

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 SENATE BILL 2029

By: Leftwich

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5
6 AS INTRODUCED

7 An Act relating to professions and occupations;
8 creating the Commercial Contractors Licensing Act;
9 providing short title; stating legislative intent;
10 naming Construction Industries Board as regulatory
11 body; defining terms; requiring commercial
12 contractors license annually; prohibiting contracting
13 without license after certain date; stating criminal
14 penalty; stating civil penalty; providing for
15 administrative penalties; limiting administrative
16 fine to certain amount; providing for refusal to
17 issue license; providing for injunctive relief;
18 exempting certain persons from licensing provision;
19 setting minimum financial and square footage limit of
20 job for purposes of licensing; directing the
21 Construction Industries Board to promulgate rules;
22 granting authority to issue or deny license; allowing
23 investigation for licensure; granting authority to
24 establish and collect fees; providing for
disciplinary action against licensee; providing for
confidential and public records; requiring certain
roster of names and addresses; requiring records of
applications for licensure be kept; authorizing
copies of application be made available on payment of
fee; authorizing designation of administrator;
requiring annual report to Governor; allowing
continuing education requirement; stating
qualifications for consideration for licensure;
prohibiting licensure of persons less than eighteen
years of age; requiring examination for licensure;
allowing fingerprints and copy of certain
identification for licensure; requiring all
applicants meet educational requirements for
licensure; requiring corporate entities to provide
certain articles and officers names; requiring
certain notification upon conviction; stating manner

1 of notification; directing use of written contract
2 for jobs over certain dollar amount; stating fraud is
3 violation of licensure act; directing notification of
4 changes to address, phone and name; stating manner of
5 notification and delivery of notices; requiring
6 surrender of license upon death or disability;
7 requiring posting of license on job site and on
8 certain media and vehicles; providing for surety bond
9 or cash bond; stating minimum amount of bond; making
10 bond payable to state; requiring notification of bond
11 cancellations and reductions in cash bond; providing
12 for replenishment of bond within certain time;
13 providing for suspension of license for bond
14 cancellation, reduction or depletion; exempting
15 certain administrator and state treasurer from
16 liability for bonds; allowing reinstatement of
17 license after bond replacement; directing licensee to
18 notify certain Board of disciplinary action by
19 another regulatory board; making disciplinary action
20 by another board grounds for disciplinary action
21 under license act; granting certain time to notify of
22 replacement qualifier; allowing suspension and
23 revocation of license for failure to replace
24 qualifier; requiring notification of bankruptcy;
stating minimum hours of continuing education for
licensure; providing forms to prove continuing
education; allowing continuing education courses to
be offered by certain Board or providers; stating
grounds for disciplinary action; authorizing
investigation; requiring notification of alleged
violations; directing hearing on violations;
establishing hearing process under Administrative
Procedures Act; granting certain Board authority to
administer oaths, issue subpoenas and require
attendance of witnesses; allowing injunctive relief
without bond requirement; making injunctive relief in
addition to other penalties and remedies; stating
allowable disciplinary actions; including suspension
and revocation of license for certain periods;
providing for reapplication for license; allowing
administrative fines and recovery of attorney fees
and costs; providing for appeal under the
Administrative Procedures Act; stating criminal
penalty for violations; requiring payment of certain
fees and taxes as condition of probation; creating
misdemeanor penalty for advertizing without a
license; allowing investigation and referral for

1 prosecution purposes; providing cease and desist
2 order; authorizing citations for certain violations;
3 setting minimum and maximum amount for civil penalty
4 citations; requiring rules for citations and civil
5 penalties; directing civil penalties be deposited in
6 State General Fund; providing procedure to notify and
7 serve cease and desist orders and citations;
8 directing certified copies of certain order be filed
9 with court clerk for enforcement; allowing recording
10 as provided for judgments; allowing the Board to
11 waive certain civil penalties upon complete
12 licensure; requiring local authority to enforce cease
13 and desist orders; directing building permits to have
14 certain signed statement of licensure or exemption;
15 making fraud on obtaining permit a violation of the
16 licensing act; providing for codification; providing
17 an effective date; and declaring an emergency.

