

STATE OF OKLAHOMA

2nd Session of the 43rd Legislature (1992)

HOUSE BILL NO. 1975

BY: BASTIN

AS INTRODUCED

AN ACT RELATING TO PROFESSIONS AND OCCUPATIONS;  
PROVIDING SHORT TITLE; ENACTING THE CONSTRUCTION  
INDUSTRY LICENSING ACT; STATING THE PURPOSE;  
DEFINING TERMS; ESTABLISHING THE CONSTRUCTION  
INDUSTRY COMMITTEE AND PROVIDING FOR DUTIES,  
APPOINTMENT AND TERMS OF OFFICE; PROVIDING POWERS  
AND DUTIES OF THE OKLAHOMA DEPARTMENT OF HEALTH AND  
THE STATE BOARD OF HEALTH; PROVIDING FOR  
COMPENSATION AND REIMBURSEMENT OF EXPENSES  
INCURRED; PROVIDING QUALIFICATIONS FOR LICENSE;  
REQUIRING APPLICATION; PROVIDING FOR FEES;  
PROVIDING FOR EXPIRATION OF LICENSES; PROVIDING A  
HEARING BOARD; PROVIDING POWERS AND LIMITATIONS OF  
BOARD; PROVIDING FOR REVOCATION OR SUSPENSION OF  
LICENSE; PROVIDING FOR REAPPLICATION; PROVIDING  
PENALTIES UNDER CERTAIN CIRCUMSTANCES; ESTABLISHING  
EXCEPTIONS; AUTHORIZING CITIES OR TOWNS TO  
ESTABLISH RULES, REGULATIONS, AND STANDARDS FOR  
CONSTRUCTION WORK; CREATING CONSTRUCTION INDUSTRY  
LICENSING REVOLVING FUND; PROVIDING PENALTY FOR  
CERTAIN VIOLATIONS; REQUIRING COMPLIANCE WITH  
ADMINISTRATIVE PROCEDURES ACT; PROVIDING EXCEPTION  
TO LICENSING REQUIREMENTS OF ACT; PROVIDING FOR  
CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1851.1 of Title 59, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Construction Industry Licensing Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1851.2 of Title 59, unless there is created a duplication in numbering, reads as follows:

The Legislature recognizes that the building and construction industry may pose a danger of significant harm to the public when incompetent or dishonest persons or contractors provide unsafe or short lived products or services. Therefore, it is necessary in the interest of public health, safety and welfare to regulate the construction industry.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1851.3 of Title 59, unless there is created a duplication in numbering, reads as follows:

As used in the Construction Industry Licensing Act:

1. "Board" means the State Board of Health;
2. "Committee" means the Construction Industry Committee;
3. "Department" means the State Department of Health;
4. "Commissioner" means the State Commissioner of Health; and
5. "Contractor" means the person or persons qualified for and responsible for the entire project contracted for, and contractors are classified as follows:

- a. "General Contractor" means a contractor whose services are unlimited as to the type of work which he or she may do, except as otherwise provided for in this act,
- b. "Building contractor" means a contractor whose services are limited to construction of commercial buildings and single dwelling or multiple dwelling residential buildings which commercial or residential buildings do not exceed three (3) stories in height and accessory use structures in connection therewith or a contractor whose services are limited to remodeling, repair or improvement of any size if the services do not affect the structural member of the building,
- c. "Residential contractor" means a contractor whose services are limited to construction, remodeling, repair or improving of one-family, two-family or three-family residences, not exceeding two (2) stories in height and accessory use structures in connection therewith, and
- d. "Specialty contractor" means a subcontractor or contract labor contractor whose operations as such by the performance of construction work require special skill and whose principle contracting business involves the use of specialized building trades or crafts including, but not limited to, heating and air conditioning, plumbing, electrical, and special sidings. Specialty contractor includes but is not limited to metal, vinyls and roofing contractors.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1851.4 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. There is hereby established the Construction Industry Committee which shall consist of eleven (11) members appointed by the Governor. All members shall be at least thirty (30) years of age and citizens or legal residents of the United States and shall be residents of this state at least five (5) years prior to their appointments. Each professional member of the Committee shall have been actually engaged in the business of his profession for at least five (5) years prior to appointment to the Committee. The membership shall be composed of:

1. One (1) architect;
2. One (1) engineer;
3. One (1) general contractor;
4. One (1) building contractor;
5. One (1) specialty contractor;
6. One (1) inspector;
7. One (1) municipal government employee;
8. One (1) residential contractor;
9. One (1) state government employee; and
10. Two (2) lay persons.

C. In making the initial appointments, the Governor shall designate five (5) members for terms expiring in 1995 and six (6) members for terms expiring in 1996. The Board shall make the initial appointments to the Committee by December 1, 1993. Thereafter, the members shall hold office for terms of two (2) years or until their successors have been appointed and qualified.

