

STATE OF NEW JERSEY • DEPARTMENT OF COMMUNITY AFFAIRS

SUBJECT: Policy Addressing Contractor Performance Issues: Fraud, Poor Workmanship, and Failure to Perform in a Timely Manner

NUMBER: 2.10.88

EFFECTIVE: September 2015

REVISED: December 2015

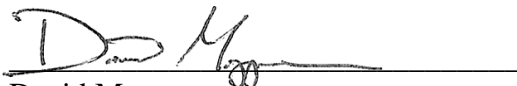
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APPROVAL:



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PURPOSE: This policy describes the actions that the Sandy Recovery Division (SRD) takes to address beneficiary complaints and concerns regarding contractor fraud, poor workmanship, and failure to commence and complete work in a timely manner, pursuant to contract, for the Reconstruction, Rehabilitation, Elevation and Mitigation (RREM) Program, the Landlord Rental Repair Program (LRRP) and the Low-to-Moderate Income (LMI) Homeowner Rebuilding Program. (The RREM Program, LRRP, and LMI Program are collectively referred to as “Housing Programs” hereafter.) This policy statement supplements Policy Number 2.10.3, “Detection of Fraud, Waste, and Abuse.”

POLICY: In its role as grantee of Community Development Block Grant-Disaster Recovery (CDBG-DR) funds, the Department of Community Affairs (DCA), SRD, has adopted policies and procedures to prevent and address issues of fraud, poor workmanship, and failure to commence and complete work in a timely manner pursuant to contract.

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Education and Prevention

SRD's initial goal is to prevent contractor fraud and other construction-related concerns for grant beneficiaries through education and prevention. Although SRD does not have a direct contractual relationship with builders, it has developed educational and due diligence measures that are designed to reasonably prevent fraud and other contractor problems by providing Sandy grant beneficiaries with information regarding the prevention of and protection from construction-related problems. Such measures include:

- A tip sheet from the Office of the Attorney General, Division of Consumer Affairs ("Consumer Affairs") entitled "Avoid Home Repair Scams" is distributed to all beneficiaries in the Housing Programs.
- The housing counseling agencies under contract to DCA, along with other homeowner assistance groups, are provided with information and training on how to help program beneficiaries prevent contractor problems and how to deal with issues that may arise.
- Educational information to assist program beneficiaries to avoid common repair scams and effectively manage their contractors is posted on the reNewJerseyStronger website with a direct link to the Consumer Affairs website to report issues and concerns. Property owners in the Housing Programs are provided tip sheets: "Avoid Home Repair Scams," "Managing Your Project," and "Insurance and Bonding" at their grant signing and pre-construction meetings. Housing Advisors, Landlord Advisors, and Project Managers explain the contents of these tip sheets in detail with property owners and answer any questions. Property owners are asked to sign an acknowledgement to confirm they were provided this information and were provided an opportunity to review it and ask questions prior to grant signing.
- Property owners are told that their Housing Advisor and/or Landlord Advisor is available to answer any questions they may have regarding contractor demands and issues.

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With respect to Pathway C beneficiaries, the RREM Project Managers assist the property owner in the development of a scope of work, contract pricing, and monitoring of construction. This process involves the following steps:

- Contractor must submit all approved permits, insurance documents, and bonds to the RREM Project Manager before a notice to proceed can be issued;
- Local building inspectors perform code inspections and RREM Project Managers perform on-site inspections at 33%, 66%, and final completion for reconstruction projects and 50% and final completion for rehabilitation projects;
- Interim construction payments are made directly to the contractor upon satisfactory inspection of work and meeting interim progress timelines. No advance payments are made. Reimbursement is only provided for work performed accompanied by unconditional releases of liens; and
- Property owner must agree that final work is complete and satisfactory and sign documents to that effect prior to the release of retainage.

In addition, the Housing Programs require that any contractor used by a beneficiary must meet the following requirements:

- Register as a business in New Jersey;
- Possess a current, valid new homebuilder license or home improvement contractor registration with the State of New Jersey;
- Not be debarred by the Federal Government or State of New Jersey; and
- SRD, at its sole discretion, reserves the right to preclude a contractor from participation in any CDBG-DR program if the contractor has been the subject of a State action while performing as a contractor with any CDBG-DR funded program.

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For Pathway B beneficiaries who have selected their own contractors, SRD nonetheless has implemented safeguards to prevent contractor fraud. After signing their grant, beneficiaries are assigned a Project Manager to assist with construction and invoice questions, as well as program requirements. The Project Manager will also discuss the contractor fraud tip sheet with the property owner at the mandatory pre-construction meeting. Among other protections:

- The property owner must present a contract to the Project Manager with a contractor that meets the requirements outlined on page 3;
- The property owner must submit a Contractor Addendum, signed by their validated contractor, acknowledging that the contractor and any subcontractors it may use are fully aware of the applicable federal and program requirements;
- A retainage (final payment) is applied to each respective program to withhold a portion of the grant award to the property owner. Release of the retainage is contingent on a successful final inspection by the Project Manager, which includes a review of the ECR, any scope adjustments, and all final closeout requirements. Retainage applies to each respective program as follows:
 - Ten (10) percent retainage applied to all RREM grant awards signed on or after October 13, 2014;
 - Ten (10) percent retainage applied to all LMI grant awards; and
 - Twenty (20) percent retainage applied to all LRRP grant awards signed on or after August 29, 2014;
- The property owner may request two (2) interim construction payments for RREM and LMI. RREM applicants who signed their grant before October 13, 2014 are eligible up to three (3) construction draw payments. The property owners must provide photographs of the work and receipts for the work, subject to approval by the Project Manager; and
- In the event that the procedures above are unable to prevent fraud and other contractor issues arise the following policies and procedures will apply.

