~~ be licensed as a contractor shall submit an application, under oath, upon a form
14 prescribed by the board. The application shall include, but not be limited to, the following
15 information regarding the applicant:

16 (1) A statement that the applicant desires the issuance of a license under the terms of this
17 chapter;

18 (2) The street address or other physical location of the applicant's place of business;

19 (3) The street address or other physical location in this state and, if different, the mailing
20 address, for service of process on the applicant;

21 ~~(4)~~ (4) Workers' compensation insurance account number, or company name if a number
22 has not yet been obtained, if applicable;

23 ~~(2)~~ (5) Unemployment insurance account number if applicable;

24 ~~(3)~~ (6) State withholding tax account number if applicable;

25 ~~(4)~~ (7) Federal employer identification number, if applicable, or if self-employed and
26 participating in a retirement plan;

27 ~~(5)~~ (8) The name and business address and residential address of:

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

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

30 (iii) The corporation officers, if the applicant is a corporation;

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

32 (9) Submit the appropriate bond as required by section 5-65-26;

33 ~~(6)~~ (10) A statement of whether or not the applicant has previously applied for
34 ~~registration~~ licensure , or is or was an officer, partner, or venturer of an applicant who previously

1 applied for ~~registration~~ licensure and if so, the name of the corporation, partnership, or venture.

2 (11) Any information requested by the board to ascertain the background, financial
3 responsibility, experience, knowledge and qualifications of the applicant.

4 (b) The application must be:

5 (1) Made on a form prescribed by the board in accordance with the rules and regulations
6 adopted by the board;

7 (2) Accompanied by the fees, application and guaranty fund, as provided in section 5-65-
8 9.

9 **5-65-6. Contractor to notify of address change -- Effect of mail to last known**
10 **address.** -- It is the duty of a contractor to notify the board of any change of address while
11 ~~registered~~ licensed and for one year following the date the contractor's ~~registration~~ license expires
12 or becomes inactive. The contractor shall notify the board within ten (10) days of the date upon
13 which the change of address occurs. Any proposed or final order or notice of hearing directed by
14 the board to the last known address of record shall be considered delivered when deposited in the
15 United States mail and/or sent registered or certified or post office receipt secured. Any other
16 communication directed by the board to the last known address of record shall be considered
17 delivered when deposited in the United States mail, regular mail.

18 **5-65-7. Insurance required of contractors.** -- (a) Throughout the period of ~~registration~~
19 licensure, the contractor shall have in effect public liability and property damage insurance
20 covering the work of that contractor which shall be subject to this chapter in not less than the
21 following amount: three hundred thousand dollars (\$300,000) combined single limit, bodily
22 injury and property damage.

23 (b) In addition, all contractors shall have in effect worker's compensation insurance as
24 required under chapter 29 of title 28. Failure to maintain required insurance shall not preclude
25 claims from being filed against a contractor.

26 (c) The contractor shall provide satisfactory evidence to the board at the time of
27 ~~registration~~ licensure and renewal that the insurance required by subsection (a) of this section has
28 been procured and is in effect. Failure to maintain insurance shall invalidate ~~registration~~ licensure
29 and may result in a fine to the ~~registrant~~ licensee.

30 **5-65-8. Term of registration -- Renewal -- Registration identification card.** -- (a) A
31 ~~certificate of registration~~ license shall be valid for two (2) years from the date of issuance unless
32 the ~~registration~~ license is revoked or suspended as described in section 5-65-10. It may be
33 renewed by the same procedure provided for an original ~~registration~~ licensure upon application
34 and furnishing of any additional supplemental information that the board may require by rule.

1 (b) The board shall issue a pocket-card ~~certificate of registration~~ license to a contractor
2 ~~registered~~ licensed under this chapter.

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

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

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

11 **5-65-9. Registration fee. License fee.** -- (a) Each applicant shall pay to the board:

12 (1) For original ~~registration~~ licensure or renewal of ~~registration~~ license, a fee of one
13 hundred twenty dollars (\$120).

