

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

HOUSE BILL 2988

By: Cooksey

AS INTRODUCED

An Act relating to professions and occupations; enacting the State Licensing for Residential Home Builders Act; providing short title; stating certain duties of the Construction Industries Board relating to such act; prohibiting certain rules; defining terms; creating the Commission for Residential Home Builders; providing for membership, appointment, terms, qualifications, vacancies, removal, service, reimbursement, meetings, officers and quorum count; requiring the Construction Industries Board to keep certain records and account for certain funds; requiring the deposit of certain funds in the Residential Home Builders Revolving Fund; stating certain duties of the Commission; requiring the Board to keep a register of all applicants; specifying information to be kept; providing for prima facie evidence of certain facts; specifying roster as public record; providing for costs; requiring certain report; providing for powers and duties of the Board; providing for powers and duties of the Commission; providing requirements and qualification for licensure; requiring certain fees; specifying licenses; authorizing the issuance of certain certificates of licensure under certain conditions; requiring bond; providing for the expiration of certificates of licensure; providing for renewals and fees and procedures related thereto; requiring certain notification by the Commission; providing for certain late payments; providing for certain disciplinary actions and procedures; authorizing any person to prefer certain charges, and providing procedures related thereto; requiring the Board to promulgate certain disciplinary rules; requiring the Board to provide a system of recordkeeping for disciplinary actions; specifying records; providing for certain reissuance under certain conditions; providing for rights of the residential home builder; limiting professional acts of licensee which are not regulated under this act; providing jurisdiction pursuant to other occupational licenses; prohibiting relief from other laws or codes; prohibiting certain acts; prohibiting certain persons from being held criminally liable under certain circumstances; authorizing certain restraining orders and injunction relief under certain conditions, and providing procedures related thereto; authorizing the district court to have certain jurisdiction; providing for reciprocity; creating the Residential Home Builders Revolving Fund, and providing procedures related

thereto; 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 1160 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 "State Licensing for Residential Home Builders Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1161 of Title 59, unless there is created a duplication in numbering, reads as follows:

The Construction Industries Board, in pursuance of its general power of supervision over the interests of the health and life of the citizens of this state, is hereby authorized, empowered and directed, through the Commissioner of Health, to make, prescribe, enforce, amend and repeal rules governing the licensing of persons desiring or intending to engage in the business trade of contracting, the establishment and levying of administrative fines, the initiation of disciplinary proceedings, the requesting of prosecution of and initiation of injunctive proceedings against any person who violates any of the provisions of the State Licensing for Residential Home Builders Act or any rule promulgated pursuant to this act, and to establish requirements for the issuance of a license as a residential home builder. Provided however, the rules shall not be inconsistent with the terms and conditions provided for in the State Licensing for Residential Home Builders Act.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1162 of Title 59, unless there is created a duplication in numbering, reads as follows:

As used in the State Licensing for Residential Home Builders Act:

1. "Board" means the Construction Industries Board;

2. "Commission" means the Commission for Residential Home Builders; and

3. "Residential home builder" means one who constructs a residence or structure for sale or who, for a fixed price, commission, fee, or wage, undertakes or offers to undertake the construction or superintending of the construction, of any residence or structure which is not over three floors in height and which does not have more than four units in an apartment complex, or the repair, improvement, or reimprovement thereof, to be used by another as a residence when the cost of the undertaking exceeds Twenty Thousand Dollars (\$20,000.00). Nothing herein shall prevent any person from performing these acts on his or her own residence or on his or her other real estate holdings. Anyone who engages or offers to engage in such undertaking in this state shall be deemed to have engaged in the business of residential home building.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1163 of Title 59, unless there is created a duplication in numbering, reads as follows:

There is hereby created until July 1, 2007, in accordance with the Oklahoma Sunset Law, the Commission for Residential Home Builders. The Commission shall be composed of five (5) members appointed by the Construction Industries Board for staggered terms. The Construction Industries Board shall select members only from lists of names provided by the home building associations of this state. After the initial appointments, the terms shall each be for five (5) years. Each of the members shall be a home builder. Members shall serve until the expiration of their respective terms and until their successors are appointed and qualified. Vacancies occurring during a term shall be filled by appointment of the Board for the remainder of the unexpired term. The Board may remove any member of the Commission for misconduct, incompetency, or neglect of

duty. No Commission member shall serve more than two complete consecutive terms. Board members shall be reimbursed for expenses incurred in the performance of their official duties in accordance with the State Travel Reimbursement Act.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1164 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. The initial meeting of the Commission shall be at the call of the Board. At the meeting a chair and vice-chair shall be elected from and by the membership of the Commission. Meetings shall be held at least four times each year at the call of the chair. At the first meeting each year, the officers shall be elected. Three members of the Commission shall constitute a quorum.