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

19 SECTION 1. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 1151A-1 of Title 59, unless
21 there is created a duplication in numbering, reads as follows:

22 This act shall be known and may be cited as the "Commercial
23 Contractor Licensing Act".

24 SECTION 2. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 1151A-2 of Title 59, unless
there is created a duplication in numbering, reads as follows:

In the interest of the public health, safety, welfare and
consumer protection and to regulate the commercial construction
industry, the purpose of this act, and the intent of the
Legislature, is to provide for the licensing of those persons who

1 engage in commercial construction in the State of Oklahoma. The
2 legislature further finds that it is in the public interest to
3 provide a mechanism to remove from practice incompetent, dishonest,
4 unqualified commercial contractors who provide inadequate, unsafe or
5 inferior building services. To fulfill these purposes, the
6 Legislature designates the Construction Industries Board as the
7 regulatory body.

8 SECTION 3. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 1151A-3 of Title 59, unless
10 there is created a duplication in numbering, reads as follows:

11 As used in the Commercial Contractor Licensing Act:

12 1. "Advertise" means any written or oral publication,
13 dissemination, solicitation or circulation which is intended to
14 directly or indirectly induce any person to contract for commercial
15 construction services with the advertiser, including but not limited
16 to, business cards, telephone directory display advertisements and
17 vehicle signage;

18 2. "Applicant" means any person applying for a license to be
19 issued by the Construction Industries Board pursuant to this act;

20 3. "Appurtenances" means all structures and improvements
21 subordinate to a primary building, including but not limited to,
22 garages, driveways, fences, patios, parking lots, docks, retaining
23 walls, storage or mechanical buildings, as may be defined by rule;

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1 4. "Board" means the Construction Industries Board designated
2 herein to regulate the commercial construction industry;

3 5. "Construct or Construction" means the offering to perform,
4 or the performance of, building, altering, repairing, adding to,
5 subtracting from, improving, reconstructing, excavating, wrecking or
6 demolishing of any commercial building, structure or project;

7 6. "Owner" means one who owns and offices or intends to office
8 in, or who contracts for the purchase, construction, remodeling,
9 alteration or repairing of a commercial office building;

10 7. "License" means a new or renewal certificate of licensure
11 issued by the Construction Industries Board pursuant to this act;

12 8. "Licensee" means a holder of a license issued pursuant to
13 this act;

14 9. "Person" means any natural person, limited or general
15 partnership, corporation, association, limited liability company, or
16 other legal entity, qualifying party, or any combination thereof;

17 10. "Qualifying Party" means a natural person who is regularly
18 employed by the licensee, or who is an officer in the case of a
19 licensed incorporation, a member in the case of a licensed limited
20 liability company, or a general partner in the case of a limited
21 liability partnership, and who is actively engaged in the work
22 undertaken by the licensee for which a license is required pursuant
23 to this act;

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1 11. "Commercial building or structure" means a single structure
2 or multiple structures which may be separated by a wall or walls,
3 firestop division, or any architectural feature and which has one or
4 more floors in height exceeding a total occupancy area of fifteen
5 hundred square feet (1500 sq ft), and where the building or
6 structure is intended for commercial use or rental or a public
7 purpose and includes, but is not limited to, office space,
8 industrial and manufacturing space, storage facilities, recreational
9 and sports facilities, dining and entertainment establishments,
10 lodges and resorts, public building and facilities, and apartment
11 complexes, townhouses, and multiplex residential living facilities,
12 and any appurtenances thereto;

13 12. "Commercial contractor" means any person who holds
14 themselves, or by or through others:

- 15 a. attempts to or submits a bid to construct,
- 16 b. contracts to construct,
- 17 c. undertakes or offers to undertake to construct,
- 18 d. constructs,
- 19 e. provides supervision, oversight, assistance,
20 consultation, or management services to a homeowner
21 regarding construction,
- 22 f. supervises, oversees, assists in, or manages the
23 construction, or

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1 g. advertises or purports to have the capacity to
2 undertake construction; and

3 13. "Subcontractor" means a person who contracts with a
4 licensed commercial contractor and who holds a license as a plumbing
5 contractor, electrical contractor, mechanical contractor,
6 residential contractor, or commercial contractor.

7 SECTION 4. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 1151A-4 of Title 59, unless
9 there is created a duplication in numbering, reads as follows:

10 All commercial contractors shall be licensed annually by the
11 Construction Industries Board.

12 SECTION 5. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 1151A-5 of Title 59, unless
14 there is created a duplication in numbering, reads as follows:

15 A. It shall be unlawful to act as commercial contractor after
16 July 1, 2011, unless licensed by the Construction Industries Board.