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Process for Sandy Division Response to Contractor Complaints from Property Owners

Recognizing that complaints from property owners regarding their contractors come to the State and SRD through multiple channels, this process is designed to ensure that there is a central collection point for all contractor complaints. SRD Constituent Services will be responsible for the management of contractor complaints that come to SRD either directly from property owners or from another source (e.g. Governor's Office, Legislators, Long Term Recovery Groups, etc.). Constituent Services will forward complaints concerning the program or program management to the appropriate designee.

Consumer Affairs can accept complaints only from persons having a contractual relationship with the contractor. Any SRD staff, including the Housing Advisors, Landlord Advisors, and Constituent Services staff should direct property owners to contact the Consumer Affairs Office directly to file a complaint. Consumer Affairs will then make a determination regarding whether a contractor complaint rises to the level of a violation of any of the laws that it administers and enforces and will notify the person who filed the complaint.

For any property owner filing a complaint with SRD Constituent Services, s/he will be directed to contact Consumer Affairs if the concerns cannot be resolved by the Housing Advisor, Landlord Advisor, or other SRD staff. All complaints related to contractors will be recorded in the Constituent Services module in SIROMS from which the weekly "Contractor Complaint Log" is generated for distribution.

Fraud

Pursuant to HUD requirements, the State Executive Order No 125, and existing DCA policy on the Detection of Fraud, Waste and Abuse (Policy Number 2.10.3), DCA has designated the Director of Auditing as the Department's Accountability Officer as it relates to contractor fraud allegations. The Accountability Officer is responsible for developing and approving investigative protocols and

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referring any allegations of fraud to the proper criminal authorities for prosecution, in this case the Sandy Fraud Task Force. (See Attachment A for the relevant State fraud statutes.) If a program beneficiary believes that they have been defrauded by a contractor, they will be advised to take the following steps:

- Immediately file a complaint with Consumer Affairs to report the allegation of fraud;
- Provide copies of all available documentation requested by Consumer Affairs;
- Cooperate fully with Consumer Affairs to assist in its investigation and enforcement action, if indicated;
- Should Consumer Affairs determine that the complaint does not involve a violation of any of the laws it administers or enforces and instead involves a “contract dispute,” pursue civil litigation against the contractor to secure a judgment to recover funds or to direct that the contractor perform; and
- Cooperate fully with law enforcement officials in the criminal prosecution of the contractor, if indicated.

Property owners will be required to provide a legal document in which a government agency alleges fraud against the contractor, such as an arrest warrant, a Criminal Complaint, an Indictment, a civil or administrative Complaint or a Notice of Violation, as evidence that the property owners cannot avail themselves of grant monies previously distributed. In such situations where fraud is indicated, the Project Manager may inspect the property to verify the amount of work completed and to estimate how much work remains to complete the rehabilitation or reconstruction. This estimate will be compared with the estimated cost to repair on record.

In conjunction with the inspection results by the Project Manager, if completed, SRD will verify both the amount of program funds the property owner paid the accused contractor and for additional duplication of benefits (“DOB”) the property owner may have received. SRD will use this analysis to determine if a property owner is eligible to have their grant award revised to receive additional program grant funds as a result of alleged contractor fraud.

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When presented with the allegations of contractor fraud, if SRD provides the beneficiary with CDBG-DR funding to complete their housing project, then the beneficiary must enforce the judgment and sign a Subrogation Agreement to reimburse the State with any funds received as a result of any civil, administrative and/or criminal action and/or agree to designate the State as “payee” on any restitution agreement. Property owners who are determined by SRD to have completed construction may not be eligible to receive any additional program funds as a result of alleged contractor fraud.

The Project Manager, working with the property owner, will validate a replacement contractor to ensure construction continues per the normal program workflow. Property owners will not receive any additional disbursements until a replacement contractor is validated and a new executed contract is on record.

Poor Workmanship and Failure to Perform in a Timely Manner

For Pathway B and C beneficiaries, who are not satisfied with either the quality of work performed by their contractors or timeliness of completion, should, after logging their complaint with Constituent Services, file a complaint with Consumer Affairs pursuant to the provisions of the New Jersey Consumer Fraud Act, specifically the New Jersey Home Improvement Contractor Registration Act, N.J.S.A. 56:8-136 et. seq. (See Attachment B for details.) As noted earlier in this Policy, SRD Constituent Services will record and track the complaints in SIROMS as to create a centralized system of record that will facilitate requisite follow-up.

In situations where Consumer Affairs alleges a possible contract dispute or civil violation under Pathway B, SRD Housing Recovery staff will inform beneficiaries that they can pursue, at their own discretion, civil litigation against the contractor to secure a judgment to recover funds or to direct that contractor to perform.

In situations where Consumer Affairs alleges a possible contract dispute or civil violation under Pathway C, SRD Housing Recovery staff may take one or more of the following actions:

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- Conduct a site visit to the property with the property owner and the contractor to determine if corrective action is necessary;
- If corrective action is necessary, the RREM Project Manager will re-inspect the property to identify the scope of work completed to date, the remaining scope of work, and any additional scope of work related to poor workmanship, if applicable;
- If the re-inspection results in addressing “unforeseen conditions” not originally included in the scope of work, the RREM Project Manager may initiate a change order, if appropriate; and
- The RREM Project Manager will conduct progress inspections in accordance with Pathway C standard procedures.

In the event a Pathway C contractor fails to comply with the agreed upon corrective actions, or is not performing work in a timely manner, SRD Housing Recovery staff shall take one or more of the following actions:

- Assist the property owner to provide written notice to the contractor’s bonding company regarding contractor performance and seek their assistance to resolve the issues;
- Consult with the Assistant Director of Housing Recovery Programs to remove the contractor from the pool of approved contactors (Pathway C only); and/or
- Replace the contractor.