B. The Board shall keep a record of the proceedings of the Commission and shall receive and account for all monies derived from the operation of the State Licensing for Residential Home Builders Act. The funds required for the operation of the Commission shall be deposited in the Residential Home Builders Revolving Fund.

C. Duties of the Commission shall include, but not be limited to, serving the Commissioner in an advisory capacity, assisting in formulating rules pursuant to the State Licensing for Residential Home Builders Act, and assisting and advising the Board on the examination of applicants for licenses as builders, in accordance with such rules and the terms and conditions as provided in this act.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1165 of Title 59, unless there is created a duplication in numbering, reads as follows:

The Board shall keep a record of the proceedings of the Commission and a register of all applicants for license showing for each the date of application, name, qualifications, place of business, place of residence, and whether license was granted or

refused. The books and register of the Commission shall be prima facie evidence of all matters recorded therein. A roster showing the names and places of business and of residence of all licensed home builders shall be prepared by the Commission during the month of March of each year. The roster shall be printed by the Commission out of the Residential Home Builders Revolving Fund of the Board with copies being made available to builders and members of the public in accordance with the Oklahoma Open Records Act.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1166 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. The Board shall have the power and duty to:

1. Promulgate rules for the implementation of the State Licensing for Residential Home Builders Act; and

2. Provide for personnel for the physical and technical issuance, renewal, suspension, revocation, modification, or denial of licenses to engage in residential contractor work and provide for investigations of licensees pursuant to the State Licensing for Residential Home Builders Act.

B. The Commission, with the assistance of staff provided for by the Board, shall have the power and duty to:

1. Enter upon public and private property for the purpose of inspecting licenses and contractor work for compliance with the provisions of the act and the rules of the Board promulgated thereto;

2. Provide for investigations and inspections;

3. Enforce the rules promulgated pursuant to the act;

4. Investigate complaints and provide for the holding of hearings in accordance with the Administrative Procedures Act;

5. Initiate disciplinary proceedings, requests of prosecution of and initiation of injunctive proceedings against any person who

violates any of the provisions of the act or any rule promulgated pursuant to the act;

6. Levy administrative fines, not to exceed One Thousand Dollars (\$1,000.00) for each violation, against any person who violates any of the provisions of the act or any rule promulgated pursuant to the act;

7. Conduct investigations into the qualifications of applicants for licensure; and

8. Exercise all incidental powers as necessary and proper to implement and enforce the provisions of the act and the rules of the Board promulgated thereto.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1167 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. Anyone seeking to be licensed as a residential home builder in this state shall file an application for licensing on a form provided by the Commission, at least thirty (30) days before any regular or special meeting of the Commission accompanied by a license fee in an amount set by the Construction Industries Board. No person contracting for service and labor of a value less than Twenty Thousand Dollars (\$20,000.00) shall be required to hold a residential home builders license pursuant to this act. An applicant must show to the satisfaction of the Commission from the application and proofs furnished that the applicant is possessed of a good character and is otherwise qualified as to competency, ability, integrity, and financial responsibility, and that the applicant has not committed or done any act, which, if committed or done by any licensed home builder would be grounds under the provisions set forth in the State Licensing for Residential Home Builders Act for the suspension or revocation of contractor's license, or that the applicant has not been found guilty of violating the Home Repair Fraud Act or committed or done any act

involving dishonesty, fraud, or deceit, or that the applicant has never been refused a license as a home builder or had such license revoked, either in this state or in another state, for reasons that should preclude the granting of the license applied for, and that the applicant has never been convicted of a felony involving moral turpitude, relating to building or contracting, or involving embezzlement or misappropriation of funds or property entrusted to the applicant. In addition to satisfying the Commission of financial responsibility, a residential home builder shall execute a bond in the amount of One Hundred Thousand Dollars (\$100,000.00)