17 B. Penalties for a violation of this act:

18 1. Criminal: It shall be a misdemeanor for any person to:

19 a. undertake or attempt to undertake the business of
20 commercial construction without holding a current and
21 valid license issued by the Construction Industries
22 Board, pursuant to this act,

23 b. knowingly present to, or file false information with,
24 the Board for the purpose of obtaining the license, or

1 c. violate any law or code adopted by the state, county
2 or municipality under this act.

3 2. Civil: A commercial contractor may not file a lien, file a
4 claim with the Board, or bring or maintain in any court of this
5 state a suit or action for compensation for the performance of any
6 work on any structure or for the breach of any contract for work on
7 any structure which is subject to this act, unless the commercial
8 contractor was licensed pursuant to this act at the time the
9 contract for performance of the work was entered into, and was
10 licensed continuously while performing the work for which
11 compensation is sought.

12 3. Administrative: Whenever it appears to the Board that any
13 commercial contractor has violated or is about to violate any
14 provision of this act, the Board may resolve the violation by
15 agreement with the commercial contractor, may initiate a complaint
16 against the commercial contractor, and may levy and collect
17 administrative fines for violations of this act, or the rules of the
18 Board, in an amount not to exceed One Thousand Dollars (\$1,000.00)
19 for each violation after notice and hearing.

20 4. It is the duty of the building official, or other authority
21 charged with the duty of issuing building or similar permits, of any
22 incorporated municipality or subdivision of the municipality or
23 county, to refuse to issue a permit for any undertaking which would
24 require a license pursuant to this act unless the applicant has

1 furnished evidence that he or she is either licensed as required by
2 this act or is exempt from the requirements of this act.

3 5. Injunctions: Whenever it shall appear to the Board that any
4 commercial contractor has violated or is about to violate any
5 provision of this act, the Board may in its own name petition the
6 district court of the county where the violation occurred, or is
7 about to occur, to issue a temporary restraining order or other
8 appropriate injunctive relief enjoining the violation.

9 SECTION 6. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 1151A-6 of Title 59, unless
11 there is created a duplication in numbering, reads as follows:

12 This act does not apply to:

13 1. Any person who engages in construction other than for
14 compensation;

15 2. Any person who is constructing, altering, improving or
16 repairing a structure located within the boundaries of any site or
17 reservation under the jurisdiction of the federal government;

18 3. Any person who engages in a commercial construction where
19 the total cost of the undertaking does not exceed Two Thousand
20 Dollars (\$2,000.00) or the total square footage of the project is
21 less than fifteen hundred square feet (1,500 sq ft);

22 4. Any employee of a licensee who does not hold himself or
23 herself out for hire or engage in contracting, except as an employee
24 of a licensee;

1 5. Subcontractors who are licensed plumbers, electrical
2 contractors or mechanical contractors in possession of a valid
3 license issued in this state. Provided, however, if the
4 subcontractor steps outside the scope of his or her specialty trade,
5 the subcontractor shall no longer be exempt from the commercial
6 contractor licensing requirement;

7 6. An authorized employee of the United States, the State of
8 Oklahoma, or any municipality, county, or other political
9 subdivision, if the employee does not hold himself or herself out
10 for hire or otherwise engage in contracting except in accordance
11 with his or her employment;

12 7. Licensed real estate agents, licensed engineers, and
13 licensed architects, and any other person licensed by the state,
14 operating under the purview of their respective licenses on behalf
15 of clients;

16 8. Owners of property when acting as their own contractor and
17 providing all material supervision themselves, when building or
18 improving a single office or business structure on such property for
19 the occupancy of such owners and not intended for sale or rent and
20 where the square footage is less than fifteen hundred square feet
21 (1,500 sq ft). In any action brought under this act, proof of the
22 sale or offering for sale of such structure or the renting or
23 offering to rent of such structure by the owners of property within
24 two (2) years after substantial completion of same is presumptive

1 evidence that the construction was undertaken with the intent of
2 sale or rent; and

3 9. Persons who supply or deliver materials and appliances or
4 who install appliances.

5 SECTION 7. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 1151A-7 of Title 59, unless
7 there is created a duplication in numbering, reads as follows:

8 A. The Construction Industries Board is authorized to
9 promulgate rules or to adopt, amend or suspend rules, not
10 inconsistent with the constitution and laws of this state as may be
11 reasonably necessary to effectuate the provisions of this act and
12 for the proper performance of its duties.

13 B. The Construction Industries Board has the authority to issue
14 or deny a license, including an inactive license, pursuant to the
15 requirements of this act.