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

16 (3) A fee to the fund, with the application for licensure. The amount of the fee shall be
17 based upon the number of persons in the applicant's employ at the time of application:

18 (i) A contractor with fewer than four (4) employees shall pay a fee of one hundred dollars
19 (\$100);

20 (ii) A contractor with four (4) to ten (10) employees shall pay a fee of two hundred
21 dollars (\$200);

22 (iii) A contractor with eleven (11) to thirty (30) employees shall pay a fee of three
23 hundred dollars (\$300);

24 (iv) A contractor with more than thirty (30) employees shall pay a fee of five hundred
25 dollars (\$500).

26 Payment shall be refunded if the application is denied by the board. No contractor shall
27 be required to pay this fee more than once unless the fund administrator determines that the
28 amount of the fund is insufficient to maintain it at a level commensurate with claims made against
29 the fund. If such a determination is so made, after conducting a public hearing, the board, in
30 consultation with the fund administrator, may assess each contractor an appropriate fee, which
31 shall not exceed the amount of the original assessment; provided, however, that the board shall
32 not assess any registrant more than once in a twelve (12) month period.

33 (b) All fees collected by the board shall be deposited as general revenues to support the
34 activities set forth in this chapter except as provided for in section 5-65-25.1.

1 (c) Each year, the executive director shall prepare a proposed budget to support the
2 programs approved by the board. The proposed budget shall be submitted to the board for its
3 review. A final budget request shall be submitted to the legislature as part of the division of
4 central services annual request.

5 **5-65-10. Grounds for discipline -- Injunctions.** -- (a) The board or commission may
6 revoke, suspend, or refuse to issue, reinstate, or reissue a ~~certificate of registration~~ license if the
7 board or commission determines after notice and opportunity for a hearing:

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

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

10 (3) That the licensee or applicant does not hold the bond or deposit required by section
11 5-65-26.

12 ~~(3)~~ (4) That the ~~registrant~~ licensee or applicant has engaged in conduct as a contractor
13 that is dishonest or fraudulent that the board finds injurious to the welfare of the public.

14 ~~(4)~~ (5) Has violated a rule or order of the board.

15 ~~(5)~~ (6) That the ~~registrant~~ licensee has knowingly assisted an unregistered person to act
16 in violation of this chapter.

17 ~~(6)~~ (7) That a lien was filed on a structure under chapter 28 of title 34 because the
18 ~~registrant~~ licensee or applicant wrongfully failed to perform a contractual duty to pay money to
19 the person claiming the lien.

20 ~~(7)~~ (8) That the ~~registrant~~ licensee has substantially violated state or local building codes.

21 ~~(8)~~ (9) That the ~~registrant~~ licensee has made false or fraudulent statements on his or her
22 application.

23 ~~(9)~~ (10) That a ~~registrant~~ licensee has engaged in repeated acts in violation of this
24 chapter and the board's rules and regulations.

25 ~~(10)~~ (11) The board may take disciplinary action against a contractor who performed
26 work or arranged to perform, while the ~~registration~~ license was suspended, invalidated or
27 revoked.

28 ~~(11)~~ (12) That the ~~registrant~~ licensee breached a contract.

29 ~~(12)~~ (13) That the ~~registrant~~ licensee performed negligent and/or improper work.

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

1 that the failure is intentional.

2 (c) (1) The board may, after a hearing, impose a fine in an amount not to exceed five
3 hundred dollars (\$500) for the first violation of this chapter, or any rules or regulations
4 promulgated by the board per day per offense. In addition, when claims are filed, the board may
5 impose a fine upon the contractor in an amount not to exceed ten thousand dollars (\$10,000)
6 when a contractor fails to complete work as ordered by the board or commission. The fine may
7 include the contract price or the value of corrective measures, the dollar amount of an imposed
8 lien, as well as incidental damages incurred by the prevailing party. Where corrective work is
9 completed as ordered by the board, the fine shall not be imposed.