B. A certificate of license shall expire on the thirty-first day of December following its issuance or renewal and shall become invalid sixty (60) days from that date unless renewed, subject to the approval of the Commission. The amount of the renewal fee shall be set by the Construction Industries Board. No later than November 30 of each year, the Commission shall mail written notice of the amount of the renewal fees for the upcoming year to the last address of record for each residential home builder licensed pursuant to the State Licensing for Residential Home Builders Act. Renewal applications shall be accompanied by evidence of continued financial responsibility satisfactory to the Commission. Renewal applications received by the Commission after January shall be accompanied by a late payment of Ten Dollars (\$10.00) for each month or part after January. After a lapse of two (2) years no renewal shall be effected and the applicant shall fulfill all requirements of a new applicant as set forth in this section.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1168 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. The Board, upon recommendation of the Commission, shall have the power to revoke the certificate of license of any residential home builder licensed pursuant to this act who is found guilty of

any fraud or deceit in obtaining a license, or gross negligence, incompetency or misconduct in the practice of the profession, or willful violation of any provisions of the State Licensing of Residential Home Builders Act. Any person may prefer charges of such fraud, deceit, negligence or misconduct against any home builder licensed pursuant to the State Licensing of Residential Home Builders Act. The charges shall be in writing and sworn to by the complainant and submitted to the Commission. The charges, unless dismissed without hearing by the Commission as unfounded or trivial, shall be heard and determined by the Commission in accordance with the provisions of the Administrative Procedures Act.

B. The Board shall adopt rules consistent with the provisions of the State Licensing of Residential Home Builders Act, governing the suspension and revocation of licenses.

C. The Board shall establish and maintain a system whereby detailed records are kept regarding complaints against each licensee. This record shall include, for each licensee, the date and nature of each complaint, investigatory action taken by the Commission, any findings by the Commission, and the disposition of the matter.

D. The Board may reissue a license to any person, firm or corporation whose license has been revoked, provided three or more members of the Commission vote in favor of such reissuance and recommend such action to the Board.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1169 of Title 59, unless there is created a duplication in numbering, reads as follows:

The issuance of a certificate of license or limited license by the Commission shall be evidence that the person, firm, or corporation named therein is entitled to all the rights and privileges of a licensed or limited licensed residential home builder while the license remains unrevoked or unexpired. A

licensed residential home builder holding a license which qualifies the licensee for work as described in the State Licensing for Residential Home Builders Act shall be authorized to perform the work without any additional occupational license notwithstanding the provisions of any other occupational licensing statute. A license issued by any other occupational licensing Board having jurisdiction over any work described in the State Licensing for Residential Home Builders Act shall qualify such licensee to perform the work for which the license qualifies the licensee without obtaining the license from the Commission. Nothing contained herein shall operate to relieve any residential home builder from the necessity of compliance with other provisions of the law requiring building permits and construction in accordance with appropriate provisions of the B.O.C.A. Code.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1170 of Title 59, unless there is created a duplication in numbering, reads as follows:

Beginning January 1, 2007, any person, firm, or corporation not being duly authorized who shall contract for or bid upon the construction of any of the projects or works without having first complied with the provisions hereof, or who shall attempt to practice home building in the state, except as provided for in the State Licensing for Residential Home Builders Act, and any person, firm, or corporation presenting or attempting to file as the person's own the licensed certificate of another or who shall give false or forged evidence of any kind to the Commission or to any member thereof in maintaining a certificate of license or who falsely shall impersonate another or who shall use an expired or revoked certificate of license shall be deemed guilty of a misdemeanor.

When it appears to the Board that any person, firm or corporation is violating any of the provisions of the State

Licensing for Residential Home Builders Act or of the rules of the Board promulgated under the State Licensing for Residential Home Builders Act, the Commissioner may apply to the district court for a restraining order and injunction to restrain the violation, and the district courts have jurisdiction to grant the requested relief, irrespective of whether or not criminal prosecution has been instituted or administrative sanctions imposed by reason of the violation.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1171 of Title 59, unless there is created a duplication in numbering, reads as follows:

To the extent that other states which provide for the licensing of residential home builders provide for similar action, the Board in its discretion may grant licenses of the same or equivalent classification to home builders licensed by other states, upon satisfactory proof furnished to the Commission that the qualifications of the applicants are equal to the qualifications of holders of similar licenses in this state and upon payment of the required fee.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1172 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 Construction Industries Board to be designated the "Residential Home Builders Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies received by the Board from fees and administrative fines pursuant to the State Licensing for Residential Home Builders Act. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the Commission for the purpose of implementing the provisions of the State Licensing for Residential Home Builders 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. This act shall become effective July 1, 2006.

SECTION 15. 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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