Consumer Affairs and SRD will work collaboratively, as appropriate, on complaints and to remove non-performing contractors from the pool of recommended contractors. At the request of the Attorney General, SRD may share beneficiary information to assist in the Attorney General’s investigation of contractors receiving CDBG-DR funds.

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Attachment A

Title 2C. The New Jersey Code of Criminal Justice

Subtitle 2. Specific Offenses

Part 2. Offenses Against Property

Chapter 20. Theft

I. General Provisions

N.J. Stat. § 2C:20-4 (2015)

§ 2C:20-4. Theft by deception

A person is guilty of theft if he purposely obtains property of another by deception. A person deceives if he purposely:

a. Creates or reinforces a false impression, including false impressions as to law, value, intention or other state of mind, and including, but not limited to, a false impression that the person is soliciting or collecting funds for a charitable purpose; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise;

b. Prevents another from acquiring information which would affect his judgment of a transaction; or

c. Fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship.

The term "deceive" does not, however, include falsity as to matters having no pecuniary significance, or puffing or exaggeration by statements unlikely to deceive ordinary persons in the group addressed.

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HISTORY:

L. 1978, c. 95; amended L. 2003, c. 43, § 1, eff. Apr. 16, 2003.

NOTES:

Cross References:

Mandatory minimum prison term for public officer, employee convicted of certain crimes; waiver, reduction, see *2C:43-6.5*.

Forfeiture of pension, retirement benefit for conviction of certain crimes; definition, certain, see *43:1-3.1*.

Additional requirements for registration see *56:8-122*.

Related Statutes & Rules:

ADMINISTRATIVE CODE:

1. *N.J.A.C. 13:45A-17.6* (2013), CHAPTER ADMINISTRATIVE RULES OF THE DIVISION OF CONSUMER AFFAIRS, Disclosure statement.

2. *N.J.A.C. 13:45D-3.3* (2013), CHAPTER TELEMARKETING: DO NOT CALL Disclosure statement.

3. *N.J.A.C. 10:69-9.15* (2013), CHAPTER AFDC-RELATED MEDICAID, Eligibility fraud by applicants and beneficiaries.

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Title 2C. The New Jersey Code of Criminal Justice

Subtitle 2. Specific Offenses

Part 2. Offenses Against Property

Chapter 20. Theft

I. General Provisions

N.J. Stat. § 2C:20-9 (2015)

§ 2C:20-9. Theft by failure to make required disposition of property received

A person who purposely obtains or retains property upon agreement or subject to a known legal obligation to make specified payment or other disposition, whether from such property or its proceeds or from his own property to be reserved in equivalent amount, is guilty of theft if he deals with the property obtained as his own and fails to make the required payment or disposition. The foregoing applies notwithstanding that it may be impossible to identify particular property as belonging to the victim at the time of the actor's failure to make the required payment or disposition. An officer or employee of the government or of a financial institution is presumed: (a) to know any legal obligation relevant to his criminal liability under this section, and (b) to have dealt with the property as his own if he fails to pay or account upon lawful demand, or if an audit reveals a shortage or falsification of accounts. The fact that any payment or other disposition was made with a subsequently dishonored negotiable instrument shall constitute prima facie evidence of the actor's failure to make the required payment or disposition, and the trier of fact may draw a permissive inference therefrom that the actor did not intend to make the required payment or other disposition.

HISTORY:

L. 1978, c. 95; Amended by L. 1987, c. 76, § 32.

Cross References:

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Violations, certain; theft, see *2A:102-16*.

Sentence of imprisonment for crime; ordinary terms; mandatory terms., see *2C:43-6*.

Mandatory minimum prison term for public officer, employee convicted of certain crimes; waiver, reduction, see *2C:43-6.5*.

Forfeiture of pension, retirement benefit for conviction of certain crimes; definition, certain, see *43:1-3.1*.

Additional requirements for registration, see *56:8-122*.

Related Statutes & Rules:

ADMINISTRATIVE CODE:

1. *N.J.A.C. 13:45A-17.6* (2013), CHAPTER ADMINISTRATIVE RULES OF THE DIVISION OF CONSUMER AFFAIRS, Disclosure statement.

2. *N.J.A.C. 13:45D-3.3* (2013), CHAPTER TELEMARKETING: DO NOT CALL, Disclosure statement.

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Attachment B

Title 56. Trade Names, Trade-Marks and Unfair Trade Practices

Chapter 8. Frauds, etc., in Sales or Advertisements or Merchandise

N.J. Stat. § 56:8-136 (2015)

§ 56:8-136. Short title [Contractors' Registration Act]

This act shall be known and may be cited as the "Contractors' Registration Act."

HISTORY:

L. 2004, c. 16, § 1, eff. Dec. 31, 2005 (eff. date; amended 2004, c. 155, § 5).

NOTES:

Effective Dates:

L. 2004, c. 155, § 5, effective November 8, 2004, amended section 18 of L. 2004, c. 16 to extend the effective date of L. 2004, c. 16 from the 180th day following enactment, or November 9, 2004, to December 31, 2005.

Cross References:

Identification badge required for certain contractors [Effective August 19, 2014], see *56:8-138.1*.

Related Statutes & Rules:

ADMINISTRATIVE CODE:

1. *N.J.A.C. 13:45A-17.1* (2013), CHAPTER ADMINISTRATIVE RULES OF THE DIVISION OF CONSUMER AFFAIRS, Purpose and scope.

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2. *N.J.A.C. 13:45A-17.5* (2013), CHAPTER ADMINISTRATIVE RULES OF THE DIVISION OF CONSUMER AFFAIRS, Initial and renewal applications.

3. *N.J.A.C. 13:45A-17.7* (2013), CHAPTER ADMINISTRATIVE RULES OF THE DIVISION OF CONSUMER AFFAIRS, Duty to update information.