D. Said members may be removed for misconduct, incompetency, or neglect of duty.

E. A majority of the Committee shall constitute a quorum for the transaction of business, and the Committee shall elect a chairperson from its number. Each member shall receive travel expenses in accordance with the provisions of the State Travel Reimbursement Act. The Committee shall meet at least quarterly to

conduct examinations, and special meetings may be called by the chairperson or the State Commissioner of Health.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1851.5 of Title 59, unless there is created a duplication in numbering, reads as follows:

The Committee shall:

1. Assist and advise the Board on all matters pertaining to the formation of rules and regulations pursuant to the provisions of the Construction Industry Licensing Act;
2. Assist and advise the Department on all matters relating to the licensing of contractors pursuant to the provisions of the Construction Industry Licensing Act;
3. Conduct investigations into the qualifications of applicants for licensure at the request of the Department;
4. Conduct investigations and proceedings, at the request of the Department, for alleged violations of the Construction Industry Licensing Act; and
5. Assist and advise the Commissioner, the Board and the Department in such other matters as is requested thereby.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1851.6 of Title 59, unless there is created a duplication in numbering, reads as follows:

The Department shall have the power and duty to:

1. Issue, renew, suspend, revoke, modify or deny licenses to engage in construction work pursuant to the Construction Industry Licensing Act;
2. Enter upon public and private property for the purpose of inspecting workers' licenses and construction work for compliance with the provisions of the Construction Industry Licensing Act and of the rules and regulations of the Board promulgated thereto;
3. Employ personnel to conduct investigations and inspections;

4. Enforce the standards and rules and regulations promulgated pursuant to the Construction Industry Licensing Act;

5. Reprimand or place on probation, or both, any holder of a license pursuant to the Construction Industry Licensing Act;

6. Investigate complaints and hold hearings;

7. Initiate prosecutions; and

9. Otherwise exercise all incidental powers as necessary and proper to implement and enforce the provisions of the Construction Industry Licensing Act and the rules and regulations of the Board promulgated thereto.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1851.7 of Title 59, unless there is created a duplication in numbering, reads as follows:

After January 1, 1994, no person, on behalf of himself or of a construction firm, shall engage or offer to engage in, by advertisement or otherwise, any construction work as a contractor who does not possess a valid and appropriate license from the Department. No business entity shall act as a construction firm unless a contractor is associated with and responsible for all construction work of such entity. Any person convicted of violating the provisions of this section shall be guilty of a misdemeanor punished by a fine of not more than One Thousand Dollars (\$1,000.00). Each day of such work in violation of this section shall constitute a separate offense.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1851.8 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. Except as authorized by the provisions of subsection B of this section, the Department shall issue a license as a contractor to any person who:

1. Has been certified by the Committee as having provided evidence of financial responsibility in the form of a surety bond in

the amount set by the Board according to the license for the particular classification of contractor, and in no case less than Ten Thousand Dollars (\$10,000.00);

2. Has paid the license fee and has otherwise complied with the provisions of the Construction Industry Licensing Act. The license fees shall be annually as follows:

- a. Application - General Building Contractor license - \$500.00,
- b. Application - Building Contractors license - \$300.00,
- c. Application - Residential Contractors license - \$200.00,
- d. Application - Specialty Contractors license - \$150.00,  
and
- e. Application - All Contractor Renewal fees - \$100.00;  
and

3. Is not less than eighteen (18) years of age.

B. All licenses shall be nontransferable. No license shall be issued for longer than one (1) year and all licenses shall expire on June 30 of each year. Licenses may be renewed upon application and payment of the required fees and payment of any penalty for late renewal, as shall be established by the Board. Persons who are licensed pursuant to this act may have their license placed on inactive status by paying the annual renewal fee and eliminating the bonding requirements. No late fee shall be charged to renew a license which expired while the applicant was in military service if application is made within one (1) year of discharge from the military service.

C. The Department is authorized to establish, upon approval by the Board, and issue, subject to the provisions of the Construction Industry Licensing Act, limited licenses in each area of construction work based on the experience, ability and the education of the applicant. The limited licenses shall authorize the licensee

to engage in only those activities and within the limits specified in the license.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1851.9 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. No general, building, residential or specialty contractor shall perform any work for which such person does not have a proper license issued by the State of Oklahoma.

