

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 1254

By: Monks

COMMITTEE SUBSTITUTE

An Act relating to professions and occupations; enacting the Contractor Licensing Act; providing short title; defining terms; creating the Contractor Licensing Advisory Committee; providing for membership, appointments, qualifications, terms, removal from office, vacancies, reimbursement, officers, quorums and meetings of such Committee; specifying certain powers and duties; requiring certain licenses; authorizing certain grace periods; authorizing certain exemptions; requiring certain qualifications for licensure; specifying applications for licensure; providing for certain fees; limiting municipalities' fees for such licenses; providing for the issuance of certain licenses and license renewals; authorizing the adoption of certain license expiration systems and prorating of fees related thereto; prohibiting certain acts; requiring the exhibition of certain licenses under certain conditions; requiring notification by certain licensees of certain changes; requiring the maintenance of certain records; providing for certain reciprocity; authorizing the revocation or suspension of certain licenses, the reprimanding of certain licensees, or the denial of application for or renewal of certain licenses under certain conditions; providing for certain investigations and proceedings related thereto; providing for certain proceedings and record keeping concerning such actions; creating the Contractor Licensing Revolving Fund; providing for expenditures and deposits of such fund; providing for certain procedures relating to such fund; providing for costs associated with the act; prohibiting certain claims; providing certain annual penalties for certain acts; providing certain administrative penalties; authorizing injunctive relief and restraining orders; providing for codification; providing an effective date; and declaring an emergency.

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 2013.1 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 "Contractor Licensing Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2013.2 of Title 59, unless there is created a duplication in numbering, reads as follows:

As used in the Contractor Licensing Act:

1. "Commissioner" means the Commissioner of Labor;
2. "Committee" means the Contractor Licensing Advisory Committee;
3. "Department" means the Department of Labor; and
4. "Contractor":
  - a. is synonymous with builder,
  - b. is any person, except a registered architect or a registered professional engineer, acting solely in his professional capacity, or who in any capacity other than as the employee of another with wages as the sole compensation, undertakes to, or offers to undertake to, or purports to have the capacity to undertake to, or submits a bid to, or does himself or by or through others, construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, railroad, excavation or other structure, project, development or improvement, or to do any part thereof, including the erection of scaffolding or other structures or works in connection therewith. Evidence of the securing of any permit from a governmental agency or the employment of any person on a construction project shall be accepted by the Committee and Commissioner or any court of this state as prima facie evidence that the person securing such permit or employing any person on a construction project is acting in the capacity of a contractor pursuant to this act,
  - c. includes subcontractor or specialty contractor, but does not include anyone who merely furnishes

materials or supplies without fabricating them into, or consuming them in the performance of, the work of a contractor, and

- d. includes a construction manager who performs management and counseling services on a construction project for a professional fee.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2013.3 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created the Contractor Licensing Advisory Committee which shall consist of the Commissioner or designee and six (6) other members to be appointed by the Commissioner.

Each member shall have the following qualifications:

1. All members shall be citizens or permanent residents of the United States and residents of the State of Oklahoma for at least one (1) year next preceding their appointments;

2. Three members shall be contractors actively engaged in the contracting business and must have been so engaged for not less than five (5) years preceding the date of their appointments;

3. Two members shall be journeymen from an employee trade association. Such members shall have five (5) years actual experience in construction work; and

4. One member shall be a lay person.

No member shall be employed by the same person as any other member of the Committee.

B. Except as otherwise provided for in this subsection, the term of office of each appointed member shall be four (4) years. Provided, the terms of the first appointed members shall terminate June 30, 1995. The terms of the members appointed after June 30, 1995 shall be coterminous with the term of the Commissioner of Labor. Each appointed member shall hold office until a successor is appointed and has qualified pursuant to this act.

C. A member may be removed from office for cause by the Commissioner.

D. Vacancies shall be filled by appointment by the Commissioner for the unexpired term of the vacancy.

E. The members shall serve without pay but may be reimbursed for actual and necessary expenses pursuant to the State Travel Reimbursement Act.

F. The Committee shall elect from among its membership a chairperson, vice-chairperson and secretary to serve terms of not more than two (2) years ending on June 30 of the year designated as the end of the officer's term. The chairperson or vice-chairperson shall preside at all meetings. The chairperson, vice-chairperson and secretary shall perform such duties as may be directed by the Committee.