4. *N.J.A.C. 13:45A-17.9* (2013), CHAPTER ADMINISTRATIVE RULES OF THE DIVISION OF CONSUMER AFFAIRS, Refusal to issue, suspension or revocation of registration; hearing; other sanctions.

5. *N.J.A.C. 5:23-2.15* (2013), CHAPTER UNIFORM CONSTRUCTION CODE, Construction permits--application.

Title 56. Trade Names, Trade-Marks and Unfair Trade Practices
Chapter 8. Frauds, etc., in Sales or Advertisements or Merchandise

GO TO THE NEW JERSEY ANNOTATED STATUTES ARCHIVE DIRECTORY

N.J. Stat. § 56:8-137 (2015)

§ 56:8-137. Definitions relative to home improvement contractors

As used in this act:

"Contractor" means a person engaged in the business of making or selling home improvements and includes a corporation, partnership, association and any other form of business organization or entity, and its officers, representatives, agents and employees.

"Director" means the Director of the Division of Consumer Affairs in the Department of Law and Public Safety.

"Division" means the Division of Consumer Affairs in the Department of Law and Public Safety.

"Home elevation" means any home improvement that involves raising an entire residential or non-commercial structure to a higher level above the ground.

"Home elevation contractor" means a contractor who engages in the practice of home elevation.

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"Home improvement" means the remodeling, altering, renovating, repairing, restoring, modernizing, moving, demolishing, or otherwise improving or modifying of the whole or any part of any residential or non-commercial property. Home improvement shall also include insulation installation, home elevation, and the conversion of existing commercial structures into residential or non-commercial property.

"Home improvement contract" means an oral or written agreement for the performance of a home improvement between a contractor and an owner, tenant or lessee, of a residential or noncommercial property, and includes all agreements under which the contractor is to perform labor or render services for home improvements, or furnish materials in connection therewith.

"Residential or non-commercial property" means any single or multi-unit structure used in whole or in part as a place of residence, and all structures appurtenant thereto, and any portion of the lot or site on which the structure is situated which is devoted to the residential use of the structure.

HISTORY: L. 2004, c. 16, § 2, eff. Dec. 31, 2005 (eff. date).

Effective Dates:

L. 2004, c. 155, § 5, effective November 8, 2004, amended section 18 of L. 2004, c. 16 to extend the effective date of L. 2004, c. 16 from the 180th day following enactment, or November 9, 2004, to December 31, 2005.

Section 5 of L. 2014, c. 34 provides: "This act shall take effect on the first day of the second month after the date of enactment, but the State may take such anticipatory administrative action in advance thereof as shall be necessary for the implementation of this act." Chapter 34, L. 2014, was approved on Aug. 15, 2014.

Amendment Note:

2014 amendment, by Chapter 34, inserted the definitions of "Home elevation" and "Home elevation contractor"; and inserted "home elevation" in the second sentence of the definition of "Home improvement."

Title 56. Trade Names, Trade-Marks and Unfair Trade Practices

Chapter 8. Frauds, etc., in Sales or Advertisements or Merchandise

N.J. Stat. § 56:8-138.1 (2015)

§ 56:8-138.1. Identification badge required for certain contractors

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a. Every contractor required to register under the "Contractors' Registration Act," P.L.2004, c.16 (*C.56:8-136 et seq.*) shall have in his possession an identification badge, issued pursuant to subsection b. of this section, whenever the contractor is performing, or engaging, or attempting to engage, in the business of making or selling home improvements. The identification badge shall be plainly visible and worn on the upper left corner of his torso when the contractor is performing, or engaging, or attempting to engage, in the business of selling home improvements.

b. Upon the application of a registered contractor, the director shall issue, or cause to be issued, a personalized identification badge to the contractor. The identification badge shall include a color photograph of the contractor's face, the contractor's name, the contractor's registration number, and the name of the contractor's business displayed in a manner that will be plainly visible and permit recognition when worn by the contractor. The badge shall include a statement, written in such a way as to be plainly visible when worn by the contractor that the badge is not for an electrical contractor, plumbing contractor or HVACR contractor license. The identification badge shall be made in such a way and of such material that any attempt to alter the badge will result in it being immediately, permanently and obviously ruined. The photograph included on the identification badge shall be taken no more than four weeks before the date upon which the identification badge is issued. A contractor shall apply for and obtain a new identification badge at least once every six years.

c. The director may charge the contractor a reasonable fee to cover the costs of the identification badge issued pursuant to this section.

d. A contractor who has been issued an identification badge pursuant to subsection b. of this section and whose registration has been suspended, revoked, or has not been renewed, shall, within three days of that suspension, revocation or nonrenewal, surrender the identification badge to the director.

e. A person who knowingly exhibits or displays an identification badge issued pursuant to subsection b. of this section and is not at that time registered as a contractor pursuant to the "Contractors' Registration Act," P.L.2004, c.16 (*C.56:8-136 et seq.*), including any contractor who has had his registration revoked, suspended, or not renewed, is guilty of a crime of the fourth degree.

HISTORY:

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L. 2013, c. 144, § 1, eff. Aug. 19, 2014.