B. Except as otherwise provided by law, the provisions of the Construction Industry Licensing Act shall not apply to:

1. Public utilities on construction, maintenance and development work performed by their employees, which work is incidental to their business;

2. An authorized employee of the United States, this state, or any municipality, county or other political subdivision of this state if the employee does not hold himself out for hire or otherwise engage in contracting except in accordance with such person's employment;

3. An officer appointed by a court when such person is acting within the scope of his office as defined by law or court order. When construction projects which were not underway at the time of appointment of the officer are undertaken, the officer shall employ or contract with a licensee;

4. Owners of property when acting as their own contractor and providing all material supervision themselves when building or improving farm outbuildings or one-family or two-family residences on such property for the occupancy or use of such owners and not offered for sale, or building or improving commercial buildings at a cost of less than Twenty-five Thousand Dollars (\$25,000.00) on such property for the occupancy or use of such owners and not offered for sale or lease. In an action brought pursuant to this paragraph, proof of the sale or lease, or offering for sale or lease of more

than one (1) such structure by the owner/builder within one (1) year after completion of same is prima facie evidence that the construction was undertaken for the purpose of sale or lease. This paragraph does not exempt any person who is employed by such owner and who acts in the capacity of contractor. To qualify for exemption pursuant to this paragraph, an owner must personally appear and sign the building permit application. The local permitting agency shall provide the person with a disclosure statement in substantially the following form:

"State law requires construction to be done by licensed contractors. You have applied for a permit pursuant to an exemption to that law. The exemption allows you as the owner of your property, to act as your own contractor even though you do not have a license. You must supervise the construction yourself. You may build or improve a one-family or two-family residence or a farm outbuilding. You may also build or improve a commercial building at a cost of Twenty-five Thousand Dollars (\$25,000.00) or less. The building must be for your own use and occupancy. It may not be built for sale or lease. If you sell or lease more than one (1) building you have built for yourself within one (1) year after the construction is complete, the law will presume that you built it for sale or lease, which is a violation of this exemption. You may not hire an unlicensed person as your contractor. Your construction must be done according to building codes and zoning regulations. It is your responsibility to make sure that persons employed by you have licenses required by state law and by any applicable county or municipal licensing ordinances.";

5. A registered architect or engineer acting within the scope of such person's practice or any person exempted by the law regulating architects and engineers, including persons doing design work. Provided, however, that an architect, engineer or designer shall not act as a contractor unless properly licensed;

6. Any person or persons who only furnish materials or supplies without fabricating them into, or consuming them in the performance of, the work of the contractor; or

7. A general contractor, building contractor, or residential contractor who uses such contractor's own personnel to apply wood, asphalt, ceramic or metal roof coverings on any construction for which such contractor has a contract. Provided, however, the contractor may not apply roof coverings that require the use of heated sealants or multiple layers of felts used in built-up roof coverings.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1851.10 of Title 59, unless there is created a duplication in numbering, reads as follows:

Any contractor, as defined by this act, or construction firm who violates any of the provisions of the Construction Industry Licensing Act, in addition to suspension or revocation of a license, upon conviction, shall be guilty of a misdemeanor and punished by a fine of not less than One Hundred Dollars (\$100.00) or more than Five Hundred Dollars (\$500.00), or both such fine and imprisonment together with the costs of prosecution.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1851.11 of Title 59, unless there is created a duplication in numbering, reads as follows:

The provisions of the Construction Industry Licensing Act shall not prohibit any political subdivision from appointing inspectors, making inspections, requiring permits for construction work and charging such fees as are determined to be necessary by such political subdivision. Said political subdivision may inspect construction work performed within the jurisdiction of that political subdivision, and may require contractors to register within their jurisdiction.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1851.12 of Title 59, unless there is created a duplication in numbering, reads as follows:

There is hereby created in the State Treasury a revolving fund for the Oklahoma State Department of Health, to be designated the "Oklahoma Construction Licensing Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies received by the Department pursuant to the Construction Industry Licensing Act. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the Department for the purpose of implementing the Construction Industry Licensing Act. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1851.13 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. The Department and the Committee shall act as the Construction Hearing Board and shall comply with the provisions of the Administrative Procedures Act.

B. The Construction Hearing Board may, upon its own motion, and shall, upon written complaint filed by any person, investigate the business transactions of any contractor, or construction firm. The Department shall suspend or revoke or may refuse to issue or renew any license pursuant to the Construction Industry Licensing Act for any of the following:

1. Making a material misstatement in the application for a license or the renewal of a license;
2. Obtaining any license by false or fraudulent representation;
3. Loaning or allowing the use of such license by any other person or illegally using a license;

4. Demonstrating incompetence to act as a contractor;

5. Violating any provisions of the Construction Industry Licensing Act, or any rule, regulation or order prescribed by the Board pursuant to the provisions of the Construction Industry Licensing Act; or

6. Willfully failing to perform normal business obligations without justifiable cause.

Any person whose license has been revoked by the Construction Hearing Board may apply for a new license one (1) year from the date of such revocation.

SECTION 14. This act shall become effective July 1, 1993.

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