G. A majority of the members appointed shall constitute a quorum to transact official business.

H. The Committee shall meet at such times as it deems necessary to implement this act.

I. The Committee shall assist and advise the Commissioner on all matters relating to the formulation of rules to be promulgated in accordance with this act and the Administrative Procedures Act.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2013.4 of Title 59, unless there is created a duplication in numbering, reads as follows:

In addition to those duties and powers otherwise prescribed by law, the Committee shall have the duties and powers to:

1. Assist the Department of Labor in licensing and otherwise regulating persons engaged in contracting;

2. Determine qualifications of applicants pursuant to this act;

3. Prescribe and adopt forms for license applications and initiate mailing of such application forms to all persons requesting such applications;

4. Assist the Commissioner in the denial, suspension or revocation of licenses as provided by this act;

5. Charge and collect such fees as are prescribed by this act;

6. Assist the Commissioner in establishing and enforcing standards governing the materials, services and conduct of the licensees and their employees in regard to this act;

7. Assist the Commissioner in promulgating rules necessary to carry out the administration of this act;

8. Assist the Commissioner in establishing categories of licenses and application requirements for each category necessary for full implementation of this act; and

9. Assist the Commissioner in providing for grievance and appeal procedures pursuant to the Oklahoma Administrative Procedures Act for any person whose license is denied, revoked or suspended.

The Committee shall have such other powers and duties as are necessary to implement this act.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2013.5 of Title 59, unless there is created a duplication in numbering, reads as follows:

In addition to those duties and powers otherwise prescribed by law, the Commissioner shall have the duties and powers to:

1. Promulgate and adopt rules pursuant to the Administrative Procedures Act necessary to effectuate the provisions of this act;

2. Prepare, conduct and grade examinations, written or oral, of persons who apply for the issuance of a license, if such examination is deemed necessary by the Committee;

3. Issue, renew, suspend, revoke, modify or deny licenses to engage in contracting pursuant to the Contractors Licensing Act;

4. Enter upon public and private property for the purpose of inspecting contractors' license for compliance with the provisions of the Contractors Licensing Act and of the rules of the Department promulgated thereto;

5. Charge and collect such fees as are prescribed by this act;

6. Employ personnel to conduct investigations and inspections;

7. Investigate alleged violations of the provisions of this act and of any rules promulgated pursuant to this act;

8. Establish and levy administrative penalties against any person who violates any of the provisions of this act or any rule promulgated pursuant to this act; and

9. Initiate disciplinary, prosecution and injunctive proceedings against any person who violates any of the provisions of this act or any rules promulgated pursuant to this act.

The Commissioner shall have such other powers and duties as are necessary to implement this act.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2013.6 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. Beginning January 1, 1995, no person shall be engaged in the profession or occupation of contractor in this state without first having obtained a license pursuant to the provisions of this act.

B. Every person engaged in such profession or occupation in this state on the effective date of this act shall have one hundred eighty (180) days in which to apply to the Commissioner for a license. A person applying for a license within this period may continue the person's profession or occupation pending a final determination of his application. Additional time beyond the one-hundred-eighty-day period may be granted by the Commissioner.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2013.7 of Title 59, unless there is created a duplication in numbering, reads as follows:

A person shall be exempt from the requirements of this act if the person:

1. Is required to be licensed by another state agency, if such licensure is of a profession or occupation which the Commissioner deems similar to the profession or occupation of contractor;

2. Works on a project for which the combined value of labor, materials, and all other items on one or more contracts is less than Three Hundred Dollars (\$300.00). Work which is part of a larger or major project, whether undertaken by the same or different contractors, may not be divided into amounts less than Three Hundred Dollars (\$300.00) in an attempt to meet the Three Hundred Dollar (\$300.00) exemption;

3. Is an employee who is paid wages and who does not have direction or control over the performance of work or who does not determine the final results of the work or project;

4. Is a public employee or officer working on public projects;

5. Is an officer of a court acting within the scope of their office;

6. Is an employee or officer of a public utility working under specified conditions;

7. Is an owner or lessee performing oil and gas operations;

8. Is an owner-builder who builds or improves existing structures on such person's own property if such person either does the work or uses such person's own employees to do the work. This exemption is only valid if the structure is not intended or offered for sale within one (1) year of completion;