Title 56. Trade Names, Trade-Marks and Unfair Trade Practices

Chapter 8. Frauds, etc., in Sales or Advertisements or Merchandise

N.J. Stat. § 56:8-138.2 (2015)

§ 56:8-138.2. Home elevation contractors, rules, regulations; fees; penalties

a. In addition to complying with the other requirements of the "Contractors' Registration Act," P.L.2004, c.16 (*C.56:8-136 et seq.*), no person shall offer to perform, or engage, or attempt to engage in the business of home elevation unless registered with the division as a home elevation contractor.

b. The division shall adopt rules and regulations pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (*C.52:14B-1 et seq.*), to effectuate the provisions of P.L.2014, c.34 (*C.56:8-138.2 et al.*) with regard to registration of home elevation contractors, and may establish fees for this purpose. Notwithstanding the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (*C.52:14B-1 et seq.*) to the contrary, the Division of Consumer Affairs may adopt immediately upon filing with the Office of Administrative Law rules and regulations for this purpose, which shall be effective for a period not to exceed 270 days following the date of enactment of P.L.2014, c.34 (*C.56:8-138.2 et al.*), and may thereafter be amended, adopted, or readopted, by the division in accordance with the requirements of the "Administrative Procedure Act".

c. In addition to any other civil or criminal penalty that may apply, any person who makes a false statement in connection with the process for registration as a home elevation contractor pursuant to this section or in regard to any statement required to be made pursuant to section 7 of P.L.2004, c.16 (*C.56:8-142*) shall be liable for a civil penalty of not less than \$ 10,000 or more than \$ 25,000. Such penalty may be imposed by the director and shall be collected by summary proceedings instituted in accordance with the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (*C.2A:58-10 et seq.*).

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d. In addition to any other action that may be authorized by law, the director may suspend or revoke the home improvement contractor registration and home elevation contractor registration of any person who violates any provision of P.L.2014, c.34 (C.56:8-138.2 et al.).

HISTORY:

L. 2014, c. 34, § 1, eff. Oct. 1, 2014.

Effective Dates:

Section 5 of L. 2014, c. 34 provides: "This act shall take effect on the first day of the second month after the date of enactment, but the State may take such anticipatory administrative action in advance thereof as shall be necessary for the implementation of this act." Chapter 34, L. 2014, was approved on Aug. 15, 2014.

Title 56. Trade Names, Trade-Marks and Unfair Trade Practices

Chapter 8. Frauds, etc., in Sales or Advertisements or Merchandise

N.J. Stat. § 56:8-138 (2015)

§ 56:8-138. Registration for contractors; application, fee.

a. On or after December 31, 2005, no person shall offer to perform, or engage, or attempt to engage in the business of making or selling home improvements unless registered with the Division of Consumer Affairs in accordance with the provisions of this act.

b. Every contractor shall annually register with the director. Application for registration shall be on a form provided by the division and shall be accompanied by a reasonable fee, set by the director in an amount sufficient to defray the division's expenses incurred in administering and enforcing this act.

c. Every contractor required to register under this act shall file an amended registration within 20 days after any change in the information required to be included thereon. No fee shall be required for the filing of an amendment.

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HISTORY:

L. 2004, c. 16, § 3, eff. Dec. 31, 2005 (eff. date; amended 2004, c. 155, § 5); amended 2004, c. 155, § 1, eff. Nov. 8, 2004.

Effective Dates:

L. 2004, c. 155, § 5, effective November 8, 2004, amended section 18 of L. 2004, c. 16 to extend the effective date of L. 2004, c. 16 from the 180th day following enactment, or November 9, 2004, to December 31, 2005.

Effective Dates:

Section 2 of L. 2013, c. 144 provides: "This act shall take effect on the 365th day following the date of enactment." Chapter 144, L. 2013, was approved on Aug. 19, 2013.

Title 56. Trade Names, Trade-Marks and Unfair Trade Practices

Chapter 8. Frauds, etc., in Sales or Advertisements or Merchandise

N.J. Stat. § 56:8-139 (2015)

§ 56:8-139. Act applicable to contractors who publicly advertise.

Except for persons exempted pursuant to section 5 [C.56:8-140] of this act, any person who advertises in print or puts out any sign or card or other device on or after December 31, 2005, which would indicate to the public that he is a contractor in New Jersey, or who causes his name or business name to be included in a classified advertisement or directory in New Jersey on or after December 31, 2005, under a classification for home improvements covered by this act, is subject to the provisions of this act. This section shall not be construed to apply to simple residential alphabetical listings in standard telephone directories.

HISTORY:

L. 2004, c. 16, § 4, eff. Dec. 31, 2005 (eff. date; amended 2004, c. 155, § 5); amended 2004, c. 155, § 2, eff. Nov. 8, 2004.

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Publisher's Note:

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Effective Dates:

L. 2004, c. 155, § 5, effective November 8, 2004, amended section 18 of L. 2004, c. 16 to extend the effective date of L. 2004, c. 16 from the 180th day following enactment, or November 9, 2004, to December 31, 2005.

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N.J. Stat. § 56:8-140 (2015)

§ 56:8-140. Inapplicability of act.

The provisions of this act shall not apply to:

a. Any person required to register pursuant to "The New Home Warranty and Builders' Registration Act," P.L. 1977, c. 467 (*C. 46:3B-1 et seq.*);

b. Any person performing a home improvement upon a residential or non-commercial property he owns, or that is owned by a member of his family, a bona fide charity, or other non-profit organization;

c. Any person regulated by the State as an architect, professional engineer, landscape architect, land surveyor, electrical contractor, master plumber, or any other person in any other related profession requiring registration, certification, or licensure by the State, who is acting within the scope of practice of his profession;

d. Any person who is employed by a community association or cooperative corporation;

e. Any public utility as defined under *R.S. 48:2-13*;

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f. Any person licensed under the provisions of section 16 of P.L. 1960, c. 41 (*C. 17:16C-77*); and

g. Any home improvement retailer with a net worth of more than \$ 50,000,000, or employee of that retailer.

HISTORY:

L. 2004, c. 16, § 5, eff. Dec. 31, 2005 (eff. date; amended 2004, c. 155, § 5).

Effective Dates:

L. 2004, c. 155, § 5, effective November 8, 2004, amended section 18 of L. 2004, c. 16 to extend the effective date of L. 2004, c. 16 from the 180th day following enactment, or November 9, 2004, to December 31, 2005.

Cross References:

Act applicable to contractors who publicly advertise., see 56:8-139.

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N.J. Stat. § 56:8-141 (2015)

§ 56:8-141. Additional requirements; refusal to issue or suspend or revoke registration; grounds.