10 (2) For each second violation of a particular subsection of this chapter or of a rule or
11 regulation promulgated by the board, a fine of a minimum of five hundred dollars (\$500) but not
12 to exceed one thousand dollars (\$1,000) may be imposed after a hearing by the board. All
13 subsequent violations shall impose fines at a minimum of one thousand dollars (\$1,000) but not
14 to exceed five thousand dollars (\$5,000). All fines collected by the board shall be deposited as
15 general revenues to be used to enforce the provisions of this chapter.

16 (3) For the first violation of section 5-65-3, only for ~~non-registered~~ nonlicensed
17 contractors, a minimum mandatory fine of two hundred fifty dollars (\$250) shall be imposed, not
18 to exceed one thousand dollars (\$1,000).

19 (d) The hearing officer, upon rendering a conclusion may require the ~~registrant~~ licensee,
20 in lieu of a fine, to attend continuing education courses as appropriate. Failure to adhere to the
21 requirement could result in immediate revocation of ~~registration~~ license.

22 (e) The expiration of a ~~registration~~ license by operation of law or by order or decision of
23 the board or a court, or the voluntary surrender of ~~registration~~ license by the ~~registrant~~ licensee,
24 does not deprive the board of jurisdiction, an action or disciplinary proceeding against the
25 ~~registrant~~ licensee or to render a decision suspending or revoking a ~~registration~~ license.

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

29 (g) A ~~registrant~~ licensee may petition the board to partially or completely expunge his or
30 her record.

31 **5-65-11. Types of allowable claims.** -- The board shall only accept and make
32 determinations of the following types of claims for damages against contractors. This section
33 shall apply to the following types of claims:

34 (1) Claims against a contractor by the owner of a structure for the following in

1 performing any work subject to this chapter:

2 (i) Negligent work.

3 (ii) Improper work.

4 (iii) Breach of contract.

5 (2) Claims against a contractor by the owner of a structure to discharge or to recoup
6 funds expended in discharging a lien established under chapter 28 of title 34 and under
7 circumstances described under this subsection. The board may reduce any amount adjudged by
8 the board under this section by any amount the claimant owes the contractor. The board shall only
9 determine claims under this subsection if:

10 (i) The owner has paid the contractor for that contractor's work subject to this chapter;
11 and

12 (ii) A lien is filed against the structure of the owner under chapter 28 of title 34 because
13 the contractor failed to pay the person claiming the lien for that person's contribution toward
14 completion of the structure.

15 (3) Claims against a ~~registered~~ licensed contractor by a ~~registered~~ licensed contractor for
16 the following in performing any work subject to this chapter:

17 (i) Negligent work;

18 (ii) Improper work;

19 (iii) Breach of contract; or

20 (iv) Furnishing labor or material or renting or supplying equipment to a contractor.

21 (4) Claims by an employee of a ~~registered~~ licensed contractor.

22 (5) If at a hearing the contractor's ~~registration~~ license number is not on the contract, or
23 recession clause when required by law, or mechanics lien notice; the ~~registrant~~ licensee shall be
24 subject to a fine.

25 (6) If a settlement/agreement reached by the parties, or payment plan is breached, the
26 board may hold an administrative hearing to suspend or revoke the contractors' ~~registration~~
27 license, impose a fine, and provide monetary relief.

28 **5-65-12. Procedure for making claims against a contractor -- Investigation by board**

29 **-- Disciplinary action.** -- (a) Any person having a claim against a contractor of the type referred
30 to in section 5-65-11, may file with the board a statement of the claim in any form and with any
31 fee that the board prescribes. The filing fee may be reimbursed to the claimant by the respondent,
32 if the respondent is found to be at fault. Claims resolved prior to issuance of an order may be
33 removed from the contractor's registration board record pursuant to administrative regulations.