9. Is an owner-builder who builds or improves existing structures on such persons own property if such person contracts for the construction with a licensed contractor or contractors;

10. Is an owner-builder who improves such person's main place of residence, has actually resided there for one (1) year prior to completion of the work, and who completes the work prior to sale. This exemption is limited to two structures within a three-year period; or

11. Is a seller or installer of finished products that do not become a fixed part of the structure. The exemption applies to a seller of installed carpets who contracts for installation of the carpet with a carpet installer. The exemption does not apply to material suppliers or manufacturers who install or contract for installation of products. Nor does it apply to those who install mobile homes or mobile home accessory structures.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2013.8 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. Any person applying for a license to engage in contracting pursuant to this act shall provide evidence to the Committee that the individual:

1. Is at least eighteen (18) years of age;
2. Has not been declared by any court of competent jurisdiction to be incompetent by reason of mental defect or disease and not restored to competency;
3. Is not a habitual user of intoxicating liquors or an illegal user of controlled dangerous substances;
4. Has not been discharged from the Armed Services of the United States under other than honorable conditions;
5. Is of good moral character;
6. Has been able to obtain or is qualified to obtain a surety bond or letter of credit in an amount and form determined and ordered by the Commissioner for the purpose of protecting the public against illegal or unscrupulous action by such licensee;
7. Has such a degree of experience, financial responsibility and general knowledge of the building, safety, health and lien laws of this state and the rudimentary principles of the contracting business as the Commissioner deems necessary for the safety and protection of the public. Adequate experience may include two (2) years of experience in development, contracting, construction or real estate;
8. Has not been convicted of a criminal offense involving fraud, embezzlement, any provision of the Home Repair Fraud Act or the Consumer Protection Act, or moral turpitude;
9. Has not had a contractor's license suspended or revoked in this state or any other state; and
10. Meets such other standards as may be established by the Commissioner pursuant to the provisions of this act.

B. The applicant shall advise the Committee and furnish full information on any conviction of a felony or any crime involving moral turpitude for which a full pardon has not been granted.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2013.9 of Title 59, unless there is created a duplication in numbering, reads as follows:

- A. An application for a license shall include:
  1. The name of the applicant;
  2. The resident address of the applicant; and

3. Such other information, statements or documents as may be required by the Commissioner.

B. Fees for license and renewal issued pursuant to this act shall be adopted by the rules of the Commissioner. Provided, the fees provided for in this subsection shall reflect the estimated actual cost of processing and issuance of original and renewal licenses. An applicant shall pay the license fee at the time such person makes application. No municipality may charge any fee for any municipal contracting licenses which would exceed the fee adopted by the rules of the Commissioner.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2013.10 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. Upon the making of proper application, payment of the proper license fee, and certification of approval by the Committee, a license shall be issued by the Commissioner to the applicant. The license shall be valid for a one-year term.

B. Renewal of a license shall not prohibit disciplinary proceedings for an act committed prior to the renewal.

C. The Commissioner may adopt a system under which licenses expire on various dates throughout the year. For any change in such expiration dates, license fees shall be prorated on an appropriate periodic basis.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2013.11 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. A license shall not be altered or assigned.

B. A license shall be exhibited by the licensee upon request of any person doing business with such licensee pursuant to the provisions of this act or by any member or authorized employee of the Department.

C. A licensee shall notify the Committee within fourteen (14) days of any change of information furnished on his application for license or on his license including, but not limited to, change of

name, address, or any developments related to the qualifications of the licensee. If the required notice of change is not given within fourteen (14) days, the license may be suspended or revoked by the Commissioner on recommendation of the Committee.

D. No person shall represent falsely that he is licensed or employed by a licensee.

E. Each licensee shall maintain a record containing such information relative to his employees as may be required by the Commissioner.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2013.12 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. The Commissioner shall have the power to issue, upon application and payment of fees, reciprocal licenses for persons licensed in other states to practice as a licensee pursuant to the provisions of this act if the Commissioner deems such states to have qualifications and standards equivalent to or which exceed those required pursuant to the provisions of this act.