In addition to any other procedure, condition or information required by this act:

a. Every applicant shall file a disclosure statement with the director stating whether the applicant has been convicted of any crime, which for the purposes of this act shall mean a violation of any of the following provisions of the "New Jersey Code of Criminal Justice," Title 2C of the New Jersey Statutes, or the equivalent under the laws of any other jurisdiction:

(1) Any crime of the first degree;

(2) Any crime which is a second or third degree crime and is a violation of chapter 20 or 21 of Title 2C of the New Jersey Statutes; or

(3) Any other crime which is a violation of *N.J.S. 2C:5-1, 2C:5-2, 2C:11-2 through 2C:11-4, 2C:12-1, 2C:12-3, 2C:13-1, 2C:14-2, 2C:15-1*, subsection a. or b. of *2C:17-1*, subsection a. or b. of *2C:17-2, 2C:18-2, 2C:20-4, 2C:20-5, 2C:20-7, 2C:20-9, 2C:21-2 through 2C:21-4, 2C:21-6, 2C:21-7, 2C:21-12, 2C:21-14, 2C:21-15, or 2C:21-19*, chapter 27 or 28 of Title 2C of the New Jersey Statutes, *N.J.S. 2C:30-2, 2C:30-3, 2C:35-5, 2C:35-10, 2C:37-1 through 2C:37-4*.

b. The director may refuse to issue or may suspend or revoke any registration issued by him upon proof that the applicant or holder of the registration:

(1) Has obtained a registration through fraud, deception or misrepresentation;

(2) Has engaged in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense;

(3) Has engaged in gross negligence, gross malpractice or gross incompetence;

(4) Has engaged in repeated acts of negligence, malpractice or incompetence;

(5) Has engaged in professional or occupational misconduct as may be determined by the director;

(6) Has been convicted of any crime involving moral turpitude or any crime relating adversely to the activity regulated by this act. For the purpose of this subsection a plea of guilty, non vult, nolo contendere or any other such disposition of alleged criminal activity shall be deemed a conviction;

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(7) Has had his authority to engage in the activity regulated by the director revoked or suspended by any other state, agency or authority for reasons consistent with this section;

(8) Has violated or failed to comply with the provisions of any act or regulation administered by the director;

(9) Is incapable, for medical or any other good cause, of discharging the functions of a licensee in a manner consistent with the public's health, safety and welfare.

c. An applicant whose registration is denied, suspended, or revoked pursuant to this section shall, upon a written request transmitted to the director within 30 calendar days of that action, be afforded an opportunity for a hearing in a manner provided for contested cases pursuant to the "Administrative Procedure Act," P.L. 1968, c. 410 (*C. 52:14B-1 et seq.*).

d. An applicant shall have the continuing duty to provide any assistance or information requested by the director, and to cooperate in any inquiry, investigation, or hearing conducted by the director.

e. If any of the information required to be included in the disclosure statement changes, or if additional information should be added after the filing of the statement, the applicant shall provide that information to the director, in writing, within 30 calendar days of the change or addition.

f. Notwithstanding the provisions of paragraph (6) of subsection b. of this section, no individual shall be disqualified from registration or shall have registration revoked on the basis of any conviction disclosed if the individual has affirmatively demonstrated to the director clear and convincing evidence of the individual's rehabilitation. In determining whether an individual has affirmatively demonstrated rehabilitation, the following factors shall be considered:

(1) The nature and responsibility of the position which the convicted individual would hold;

(2) The nature and seriousness of the offense;

(3) The circumstances under which the offense occurred;

(4) The date of the offense;

(5) The age of the individual when the offense was committed;

(6) Whether the offense was an isolated or repeated incident;

(7) Any social conditions which may have contributed to the offense; and

(8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have had the individual under their supervision.

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HISTORY:

L. 2004, c. 16, § 6, eff. Dec. 31, 2005 (eff. date; amended 2004, c. 155, § 5).

Effective Dates:

L. 2004, c. 155, § 5, effective November 8, 2004, amended section 18 of L. 2004, c. 16 to extend the effective date of L. 2004, c. 16 from the 180th day following enactment, or November 9, 2004, to December 31, 2005.

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N.J. Stat. § 56:8-142 (2015)

§ 56:8-142. Proof of commercial general liability insurance, cargo, other insurance, posting of bond; requirements

a. On or after December 31, 2005, every registered contractor who is engaged in home improvements shall secure, maintain and file with the director proof of a certificate of commercial general liability insurance in a minimum amount of \$ 500,000 per occurrence.

b. Every registered contractor engaged in home improvements whose commercial general liability insurance policy is cancelled or nonrenewed shall submit to the director a copy of the certificate of commercial general liability insurance for a new or replacement policy which meets the requirements of subsection a. of this section before the former policy is no longer effective.

c. Every home elevation contractor engaged in performing home elevations, in addition to the insurance required pursuant to subsection a. of this section, shall secure and maintain cargo or other insurance that specifically covers home elevation activities, in a minimum amount of \$ 1,000,000 per occurrence to cover damages or other losses to the homeowner, lessee, tenant or other party resulting from a home elevation, except as otherwise provided in this subsection. The Director of the Division of Consumer Affairs in consultation with the Department of Banking and Insurance may promulgate rules and regulations to implement this subsection, which rules and regulations also may require that home elevation contractors secure and maintain additional insurance of such kind and in such amounts as the director may determine in

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consultation with the Department of Banking and Insurance. In addition to or as an alternative to the insurance required by this subsection, the director may also require the posting of a bond in favor of the owner, lessee, tenant or other party to the home improvement contract for home elevation. Every bond and insurance policy required to be maintained under this subsection shall provide that the issuer of that bond or policy shall give the director written notice of cancellation or non-renewal of the bond or policy within 10 days of the cancellation or non-renewal.

d. A home elevation contractor, prior to entering into an agreement to perform a home elevation, shall provide proof of insurance to the homeowner including the issuing insurer, policy number, type, and amount of insurance coverage maintained by the contractor in accordance with this section.