34 (1) All claims filed with the contractor's registration board shall be heard by a designated

1 hearing officer, unless either party prior to the administrative hearing, files a civil action on the
2 matter in a state court. Upon receipt of a written notice and a copy of the filed civil complaint the
3 board shall discontinue processing the claim. If documentation is not received, the hearing will be
4 conducted.

5 (2) A court judgment may constitute the basis for regulatory action against a contractor's
6 ~~registration~~ license, which may result in the imposition of fines and penalties.

7 (b) The board may refuse to accept, or refuse at any time to continue processing a claim
8 if:

9 (1) The same facts and issues involved in the claim have been submitted to any other
10 entity authorized by law or the parties to effect a resolution and settlement;

11 (2) The claimant does not permit the contractor against whom the claim is filed to be
12 present at any inspection made by the board;

13 (3) The board determines that the contractor against whom the claim is filed is capable of
14 complying with the recommendations made by the board relative to the claim, but the claimant
15 does not permit the contractor to comply with the recommendations. The board may refuse to
16 accept further process of a claim under this paragraph only if the contractor was ~~registered~~
17 licensed at the time the work was first performed and is ~~registered~~ licensed at the time the board
18 makes its recommendations; or

19 (4) The board determines that the nature or complexity of the claim is such that a court is
20 the appropriate forum for the adjudication of the claim.

21 (c) The board shall not process a claim unless it is filed in a timely manner as follows:

22 (1) If the owner of a new structure files the claim, the board must receive the claim not
23 later than one year after the date the structure was first occupied as determined from the date of
24 issuance of the certificate of occupancy, or one year after the date of the closing on the structure,
25 whichever occurs later.

26 (2) If the owner of an existing structure files the claim, the board must receive the claim
27 not later than one year after the date the work was substantially completed as determined by the
28 certificate of occupancy, or the date that work ceased.

29 (3) Regardless of whether the claim involves a new or existing structure, if the owner
30 files the claim because the contractor failed to begin the work pursuant to a written contract, the
31 board must receive the claim not later than one year after the date the parties entered into a
32 written contract.

33 (4) Regardless of whether the claim involves a new or existing structure, if the owner
34 files a claim because the contractor failed to substantially complete the work, the board must

1 receive the claim not later than one year after the date the contractor ceased work on the structure.

2 (5) If a ~~registered~~ licensed general contractor files the claim against a ~~registered~~ licensed
3 subcontractor, because the subcontractor failed to substantially complete the work, the board must
4 receive the claim not later than one year after the date the subcontractor ceased to work on the
5 structure.

6 (6) If a material or equipment supplier, an employee, or a ~~registered~~ licensed
7 subcontractor files the claim, the board must receive the claim not later than one year after the
8 date the ~~registrant~~ licensee incurred the indebtedness.

9 (7) Any corrective work performed to resolve a claim shall be the responsibility of the
10 contractor for one year beyond the completion date but only for corrective work performed.

11 (d) Upon acceptance of the statement of claim, the board shall give notice to the party
12 against whom the claim is made and shall initiate proceedings to determine the validity of the
13 claim. If, after investigation, the board determines that a violation of this chapter or of any rule
14 promulgated under this chapter has occurred, the board shall recommend to the ~~registrant~~ licensee
15 any action that the board considers appropriate, including revocation of the ~~registrant's certificate~~
16 licensee's license, to compensate the claimant for any damages incurred as the result of the
17 violation. If the contractor performs accordingly, the board shall give that fact due consideration
18 in any subsequent disciplinary proceeding brought by the board; provided, that the board shall
19 suspend for a period of one year ~~certification~~ license of any ~~registrant~~ licensee who is found by
20 final determination to have willfully and knowingly violated any provisions of this chapter with
21 respect to three (3) or more structures within a one year period.

22 **5-65-13. Nonlawyer may represent corporation before board. --** A corporation that is
23 ~~registered~~ licensed or required to be ~~registered~~ licensed as a contractor under this chapter and that
24 is a party in any proceeding before the board or any representative of a party may appear or be
25 represented in the proceeding by an officer of the corporation who is not a member of the state
26 bar.