16 C. The Construction Industries Board may investigate any person
17 to the extent necessary to determine if the person is unlawfully
18 engaged in the practice of commercial contracting. The Board may
19 refer the matter for prosecution whether or not the person ceases to
20 practice commercial contracting without a valid license.

21 D. The Construction Industries Board has the authority to
22 establish and collect fees, fines and administrative fines pursuant
23 to this act and the rules promulgated by the Board.

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1 E. The Construction Industries Board has the authority to take
2 disciplinary action against the license or any licensee as set forth
3 in this act.

4 F. All administrative complaints, orders to show cause, notices
5 of hearings, and statements of charges and all amendments thereto,
6 and all orders of the Construction Industries Board which are
7 dispositive of the issues raised thereby, shall be public record.

8 G. All application material, examination scores, letters of
9 inquiry and reference concerning applicants, pending and closed
10 complaint and investigative files until a formal hearing may
11 commence or until final disciplinary action is taken, case dismissed
12 without disciplinary action, and other material of like confidential
13 nature and information otherwise protected by law, shall be
14 confidential information and not public records.

15 H. Appeals from orders of the Construction Industries Board
16 shall be pursuant to the Administrative Procedures Act.

17 I. A complete roster listing the names and last known addresses
18 of all licensees who are licensed pursuant to this act shall be
19 published by the Construction Industries Board at intervals as
20 established by rule.

21 J. A record shall be made and preserved by the Construction
22 Industries Board of each application for a commercial contractor's
23 license and the findings of the Board pertaining to the application.
24 A copy of the applicant's or licensee's own record shall be made

1 available to any applicant or licensee requesting the applicant's or
2 licensee's own records upon payment of a reasonable fee to the Board
3 for making a copy of such record.

4 K. The Construction Industries Board shall designate an
5 administrator to serve at the pleasure of the Board to perform
6 duties as required by this act.

7 L. The Construction Industries Board shall annually submit to
8 the Governor a report of its transactions for the preceding year.
9 The Board shall file with the Secretary of State a copy of the
10 report submitted to the Governor.

11 M. The Construction Industries Board has the authority to
12 establish continuing education requirements for licensees under this
13 act.

14 SECTION 8. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 1151A-8 of Title 59, unless
16 there is created a duplication in numbering, reads as follows:

17 A. In determining whether or not to issue, deny or renew a
18 commercial contractor's license pursuant to this act, the
19 Construction Industries Board shall consider, among other things,
20 the following:

- 21 1. Experience;
- 22 2. Ability;
- 23 3. Character and/or compliance with code of ethics and other
24 grounds which may include, but not be limited to:

- a. applicant's failure to meet any requirement or standard established by this act or the rules adopted by the Board,
- b. false representations of facts on an application for licensure or renewal thereof,
- c. applicant's having another person appear in the applicant's place for the licensing exam,
- d. applicant's following a course of conduct that would be grounds for discipline under this statute or the rules adopted by the Board,
- e. the revocation, suspension or probationary status of any of the applicant's professional licenses in this state or any other state,
- f. disciplinary action pending against any of the applicant's professional licenses in this state or any other state,
- g. engaging in commercial contracting without a license or committing any act that, if committed performed by any licensee, would be grounds for suspension or revocation of the license, or
- h. any other reasons authorized by law or rule;

4. Previous performance on contracts;

5. Financial condition:

1 a. the Board may require a financial statement on a form
2 prescribed by the Board and a financial and public
3 records search directly from a credit reporting
4 agency,

5 b. the Board may, by rule, establish the minimum net
6 worth or surety bond required to obtain a new license
7 or renew a license,

8 c. the Board may require that business-related judgments,
9 judgment liens, and other perfected liens, must be
10 satisfied and released,

11 d. the Board may require such other evidence of business-
12 related financial condition sufficient to reasonably
13 satisfy the Board of the applicant's financial
14 responsibility as it deems necessary, and

15 e. any information obtained by the Board pursuant to this
16 subsection relating to the financial condition of an
17 applicant shall not be public information;

18 6. Any other information to show ability and willingness to
19 serve the public and to protect the public health, safety and
20 welfare;

21 7. Default in complying with the provisions of this act;

22 8. The conviction of any crime which substantially affects the
23 applicant's ability to perform or serve the public. The applicant
24 may be requested to furnish the criminal background check, or the

1 application or renewal may contain a question which, if answered in
2 the affirmative, shall allow the Board to conduct a criminal
3 background check; and

4 9. Any other pertinent information the Board may require.