B. The Commissioner shall also have the power to issue a temporary license, provided all requirements have been met, to a person who files an application for licensure pursuant to the provisions of this act while his application is being processed.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2013.13 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. Upon the conviction of any individual named on the license or on the application for license of a felony, the Commissioner on recommendation of the Committee may suspend any license for a period not to exceed thirty (30) days pending a full investigation by the Committee. Such investigation shall be initiated within the thirty-day period of the suspension. A final determination by the Committee shall result in either removal of the suspension or the imposition of another sanction as the Commissioner considers appropriate, as provided for in this act.

B. The Commissioner may revoke or suspend any license, reprimand any licensee or deny any application for license or renewal of such license, if in the judgement of the Committee:

1. The applicant or licensee has violated any provision of this act or any rule promulgated in accordance with this act;

2. The applicant or licensee has committed any offense resulting in his conviction of a felony or crime involving moral turpitude. Provided, however, if the applicant has had no felony convictions at least five (5) years prior to making application for a license and said applicant has shown the Committee that he has been rehabilitated, the Committee may recommend said applicant for a license;

3. The applicant or licensee has practiced fraud, deceit, or misrepresentation;

4. The applicant or licensee has made a material misstatement in any information required by the Commissioner; or

5. The applicant or licensee has demonstrated incompetence or untrustworthiness in his actions.

C. Before final action under subsection B of this section, the Committee shall provide thirty (30) days' written notice to the applicant or licensee involved of the action intended, and give sufficient opportunity for such person to request a hearing before the Committee and the Commissioner and to be represented by an attorney. A hearing shall be scheduled by the Committee if so requested by the applicant or licensee.

D. In the event the application for a license is denied, or the license is revoked or suspended, or any reprimand is imposed, a record of such action shall be in writing and officially signed by the Commissioner. The original copy shall be filed with the Commissioner and a copy mailed to the affected applicant or licensee and to the Consumer Protection Division in the Office of the Attorney General within two (2) working days of the final action taken by the Commissioner.

E. A suspended license shall be subject to expiration and may be renewed as provided by this act, regardless of suspension. Provided, such renewal shall not remove the suspension.

F. A revoked license terminates on the date of revocation and cannot be reinstated. Provided, the Commissioner may reverse the revocation action. Any licensee whose license is revoked shall apply for a new license and meet all requirements for a license as stated in this act prior to engaging in any contracting activities. The Committee and the Commissioner shall take action on the new application and may require additional safeguards against such acts by the applicant as may have been the cause of the revocation of the prior license. Within ten (10) working days of such license being reinstated the Commission shall notify the Consumer Protection Division in the Office of the Attorney General of such reinstatement.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2013.14 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 Department of Labor, to be designated the Contractor 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 Contractor 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 Contractor 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 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2013.15 of Title 59, unless there is created a duplication in numbering, reads as follows:

All costs of administration of the Contractor Licensing Act shall be paid from fees, monies and other revenue collected pursuant to the provisions of this act. At no time shall a claim for payment be submitted to the Director of State Finance if the

revenue deposited in the Contractor Licensing Revolving Fund to the current date does not equal or exceed the total claims for payments made to that date.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2013.16 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. An individual or person who is found to be in violation of the provisions of the Contractor Licensing Act or of the rules adopted pursuant to this act for implementation or administration of this act, upon conviction, shall be guilty of a misdemeanor and shall be punished by confinement in the county jail for a period not to exceed one (1) year or by the imposition of a fine not to exceed Five Thousand Dollars (\$5,000.00) per violation and not to exceed Twenty-Five Thousand Dollars (\$25,000.00) for all violations occurring within a one-year period of time, or by both such imprisonment and fine.

B. If after a hearing in accordance with the Administrative Procedures Act the Commissioner shall find any person to be in violation of any of the provisions of this act, such person may be subject to an administrative penalty of not more than One Thousand Dollars (\$1,000.00) for each violation. Each day a person is in violation of this act may constitute a separate violation. All administrative penalties collected pursuant to the provisions of this subsection shall be deposited in the Contractor Licensing Revolving Fund. Administrative penalties imposed pursuant to this subsection shall be enforceable in the district courts of this state.

C. The Commissioner may make application to the appropriate court for an order enjoining the acts or practices prohibited by this act, and upon a showing by the Commissioner that the person has engaged in any of the prohibited acts or practices, an injunction, restraining order, or other order as may be appropriate shall be granted by the court.

SECTION 17. This act shall become effective July 1, 1993.

SECTION 18. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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