27 **5-65-19. ~~Penalty for operating without a registration and failure to comply with a~~**
28 **~~final order of the board. --~~ Penalty for operating without a license and failure to comply**
29 **with a final order of the board. --** (a) Any person who violates a final order of the board, or
30 fails to ~~register~~ become licensed as a contractor as stipulated, and upon proper written
31 notification, is deemed guilty of a misdemeanor, and, upon conviction, shall be imprisoned for a
32 term not exceeding one year, or fined not more than one thousand dollars (\$1,000) for each
33 offense.

34 (b) A final order shall be considered delivered when served to a defendant. In addition to

1 any sentence or fine imposed by the court under subsection (a) of this section, the court may order
2 a defendant to comply with any outstanding final order of the board and/or to pay to the board
3 any outstanding fine or fines previously imposed by the board pursuant to section 5-65-10(c).

4 ~~**5-65-22. Display of Certificate of registration.**~~ **Display of license.** -- All contractors
5 subject to the provisions of this chapter must include their ~~certificate of registration~~ license
6 number on all advertising proposals, contracts and invoices displayed in a conspicuous manner.

7 SECTION 2. Chapter 5-65 of the General Laws entitled "Contractors' Registration" is
8 hereby amended by adding thereto the following sections:

9 **5-65-5.1. Issuance of licenses -- Use of examinations to investigate, classify and**
10 **qualify applicants.** – Under reasonable rules and regulations adopted by the board, the board
11 may investigate, classify and qualify applicants for contractors' licenses by written or oral
12 examinations, or both, and may issue contractors' licenses to qualified applicants. The
13 examinations may, in the discretion of the board, be given in specific classifications only.

14 **5-65-5.2. Prohibition from certain persons from licensure.** – To obtain or renew a
15 license under this chapter, a person shall not have had a license refused or revoked, within one
16 year before the person's application, or shall not have engaged in the contracting business, nor
17 shall the person have submitted a bid without first having been licensed within one year before
18 the person's application, nor shall a person act as a contractor between the filing of the application
19 and actual issuance of the license, nor shall the person be found in violation of any provision in
20 section 5-65-10 within one year before the person's application. The board may find any of those
21 actions or circumstances to be excusable if there was a reasonable doubt as to the need for
22 licensure or the actions of the applicant did not result in an unremedied hardship or danger to the
23 public. A person convicted of contracting without a license is not eligible to obtain a license
24 under this chapter for one year after the date of the last conviction.

25 **5-65-25. Residential contractor's guaranty fund.** – (a) There shall be established a
26 Residential Contractor's Guaranty Fund within the contractors' registration board, to compensate
27 owners for actual losses incurred by them as a result of licensed contractor conduct which has
28 been found by the board or a court of competent jurisdiction to be work performed in a poor or
29 unworkmanlike manner or which is a common law violation or a violation of any statutes or
30 regulations designed for the protection of consumers, including, but not limited to, prohibited acts
31 listed in section 5-65-10; provided, however, that the owner has exhausted all customary and
32 reasonable efforts to collect the judgment but the contractor has filed for bankruptcy, fled the
33 jurisdiction or the owner is otherwise unable to collect such judgment after execution. The board
34 shall promulgate such regulations as it may deem necessary to implement the fund under this

1 chapter. Prior to the adoption, amendment or repeal of any regulation, the director shall give
2 notice and hold a public hearing in accordance with the requirements of chapter 42-35. The fund
3 administrator shall be responsible for implementing the provisions of this chapter and such
4 regulations as the board may promulgate as they relate to the fund.

5 (b) For purposes of recovery against the fund, the conduct of a licensed contractor shall
6 be deemed to include the conduct of his employees', salesperson and subcontractors, whether or
7 not an express relationship exist, provided the work or activities' of such individuals is within the
8 scope of the contractor and not for additional work beyond the contract which such individuals
9 undertake by separate agreement with the owner.