5 B. No license shall be issued to a person under eighteen (18)
6 years of age, to any partnership in which one of the partners is a
7 minor, or to any corporation in which a corporate officer is a
8 minor.

9 C. No license shall be issued to a commercial contractor unless
10 the person has passed a written examination prescribed by the Board.

11 D. Before receiving, renewing and holding a license pursuant to
12 this act, the Board may require a person to submit to the Board a
13 full set of fingerprints and a copy of a state issued driver license
14 or identification card.

15 E. All applicants and licensees shall comply with the education
16 requirements established or adopted by the Board.

17 F. Corporate entities applying for a license shall provide the
18 Articles establishing the corporation, including a list of the
19 officers, members, managers or partners of the corporation.

20 SECTION 9. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 1151A-9 of Title 59, unless
22 there is created a duplication in numbering, reads as follows:

23 A. Each licensee shall notify the Construction Industries Board
24 within ten (10) days after the licensee receives notice that any

1 criminal conviction has been rendered against him or her. The
2 notification shall be in writing, sent by certified mail, and shall
3 include a copy of the conviction.

4 B. Each licensee shall utilize a valid written contract when
5 engaging in the business of commercial construction for jobs in the
6 amount of Two Thousand Dollars (\$2,000.00) or more. Committing
7 fraud when executing or materially altering a commercial
8 construction contract, mortgage, promissory note or other document
9 incidental to performing commercial construction, is a violation of
10 this act.

11 C. Each licensee shall promptly notify the Board in writing if
12 there is any change in the licensee's mailing address, physical
13 address or telephone numbers during the license year. Any proposed
14 or final order or notice of hearing directed by the Board to the
15 last known address of record shall be considered delivered when
16 deposited in the United States mail and/or sent registered or
17 certified or post office receipt secured. Any other communication
18 directed by the Board to the last known address of record shall be
19 considered delivered when deposited in the United States mail,
20 regular mail.

21 D. Each licensee shall promptly notify the Board in writing of
22 any legal name change. If the name change is due to the death or
23 disability of a sole proprietor, the license may be voluntarily
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1 surrendered; if not voluntarily surrendered the license shall be
2 revoked.

3 E. Each licensee shall post in a conspicuous place on the job
4 site the name and license number for the license under which any
5 work is being performed. In addition, the licensee's name and
6 license number shall be printed on any and all media containing the
7 licensee's name, any signs displayed on any vehicle used to conduct
8 business, business cards, letterhead, signs, and advertisements.

9 F. Each licensee shall provide proof of current workers'
10 compensation coverage in order for the license to be issued or
11 renewed. Failure to provide such proof shall result in the
12 revocation of the license.

13 G. Prior to commencing work or undertaking to perform any
14 services or duties in the state related to commercial construction,
15 each licensee shall file, with the Construction Industries Board as
16 the depository agency, a surety bond of a surety authorized to do
17 business in this state, or a cash bond.

18 1. The bond shall be a condition of licensure, and the license
19 shall not be issued until the bond has been properly filed.

20 a. the bond shall be in the penal sum of One Million
21 Dollars (\$1,000,000.00),

22 b. payable to the State of Oklahoma, and

23 c. in full compliance with the rules promulgated pursuant
24 to this act.

1 2. Notice of bond cancellation shall be given to the Board and
2 the licensee by the surety prior to cancellation. Proof of notice
3 to the licensee shall be submitted promptly to the Board.

4 3. On reduction or depletion of the cash bond, the Board shall
5 immediately notify the licensee of the reduction or depletion and
6 that the licensee must replenish the cash bond or furnish a surety
7 bond on or before thirty (30) days from the date of the reduction or
8 depletion, or the licensee's license shall be suspended on the
9 thirtieth day without further notice or hearing. Notice to the
10 licensee shall be by certified mail, postage fully prepaid, and
11 addressed to the licensee's latest address of record in the Board's
12 office. The licensee's license shall be suspended by operation of
13 law on the date the bond is cancelled, or thirty (30) days from the
14 date of reduction or depletion of the cash bond unless a replacement
15 bond or cash bond is on file with the Board.

16 4. The Administrator of the Construction Industries Board and
17 the State Treasurer shall have no personal liability for the
18 performance of duties relating to the bonds or cash bonds required
19 or permitted by this act as long as such duties are performed in
20 good faith.

21 5. A commercial contractor's license that has become invalid
22 due to surety bond cancellation, cash bond depletion or cash bond
23 reduction may be reinstated upon receipt pursuant to the
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1 requirements of this subsection of a replacement surety bond or cash
2 bond.

