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## OLR Bill Analysis

### sSB 266

#### ***AN ACT CONCERNING NEW HOME CONSTRUCTION CONTRACTORS, HOME IMPROVEMENT CONTRACTORS, TRADE APPRENTICESHIPS AND LOCKSMITHS.***

#### **SUMMARY**

This bill makes various changes in the laws governing registered new home construction contractors (also referred to as “new home builders” (NHB)) and home improvement contractors (HIC). Among other things, the bill:

1. requires NHBs and HICs to provide proof of general liability insurance when registering, which under the bill must be done online;
2. specifies the contents of an enforceable contract between an NHB and consumer;
3. increases NHBs’ guaranty fund contribution from \$480 biennially to \$340 annually;
4. raises the maximum payout from the guaranty fund for claims involving HICs from \$15,000 to \$25,000; and
5. provides additional methods for consumers to access the guaranty funds by (A) allowing them access after obtaining a binding arbitration decision and (B) raising the maximum claim amount that can be litigated using the Superior Court’s small claims process, if the issue is related to a registered HIC or NHB.

The bill also (1) specifies what constitutes home improvement and locksmith work; (2) creates an umbrella home improvement salesperson registration for retailers operating from a fixed location; (3) specifies how a limited license holder who is training for an unlimited

license is treated for purposes of the hiring ratio; and (4) makes various technical, conforming, and minor changes.

EFFECTIVE DATE: July 1, 2022, except the provision about the hiring ratio is effective upon passage (§ 11), and the locksmith provision is effective July 1, 2021 (§ 12).

## **§§ 1, 5 & 6 — NHB AND HIC REGISTRATION AND OVERSIGHT**

By law, NHBs and HICs must register with the Department of Consumer Protection (DCP).

### ***NHB and HIC Registration (§§ 1 & 5)***

***Annual Registration.*** The bill makes NHB registration an annual, rather than biennial, requirement. Under the bill, NHB and HIC registration must be done online, rather than in writing. The NHB fee is \$120 annually, rather than \$240 biennially. (The bill also increases their guaranty fund fee, as described below.)

Under the bill, NHB registrations expire on March 31 annually, rather than September 30 in odd-numbered years. The bill eliminates (1) DCP's authority to charge NHB applicants a registration fee on a pro rata basis, depending on the date of application and (2) language specifying that NHB registrations cannot be renewed if they are expired for more than six months. Under existing law, the fee for renewal is the same as the application fee.

***Procedure for NHBs Operating as HICs.*** Under current law, if an NHB also does home improvement work, then the NHB must register as an HIC. The bill exempts NHBs from the registration requirement (and \$100 annual registration fee) but requires them, before doing such work to (1) notify DCP in writing of their intent to do home improvement work and (2) pay the annual Home Improvement Guaranty Fund fee (\$100).

### ***General Liability Insurance Requirement for NHBs and HICs (§§ 1 & 6)***

The bill requires, at the time of annual registration, NHBs and HICs to include proof that they have obtained general liability insurance.

They must do so by providing the policy number and insurer's business name. The bill leaves unspecified the required coverage amount.

#### **§ 4 — HOME IMPROVEMENT WORK DEFINED**

The bill specifies that "home improvement" work includes installing or improving alarm systems that do not require a licensed electrician. But under the bill, "home improvement" does not include tree or shrub cutting or stump grinding. Therefore, individuals who engage in such alarm work would need to be registered, but those cutting trees or shrubs or grinding stumps would not.

#### **§§ 1 & 7 — TRANSFERRING NHB OR HIC REGISTRATION FOLLOWING BUSINESS ORGANIZATION OR NAME CHANGE**

Under current law, registrations are not transferable or assignable. The bill allows an NHB or HIC to change his or her business's name or form without paying to re-register with DCP and being assigned a new registration number. The bill also extends this exception for business name or form changes to registered home improvement salespersons who negotiate or solicit home improvement contracts on behalf of a contractor.

#### **§§ 5 & 9 — PLACING CONDITIONS ON CERTAIN NHB AND HIC CERTIFICATES**

The bill expands DCP's enforcement options regarding NHBs and corporations performing or offering to perform home improvements by allowing the department to place conditions on their registration certificates. Under current law, DCP is authorized only to completely revoke or suspend such certificates.

The bill requires DCP to impose conditions under the same process for revoking or suspending a certificate (i.e., provide notice and an opportunity for a hearing in accordance with the Uniform Administrative Procedure Act). (The bill does not modify DCP's enforcement options for other HICs.)

#### **§§ 3 & 8 — GUARANTY FUNDS**

The bill raises the fee used to capitalize the New Home Construction

Guaranty Fund (§ 3) and the maximum reimbursement from the Home Improvement Guaranty Fund (§ 8) (see BACKGROUND). The bill permits consumers to access the funds after obtaining a binding arbitration decision (§§ 3 & 8).

The bill also makes minor and conforming changes, including (1) allowing consumers seeking to access the New Home Construction Guaranty Fund to submit to DCP a signed and sworn statement in lieu of a signed and sworn notarized affidavit and (2) eliminating the affidavit requirements for Home Improvement Guaranty Fund applicants.

#### ***New Home Construction Guaranty Fund's Capitalization***

Under current law, NHBs biennially contribute \$480 to the New Home Construction Guaranty Fund as part of DCP registration. The bill makes their contribution annual and raises the contribution to \$340 annually.

#### ***Home Improvement Guaranty Fund Claim Amounts***

The bill raises the maximum consumer reimbursement from the Home Improvement Guaranty Fund from \$15,000 per claim to \$25,000 per claim.