HISTORY: L. 2004, c. 16, § 7, eff. Dec. 31, 2005 (eff. date).

Effective Dates:

L. 2004, c. 155, § 5, effective November 8, 2004, amended section 18 of L. 2004, c. 16 to extend the effective date of L. 2004, c. 16 from the 180th day following enactment, or November 9, 2004, to December 31, 2005.

Section 5 of L. 2014, c. 34 provides: "This act shall take effect on the first day of the second month after the date of enactment, but the State may take such anticipatory administrative action in advance thereof as shall be necessary for the implementation of this act." Chapter 34, L. 2014, was approved on Aug. 15, 2014.

Amendment Note:

2014 amendment, by Chapter 34, added c. and d.

Cross References:

Contracts, certain, required to be in writing; contents., see *56:8-151*.

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N.J. Stat. § 56:8-143 (2015)

§ 56:8-143. Refusal to issue, renew, revocation, suspension of registration; procedures.

a. The director may refuse to issue or renew, and may revoke, any registration for failure to comply with, or violation of, the provisions of this act or for any other good cause shown within the meaning and purpose of this act. A refusal or revocation shall not be made except upon reasonable notice to, and opportunity to be heard by, the applicant or registrant.

b. The director, in lieu of revoking a registration, may suspend the registration for a reasonable period of time, or assess a penalty in lieu of suspension, or both, and may issue a new registration, notwithstanding the revocation of a prior registration, if the applicant is found to have become entitled to the new registration.

HISTORY:

L. 2004, c. 16, § 8, eff. Dec. 31, 2005 (eff. date; amended 2004, c. 155, § 5).

Effective Dates:

L. 2004, c. 155, § 5, effective November 8, 2004, amended section 18 of L. 2004, c. 16 to extend the effective date of L. 2004, c. 16 from the 180th day following enactment, or November 9, 2004, to December 31, 2005.

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Chapter 8. Frauds, etc., in Sales or Advertisements or Merchandise

N.J. Stat. § 56:8-144 (2015)

§ 56:8-144. Display of registration number; requirements.

a. All registrants shall prominently display their registration numbers within their places of business, in all advertisements distributed within this State, on business documents, contracts and correspondence with consumers of home improvement services in this State, and on all commercial vehicles registered in this State and leased or owned by registrants and used by registrants for the purpose of providing home improvements, except for vehicles leased or rented to customers of registrants by a registrant or any agent or representative thereof.

b. Any invoice, contract or correspondence given by a registrant to a consumer shall prominently contain the toll-free telephone number provided pursuant to section 14 [C.56:8-149] of this act.

HISTORY:

L. 2004, c. 16, § 9, eff. Dec. 31, 2005 (eff. date; amended 2004, c. 155, § 5).

Publisher's Note:

The bracketed material was added by the Publisher to provide a reference.

Effective Dates:

L. 2004, c. 155, § 5, effective November 8, 2004, amended section 18 of L. 2004, c. 16 to extend the effective date of L. 2004, c. 16 from the 180th day following enactment, or November 9, 2004, to December 31, 2005.

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N.J. Stat. § 56:8-145 (2015)

§ 56:8-145. Applicability of act to out-of-State contractors.

The provisions of this act shall apply to any person engaging in any of the activities regulated by this act in this State, including persons whose residence or principal place of business is located outside of this State.

HISTORY:

L. 2004, c. 16, § 10, eff. Dec. 31, 2005 (eff. date; amended 2004, c. 155, § 5).

Effective Dates:

L. 2004, c. 155, § 5, effective November 8, 2004, amended section 18 of L. 2004, c. 16 to extend the effective date of L. 2004, c. 16 from the 180th day following enactment, or November 9, 2004, to December 31, 2005.

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N.J. Stat. § 56:8-146 (2015)

§ 56:8-146. Violations, fourth degree crime.

a. It is an unlawful practice and a violation of P.L. 1960, c. 39 (*C. 56:8-1 et seq.*) to violate any provision of this act.

b. In addition to any other penalty provided by law, a person who knowingly violates any of the provisions of this act is guilty of a crime of the fourth degree.

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HISTORY:

L. 2004, c. 16, § 11, eff. Dec. 31, 2005 (eff. date; amended 2004, c. 155, § 5).

Effective Dates:

L. 2004, c. 155, § 5, effective November 8, 2004, amended section 18 of L. 2004, c. 16 to extend the effective date of L. 2004, c. 16 from the 180th day following enactment, or November 9, 2004, to December 31, 2005.

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N.J. Stat. § 56:8-147 (2015)

§ 56:8-147. Supersedure of municipal ordinance, regulation.

a. This act shall supersede any municipal ordinance or regulation that provides for the licensing or registration of contractors or for the protection of homeowners by bonds or warranties required to be provided by contractors, exclusive of those required by water, sewer, utility, or land use ordinances or regulations.

b. No municipality shall issue a construction permit for any home improvement to any contractor who is not registered pursuant to the provisions of this act.

HISTORY:

L. 2004, c. 16, § 12, eff. Dec. 31, 2005 (eff. date; amended 2004, c. 155, § 5).

Effective Dates:

L. 2004, c. 155, § 5, effective November 8, 2004, amended section 18 of L. 2004, c. 16 to extend the effective date of L. 2004, c. 16 from the 180th day following enactment, or November 9, 2004, to December 31, 2005.

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N.J. Stat. § 56:8-148 (2015)

§ 56:8-148. Municipal powers preserved.

This act shall not deny to any municipality the power to inspect a contractor's work or equipment, the work of a contractor who performs improvements to commercial property, or the power to regulate the standards and manners in which the contractor's work shall be done.