10 **5-65-25.1. Operation of fund.** –The fund administrator shall operate the fund in
11 accordance with this chapter and maintain the fund at a level which is commensurate with claims
12 anticipated to be made against it. All monies collected shall be deposited to the credit of the fund
13 into a special interest bearing account to be administered by the fund administrator who shall
14 invest or reinvest the money of the fund. No portion of monies in said account shall be used for
15 the administration of the fund, except as required by this paragraph. Interests accruing from
16 investment of money in the fund shall be credited to the fund, with a portion of the interest, the
17 amount of which shall be determined by the fund administrator, to be applied to educating
18 consumers, contractors and others as to the requirements of this chapter.

19 **5-65-25.2. Claims against the fund.** – (a) An owner may make a claim to the fund only
20 if he/she has complied with the provisions of sections 5-65-11 and 5-65-12, and has filed his/her
21 claim with the fund within six (6) months after the owner has obtained a judgment or arbitration
22 award, and has exhausted all such customary and reasonable efforts to collect the judgment or
23 award.

24 (b) A claim under this section shall not be construed to limit the availability of other legal
25 or equitable remedies unless the claim made is for the full amount of the value of the work
26 claimed as damages, in which case the contractor or subcontractor, upon repayment to the fund,
27 may use repayment as a defense via settlement.

28 (c) The fund administrator may not award: (1) more than ten thousand dollars (\$10,000)
29 or any amount necessary to compensate the owner for his actual loss, whichever is less to any one
30 claimant; or (2) more than seventy-five thousand dollars (\$75,000) to claims on account of the
31 conduct of any one licensed contractor within a twelve (12) month period, unless after the fund
32 administrator has paid out said seventy-five thousand dollars (\$75,000) the licensee has repaid the
33 fund the full amount; provided, however, that it is within the discretion of the fund administrator
34 to waive the limit with cause; or (3) any amount for consequential damages, except as may be

1 allowed under section 5-65-12, or for personal injury, punitive damages, attorney's fees, court
2 costs or interest.

3 (d) If at any time the money deposited in the fund is insufficient to satisfy any approved
4 claim or portion thereof, the fund administrator, when sufficient money has been deposited in the
5 fund, shall satisfy the unpaid claims or portions thereof in the order that the claims were
6 originally filed with the fund administrator.

7 (e) The pendency of a claim against the fund shall not limit the administrator from taking
8 disciplinary action against any licensed contractor pursuant to this chapter.

9 **5-65-25.3. Subrogation of fund administrator.** – (a) When the fund administrator has
10 paid from the fund any sum to a claimant, the fund administrator shall be subrogated to all rights
11 of the claimant up to the amount paid, and the claimant shall assign all the claimant's rights, title
12 and interest in the claim up to the amount paid to the claimant by the fund administrator.

13 (b) Payment from the fund of any sum to a claimant under this section shall vest in the
14 fund administrator a right to reimbursement to the fund, with interest, any money paid on account
15 of the licensed contractor found by the fund administrator to be responsible for the claim.

16 (c) If the amount paid from the fund, plus interest at a rate set by the fund administrator,
17 is not repaid by the licensed contractor on whose account a claim was paid in full, within thirty
18 (30) days after notice, the attorney general may seek legal proceedings to recover against the
19 licensed contractor the amount unpaid. The fund administrator shall be entitled to a judgment for
20 such amount upon a showing that: (1) the licensee was afforded notice and an opportunity to be
21 heard in legal actions which resulted in the judgment against the licensee; and (2) no appeal is
22 pending; and (3) the fund administrator has directed payment from the fund based on the final
23 judgment of the board or a court of competent jurisdiction.

24 (d) The fund shall be deemed a creditor with respect to any amount paid from the fund
25 for the purpose of expecting to any discharge of the licensed contractor under federal bankruptcy
26 law.