#### ***Expanded Access to the Funds Following Binding Arbitration***

Under current law, a consumer who obtains a court judgment, order, or decree against a registered NHB or HIC may apply to DCP for restitution for the amount of the judgment, order, or decree, other than punitive damages, and subtracting any amount already recovered from the contractor. The bill allows consumers who have obtained a binding arbitration decision against a registered NHB or HIC to access the guaranty fund on the same terms.

Under the bill, binding arbitration decisions against or regarding an NHB or HIC are treated as court judgements, orders, and decrees for purposes of accessing the guaranty funds.

### **§ 13 — EXPANDED AVAILABILITY OF SMALL CLAIMS PROCESS**

The bill raises the monetary threshold, from \$5,000 to \$15,000, under which an action claiming loss or damages caused by a registered HIC or NHB, during their professional work, can be brought in the Superior Court's small claims session.

### **§ 10 — NEW UMBRELLA HOME IMPROVEMENT SALESPERSON REGISTRATION FOR RETAILERS**

By law, individuals acting as a home improvement contractor or salesperson must register individually with DCP with limited exceptions. The bill exempts from the individual salesperson registration requirement individuals covered by an umbrella registration that the bill authorizes.

The bill authorizes retail establishments that operate from a fixed location (e.g., home improvement stores) where goods or services are offered for sale to register on behalf of their salespersons. This umbrella salesperson registration is available only to retailers whose salespersons solicit, negotiate, and complete sales entirely on the retailer's premises, virtually, or by phone.

Retailers must apply for the umbrella registration on a DCP-prescribed form, paying the same \$160 fee that would be due if each salesperson registered individually (i.e., the sum of the \$120 registration fee and \$40 guaranty fund contribution). Retailers must maintain a list of covered salespersons and make it available to DCP on request. A retailer can update its list to substitute one salesperson-employee for a former one without incurring new fees (nor is a refund given). The registration renewal fee is based on the retailer's current salesperson roster. (Renewal is presumably annually, but not specified.)

Umbrella salesperson registrations are not transferrable or assignable. A person who is covered under the umbrella registration must apply for a salesperson registration if he or she is doing covered work at a place other than the retailer's premises or by means other than virtually or by phone.

### **§ 2 — NHB CONTRACT WITH CONSUMER**

The bill requires NHBs to have a written contract for it to be valid or enforceable against a consumer. This is applicable for the construction or sale of a new home, or any portion of a new home, prior to occupancy. Under the bill, the written contract must:

1. be signed by the NHB and consumer;
2. contain the entire agreement between the NHB and consumer;
3. contain the NHB's name, address, and DCP registration number;
4. contain the transaction date and specify a start and completion date;
5. be entered into by a registered NHB; and
6. disclose each corporation, limited liability company, partnership, sole proprietorship, or other legal entity, which is or has been an NHB in which the subject NHB's owner or owners have been a shareholder, member, partner, or owner in the past five years.

The NHB must deliver the completed contract to the consumer at the time of execution at no cost. The bill authorizes the DCP commissioner to adopt regulations requiring additional contract provisions.

The bill requires any changes to the contract to be written and signed by both parties unless the DCP commissioner eliminates the requirement by regulation.

The bill specifies that its provisions do not preclude a registered NHB from recovering payment for work performed at the consumer's request if the NHB has a written contract signed by both parties that includes a start and completion date. A court may allow the NHB to recover the reasonable value of provided services if it determines equity requires it.

## **§ 11 — HIRING RATIO CALCULATION**

As described below (see BACKGROUND), DCP regulations establish a “hiring ratio” for the electrical; plumbing; heating, piping, and cooling; sprinkler fitting; and sheet metal working trades. The hiring ratio limits the number of apprentices that an employer may use based on the number of journeypersons or contractors employed.

Under the bill, for purposes of this hiring ratio, limited license holders count as journeypersons or contractors if they are working as such when enrolled in an unlimited license apprenticeship program. The bill also specifies that the unlimited category registered apprentice’s limited license must not be used to calculate the number of apprentices that the unlimited contractor may hire under the hiring ratio.

## **§ 12 — DEFINING LOCKSMITH**

The bill exempts certain work from the definition of locksmithing, therefore exempting individuals who perform such work from registering with DCP as locksmiths. The bill exempts individuals who service, install, or repair electronic locks, access control devices, or other similar locking devices that connect to an electronic security system. The exemption only applies if (1) a licensed electrician does any required electrical work and (2) the individual does not publicly hold himself or herself out as a locksmith.

## **BACKGROUND**

### ***Guaranty Funds***

The New Home Construction and Home Improvement Guaranty Funds reimburse consumers who are unable to recover losses for damages caused by registered new home construction contractors and registered home improvement contractors, respectively. Both funds are capitalized through fees paid by NHBs and HICs. Each fund is capped at \$750,000 annually with excess funds transferred to DCP’s Consumer Protection Enforcement Account and then the General Fund.

### ***Hiring Ratio***

By law, each trade has three different basic levels of expertise:

apprentice, journey person, and contractor. Contractors may offer their services to the public; apprentices and journey persons must work for contractors. The hiring ratio limits the number of apprentices that an employer may use based on the number of journey persons or contractors employed. (The hiring ratio is distinct from job (or work) site ratios that apply to registered apprenticeship trades.)

***Limited and Unlimited Licenses***

Within the contractor and journey person classifications, there are two license types: limited and unlimited. An unlimited licensee has permission to do a broad range of work within his or her trade; limited licenses authorize a narrower scope of practice.

**COMMITTEE ACTION**

General Law Committee

Joint Favorable Substitute

Yea 19 Nay 0 (02/16/2021)