HISTORY:

L. 2004, c. 16, § 13, eff. Dec. 31, 2005 (eff. date; amended 2004, c. 155, § 5).

Effective Dates:

L. 2004, c. 155, § 5, effective November 8, 2004, amended section 18 of L. 2004, c. 16 to extend the effective date of L. 2004, c. 16 from the 180th day following enactment, or November 9, 2004, to December 31, 2005.

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N.J. Stat. § 56:8-149 (2015)

§ 56:8-149. Public information campaign, toll free number.

a. The director shall establish and undertake a public information campaign to educate and inform contractors and the consumers of this State of the provisions of this act. The public information campaign

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shall include, but not be limited to, the preparation, printing and distribution of booklets, pamphlets or other written pertinent information.

b. The director shall provide a toll-free telephone number for consumers making inquiries regarding contractors.

HISTORY:

L. 2004, c. 16, § 14, eff. Dec. 31, 2005 (eff. date; amended 2004, c. 155, § 5).

Effective Dates:

L. 2004, c. 155, § 5, effective November 8, 2004, amended section 18 of L. 2004, c. 16 to extend the effective date of L. 2004, c. 16 from the 180th day following enactment, or November 9, 2004, to December 31, 2005.

Cross References:

Display of registration number; requirements., see 56:8-144.

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N.J. Stat. § 56:8-150 (2015)

§ 56:8-150. Applicability of C.56:8-1 et seq.

Nothing in this act shall limit the application of P.L. 1960, c. 39 (C. 56:8-1 et seq.), or any regulations promulgated thereunder, in regard to the registration or regulation of contractors.

HISTORY:

L. 2004, c. 16, § 15, eff. Dec. 31, 2005 (eff. date; amended 2004, c. 155, § 5).

Effective Dates:

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L. 2004, c. 155, § 5, effective November 8, 2004, amended section 18 of L. 2004, c. 16 to extend the effective date of L. 2004, c. 16 from the 180th day following enactment, or November 9, 2004, to December 31, 2005.

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N.J. Stat. § 56:8-151 (2015)

§ 56:8-151. Contracts, certain, required to be in writing; contents.

a. On or after December 31, 2005, every home improvement contract for a purchase price in excess of \$ 500, and all changes in the terms and conditions of the contract, shall be in writing. The contract shall be signed by all parties thereto, and shall clearly and accurately set forth in legible form and in understandable language all terms and conditions of the contract, including but not limited to:

- (1) The legal name, business address, and registration number of the contractor;
- (2) A copy of the certificate of commercial general liability insurance required of a contractor pursuant to section 7 [C. 56:8-142] of this act and the telephone number of the insurance company issuing the certificate; and
- (3) The total price or other consideration to be paid by the owner, including the finance charges.

b. On or after December 31, 2005, a home improvement contract may be cancelled by a consumer for any reason at any time before midnight of the third business day after the consumer receives a copy of it. In order to cancel a contract the consumer shall notify the contractor of the cancellation in writing, by registered or certified mail, return receipt requested, or by personal delivery, to the address specified in the contract. All moneys paid pursuant to the cancelled contract shall be fully refunded within 30 days of receipt of the notice of cancellation. If the consumer has executed any credit or loan agreement through the contractor to pay all or part of the contract, the agreement or note shall be cancelled without penalty to the consumer and written notice of that cancellation shall be mailed to the consumer within 30 days of receipt of the notice of cancellation. The contract shall contain a conspicuous notice printed in at least 10-point bold-faced type as follows:

"NOTICE TO CONSUMER

YOU MAY CANCEL THIS CONTRACT AT ANY TIME BEFORE MIDNIGHT OF THE THIRD BUSINESS DAY AFTER RECEIVING A COPY OF THIS CONTRACT. IF YOU WISH TO CANCEL THIS CONTRACT, YOU MUST EITHER:

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1. SEND A SIGNED AND DATED WRITTEN NOTICE OF CANCELLATION BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED; OR

2. PERSONALLY DELIVER A SIGNED AND DATED WRITTEN NOTICE OF CANCELLATION TO:

(Name of Contractor)

(Address of Contractor)

(Phone Number of Contractor)

If you cancel this contract within the three-day period, you are entitled to a full refund of your money. Refunds must be made within 30 days of the contractor's receipt of the cancellation notice."

HISTORY:

L. 2004, c. 16, § 16, eff. Dec. 31, 2005 (eff. date; amended 2004, c. 155, § 5); amended 2004, c. 155, § 4, eff. Nov. 8, 2004.

Publisher's Note:

The bracketed material was added by the Publisher to provide a reference.

Effective Dates:

L. 2004, c. 155, § 5, effective November 8, 2004, amended section 18 of L. 2004, c. 16 to extend the effective date of L. 2004, c. 16 from the 180th day following enactment, or November 9, 2004, to December 31, 2005.

ADMINISTRATIVE CODE:

1. *N.J.A.C. 13:45A-17.11* (2013), CHAPTER ADMINISTRATIVE RULES OF THE DIVISION OF CONSUMER AFFAIRS, Ownership and use of registration number; replacement and duplicate certificates.

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N.J. Stat. § 56:8-152 (2015)

§ 56:8-152. Rules, regulations.

The director, pursuant to the provisions of the "Administrative Procedure Act," P.L. 1968, c. 410 (*C. 52:14B-1 et seq.*), shall promulgate rules and regulations to effectuate the purposes of this act.

HISTORY:

L. 2004, c. 16, § 17, eff. Dec. 31, 2005 (eff. date; amended 2004, c. 155, § 5).

Effective Dates:

L. 2004, c. 155, § 5, effective November 8, 2004, amended section 18 of L. 2004, c. 16 to extend the effective date of L. 2004, c. 16 from the 180th day following enactment, or November 9, 2004, to December 31, 2005.