

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

HOUSE BILL NO. 1338

By: Boyd (Laura)

AS INTRODUCED

An Act relating to professions and occupations;  
enacting the Swimming Pool Contractor Act;  
providing short title; defining terms; creating the  
Swimming Pool 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;  
providing for categories of licenses and  
qualifications for such licenses; authorizing  
certain exemptions; requiring certain  
qualifications for licensure; specifying  
applications for licensure; providing for certain  
fees; 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 Swimming Pool 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  
penalties for certain acts; 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 2050.1 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 "Swimming Pool  
Contractor Act".

SECTION 2. NEW LAW A new section of law to be codified  
in the Oklahoma Statutes as Section 2050.2 of Title 59, unless there  
is created a duplication in numbering, reads as follows:

As used in the Swimming Pool Contractor Act:

1. "Commissioner" means the Commissioner of Labor;
2. "Committee" means the Swimming Pool Committee;
3. "Department" means the Department of Labor;
4. "Contractor" means any person in the business of  
constructing, building, installing or repairing swimming pools,  
either commercial or residential, including but not limited to

whirlpools, spas, hot tubs, aboveground pools, and any person desiring to engage in such business; and

5. "License" means Type A, B or C license as specified in the Swimming Pool Contractor Act.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2050.3 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created the Swimming Pool Committee, which shall consist of the Commissioner or designee and four (4) members to be appointed by the Commissioner.

Each member shall have the following qualifications:

1. Have at least five (5) years of experience in the swimming pool contracting, building or installing business; and

2. Be a resident of this state.

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 coterminous with that of the Commissioner. 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 and standards to be promulgated in accordance with this act.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2050.4 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 following duties and powers:

1. To assist the Department in licensing and otherwise regulating persons engaged in the swimming pool contracting, building and installing business;
2. To determine qualifications of applicants pursuant to this act;
3. To prescribe and adopt forms for license applications and initiate mailing of such application forms to all persons requesting such applications;
4. To assist the Commissioner in the denial, suspension or revocation of licenses as provided by this act;
5. To charge and collect such fees as are prescribed by this act;
6. To 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. To assist the Commissioner in promulgating rules necessary to carry out the administration of this act;

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

9. To 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; and

10. To have such other powers and duties as is necessary to implement this act.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2050.5 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 following duties and powers:

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

2. To 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 Commissioner;

3. To charge and collect such fees as are prescribed by this act;

4. To investigate alleged violations of the provisions of this act and of any rules promulgated pursuant to this act;

5. To 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;

6. To initiate disciplinary, prosecution and injunctive proceedings against any person who violates any of the provisions of this act or any rule promulgated pursuant to this act; and

7. To 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 2050.6 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. Beginning January 1, 1994, no person shall be engaged in the profession or occupation of a swimming pool contractor in this state without first having obtained a license pursuant to the provisions of this act.

B. There shall be three (3) categories of licenses as follows:

1. Type A License. The swimming pool contractor who desires to do all phases of pool installation or maintenance for both commercial and/or residential.

The qualifications for the Type A inground swimming pool Contractor License, for both commercial and/or residential license, are:

- a. the applicant shall have attained the age of eighteen (18) years,
- b. the applicant shall possess at least three (3) years of active experience in the field in which he desires to be licensed, i.e., contracting to build and/or install inground swimming pools,
- c. the applicant shall show proof of insurability in the amount of Three Hundred Thousand Dollars (\$300,000.00) or more combined single limits, and
- d. the swimming pool contractor must inform the buyer that a performance bond is optional with the buyer;

2. Type B License. The swimming pool contractor that desires to do whirlpools, spas, hot tubs, and aboveground pools for both commercial and/or residential.

The qualifications for the Type B whirlpool, spa, hot tub and aboveground pool Contractor License, for both commercial and/or residential license, are:

- a. the applicant shall have attained the age of eighteen (18) years,
- b. the applicant shall possess at least two (2) years of active experience in the field in which he desires to be licensed, i.e., the assembly or installation of whirlpools, spas, hot tubs, and aboveground pools for both commercial and/or residential,
- c. the applicant shall show proof of insurability in the amount of Three Hundred Thousand Dollars (\$300,000.00) or more combined single limits, and
- d. the swimming pool contractor must inform the buyer that a performance bond is optional with the buyer; and

3. Type C License. The pool service repairman for both commercial and/or residential.

The qualifications for the Type C Swimming Pool Contractor License, for both commercial and/or residential license, are:

- a. the applicant shall have attained the age of eighteen (18) years,
- b. the applicant shall possess at least two (2) years of active experience in the field in which he desires to be licensed, i.e., the repair of commercial and/or residential class swimming pools,
- c. the applicant shall show proof of insurability in the amount of Three Hundred Thousand Dollars (\$300,000.00) or more combined single limits, and
- d. the swimming pool contractor must inform the buyer that a performance bond is optional with the buyer.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2050.7 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. In addition to the other qualifications specified in Section 6 of this act, any person applying for a license to engage in swimming pool contracting pursuant to this act shall provide evidence to the Committee that the individual has the following qualifications:

1. Has not been declared by any court of competent jurisdiction incompetent by reason of mental defect or disease, or if so has been restored to competency;

2. Is not a habitual user of intoxicating liquors or an illegal user of controlled dangerous substances;

3. Has not been discharged from the Armed Services of the United States under other than honorable conditions;

4. Is of good moral character; and

5. 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 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2050.8 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 not exceed One Hundred Dollars (\$100.00) for a license fee, and Fifty Dollars (\$50.00) for a renewal license fee. An applicant shall pay the license fee at the time such person makes application.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2050.9 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 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2050.10 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 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2050.11 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 for up to one (1) year to a person who files an application for licensure pursuant to the provisions of this act while his application is being processed or while such person is awaiting a determination to be made on such person's qualifications for such license after filing his application.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2050.12 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 judgment 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 of 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 the Consumer Protection Division in the Office of the Attorney

General within two (2) 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 swimming pool contracting, building or installing 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. Notification shall be sent to the Consumer Protection Division of the Office of the Attorney General within ten (10) days of the return or renewal of such license.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2050.13 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 "Swimming Pool 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 Swimming Pool Contractor 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 Swimming Pool Contractor 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 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2050.14 of Title 59, unless there is created a duplication in numbering, reads as follows:

All costs of administration of the Swimming Pool Contractor 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 Swimming Pool Revolving Fund to the current date does not equal or exceed the total claims for payments made to that date.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2050.15 of Title 59, unless there is created a duplication in numbering, reads as follows:

Any individual or person who is found to be in violation of the provisions of the Swimming Pool Contractor 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 Hundred Dollars (\$500.00), or by both such imprisonment and fine.

SECTION 16. This act shall become effective July 1, 1993.

SECTION 17. 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.

44-1-5260 MCD