27 **5-65-26. Bond requirements.** – (a) Before issuing a contractor's license to any applicant,
28 the board shall require that the applicant:

29 (1) File with the board a surety bond in a form acceptable to the board executed by the
30 contractor as principal with a corporation authorized to transact surety business in the state of
31 Rhode Island as surety; or

32 (2) In lieu of such bond, establish with the board a cash deposit as provided by this
33 section.

34 (b) Before granting renewal of a contractor's license to any applicant, the board shall

1 require that the applicant file with the board satisfactory evidence that his/her surety bond or cash
2 deposit is in full force, unless the applicant has been relieved of the requirement as provided in
3 this section.

4 (c) Failure of an applicant or licensee to file or maintain in full force the required bond or
5 establish the required cash deposit constitutes cause for the board to deny, revoke, suspend or
6 refuse to renew a license.

7 (d) Except as otherwise provided in subsection (e), the amount of each bond or cash
8 deposit required by this section must be fixed by the board, in accordance with its rules and
9 regulations, with reference to the contractor's financial and professional responsibility and the
10 magnitude of his/her operations, but must be not less than one thousand dollars (\$1,000) or more
11 than five hundred thousand dollars (\$500,000). The board must be continuous in form and must
12 be conditioned that the total aggregate liability of the surety for all claims is limited to the face
13 amount of the bond irrespective of the number of years the bond is in force. A bond required by
14 this section must be provided by a person whose long-term debt obligations are rated "A" or
15 better by a nationally recognized rating agency. The board may increase or reduce the amount of
16 any bond or cash deposit if evidence supporting such a change in the amount is presented to the
17 board at the time application is made for renewal of a license or at any hearing conducted
18 pursuant to chapter 42-35. Unless released earlier pursuant to subsection (e), any cash deposit
19 may be withdrawn two (2) years after termination of the license in connection with which it was
20 established, or two (2) years after completion of all work authorized by the board after
21 termination of the license, whichever occurs later, if there is an outstanding claim against it.

22 (e) After the licensee has acted in the capacity of a licensed contractor in the state of
23 Rhode Island for not less than five (5) consecutive years, the board may relieve the licensee of the
24 requirement of filing a bond or establishing a cash deposit if evidence supporting such relief is
25 presented to the board. The board may at any time thereafter require the licensee to file a new
26 bond or establish a new cash deposit as provided in subsection (d);

27 (1) If evidence is presented to the board supporting this requirement; or

28 (2) Pursuant to subsection (f), after notification of a final written decision by the labor
29 commissioner.

30 (f) If the board receives notification that three (3) substantiated claims for wages have
31 been filed against a contractor within a two (2) year period, the board shall require the contractor
32 to file a bond or establish a cash deposit in an amount fixed by the board. The contractor shall
33 maintain the bond or cash deposit for the period required by the board.

34 **5-65-26.1. Persons benefited by bond or deposit.** – (a) Each bond or deposit required

1 by section 5-65-26 must be in favor of the state of Rhode Island for the benefit of any person
2 who:

3 (1) As owner of the property to be improved entered into a construction contract with the
4 contractor and is damaged by failure of the contractor to perform the contract or to remove liens
5 filed against the property;

6 (2) As an employee of the contractor performed labor on or about the site of the
7 construction covered by the contract;

8 (3) As a supplier or materialman furnished materials or equipment for the construction
9 covered by the contract; or

10 (4) Is injured by an unlawful act or omission of the contractor in the performance of a
11 contract.

12 (b) Any person claiming against the bond or deposit may bring an action in a court of
13 competent jurisdiction on the bond or against the board on the deposit for the amount of damage
14 he has suffered to the extent covered by the board or deposit. No action may be commenced on
15 the bond or deposit two (2) years after the commission of the act on which the action is based. If
16 an action is commenced on the bond, the surety that executed the bond shall notify the board of
17 the action within thirty (30) days after the date that:

18 (1) The surety is served with a complaint and summons; or

19 (2) The action is commenced, whichever occurs first.

20 (c) Upon receiving a request from a person for whose benefit a bond or deposit is
21 required, the board shall notify him that:

22 (1) A bond is in effect or that a deposit has been made, and the amount of either;

23 (2) There is an action against a bond, if that is the case, and the court, the title and
24 number of the action and the amount sought by the plaintiff; and

25 (3) There is an action against the board, if that is the case, and the amount sought by the
26 plaintiff.

27 (d) If a surety, or in the case of deposit, the board, desires to make payment without
28 awaiting court action, the amount of the bond or deposit must be reduced to the extent of any
29 payment made by the surety or the board in good faith under the bond or deposit. Any payment
30 must be based on written claims received by the surety or board before the court action.

31 (e) The surety or the board may bring an action for interpleader against all claimants
32 upon the bond or deposit. If an action for interpleader is commenced, the surety or the board must
33 serve each known claimant and publish notice of the action at least once each week for two (2)
34 weeks in a newspaper of general circulation in the county where the contractor has his/her

1 principal place of business. The board is entitled to deduct its costs of the action, including
2 publication, from its liability under the bond. The board is entitled to deduct its costs of the
3 action, including attorney's fees and publication, from the deposit.

4 (f) A claim of any employee of the contractor for labor is a preferred claim against a bond
5 or deposit. If any bond or deposit is insufficient to pay all claims for labor in full, the sum
6 recovered must be distributed among all claimants for labor in proportion to the amounts of their
7 respective claims. Partial payment of claims is not full payment, and the claimants may bring
8 actions against the contractor for the unpaid balances.

9 (g) Claims, other than claims for labor, against a bond or deposit have equal priority,
10 except where otherwise provided by law, and if the bond or deposit is insufficient to pay all of
11 those claims in full, they must be paid pro rata. Partial payment of claims is not full payment, and
12 the claimants may bring actions against the contractor for the unpaid balances.

13 (h) The board may not claim against the bond or deposit required pursuant to section 5-
14 65-26 for the payment of an administrative fine imposed for a violation of the provisions of this
15 chapter.

16 **5-65-26.2. Persons benefited by bond or deposit.** – (a) With respect to a surety bond
17 that a licensed contractor must maintain in accordance with section 5-65-26:

18 (1) The surety shall give prompt notice to the board of any claims paid against the bond
19 of a licensed contractor.

20 (2) The surety may cancel the bond upon giving sixty (60) days noticed to the board and
21 to the contractor by certified mail.

22 (b) Upon receipt by the board of the notice described in paragraph (1) of subsection (a),
23 the board shall immediately notify the contractors who is the principal on the bond that his/her
24 license will be suspended or revoked unless he/she furnishes an equivalent bond or establishes an
25 equivalent cash deposit before a date set by the board.

26 (c) Upon receipt by the board of the notice described in paragraph (2) of subsection (a),
27 the board shall immediately notify the contractor who is the principal on the bond that his/her
28 license will be suspended or revoked unless he/she furnishes an equivalent bond or established an
29 equivalent cash deposit before the effective date of cancellation.

30 (d) The notice is mailed to the contractor by the board pursuant to subsection (b) of (c)
31 must be addressed to his/her last known address in the office of the board.

32 (e) If the contractor does not comply with the requirements of the notice from the board,
33 his/her license must be suspended or revoked on the date:

34 (1) Set by the board, if the notice was provided to the contractor pursuant to subsection

1 (b); or

2 (2) The bond is cancelled, if the notice was provided to the contractor pursuant to
3 subsection (c).

4 SECTION 3. This act shall take effect on January 1, 2007.

=====
LC02195
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO BUSINESSES AND PROFESSIONS – CONTRACTORS' REGISTRATION

1 This act would require the licensing of contractors, and would also require that
2 contractors carry a surety bond as a requirement of licensure or license renewal. This act would
3 also establish a Residential Contractor Guaranty Fund for homeowners who are aggrieved by
4 contractors.

5 This act would take effect on January 1, 2007.

=====
LC02195
=====