3 H. Each licensee shall notify the Board immediately upon
4 receipt of an order imposing disciplinary action upon its license
5 issued by any professional regulatory board, in this or any other
6 state. Disciplinary action taken against any professional license
7 held by the licensee in this state or any other state is grounds for
8 disciplinary action against the license issued by the Construction
9 Industries Board.

10 I. Each licensee shall notify the Board immediately when a
11 designated qualifier ceases to serve as the designated qualifier for
12 the licensee, or is disassociated from the licensee. If the
13 licensee has not named a new designated qualifier who meets the
14 requirements to serve as a designated qualifier within forty-five
15 (45) days after the previous designated qualifier ceased to serve as
16 the designated qualifier or was disassociated from the licensee, the
17 license shall be suspended or revoked by operation of law.

18 J. Each licensee shall promptly notify the Board of the filing
19 of bankruptcy by the licensee.

20 K. Prior to license renewal, each licensee shall present proof
21 of completion of a minimum of ten (10) hours of continuing education
22 during the immediately preceding twelve (12) months in accordance
23 with the rules adopted by the Board.

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1 1. Proof of completion of continuing education shall be
2 provided on a form provided by the Board, and verified by the course
3 instructor or provider; and

4 2. Courses may be offered by the Board, or by a provider
5 approved by the Board, and shall address subject matter approved by
6 the Board.

7 SECTION 10. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 1151A-10 of Title 59, unless
9 there is created a duplication in numbering, reads as follows:

10 The following licensee conduct, acts, omissions or conditions
11 may constitute grounds for disciplinary action by the Construction
12 Industries Board:

13 1. Violating any of the provisions of this act, or any
14 administrative rule or order adopted by the Board;

15 2. Violating the code of ethics adopted by the Board;

16 3. Fraud or deception, a misrepresentation or misstatement, or
17 any unlawful means in applying for or securing a license;

18 4. Fraud or deception, a misrepresentation or misstatement, or
19 any unlawful means in applying for or securing a building permit or
20 other permits for residential construction;

21 5. Failure to pay the required fee for licensure as provided in
22 this act;

23 6. Conduct constituting a violation of public laws, ordinances
24 or rules of this state, or any subdivision thereof, relevant to

1 contracting, reflecting on the contractor's ability or
2 qualifications to continue contracting for other persons, and making
3 the licensed contractor a threat to the public safety, health or
4 well-being;

5 7. Conduct which constitutes dishonest or dishonorable
6 dealings;

7 8. Incompetence, gross negligence or reckless conduct in the
8 performance of construction;

9 9. Failing to substantially complete a project for construction
10 or a failure to substantially comply with the terms of a contract or
11 written warranty;

12 10. A license, registration or certification revoked, suspended
13 or otherwise disciplined by this state or a jurisdiction outside
14 this state;

15 11. Interference with an investigation or disciplinary
16 proceeding by a willful misrepresentation of facts or by the use of
17 threats or harassment against any person to prevent such person from
18 providing evidence in a disciplinary proceeding, investigation or
19 other legal action instituted in accordance with this act;

20 12. Conviction of any felony or misdemeanor crime in the courts
21 of this state or any other state, territory or country which
22 substantially affects the licensee's ability to perform or serve the
23 public. As used in this subsection, "conviction" means and shall
24 include a finding or verdict of guilt, an admission of guilt or a

1 plea of nolo contendere or its equivalent. The record of
2 conviction, or a certified copy thereof, certified by the clerk of
3 the court or by the judge in whose court the conviction occurred,
4 shall be conclusive evidence of such conviction;

5 13. Aiding or abetting a person not licensed in this state who
6 directly or indirectly performs activities requiring a license;

7 14. Failing to pay a valid judgment that arose out of any
8 practice pursuant to this act, or any court-ordered restitution
9 related to contracting, within six (6) months of the date that the
10 judgment or order became final; and

11 15. Failing to meet continuing education requirements as
12 established by the Board.

13 SECTION 11. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 1151A-11 of Title 59, unless
15 there is created a duplication in numbering, reads as follows:

16 A. When it is brought to the attention of the Construction
17 Industries Board by the written statement of any person, or on the
18 Board's initiative, that a person licensed under this act has done
19 any act or thing in violation of any provision of this act, the
20 Board shall undertake an investigation of such person, and if the
21 Board finds that there is probable cause to institute proceedings
22 against such person, it shall without unnecessary delay transmit to
23 that person by mail, a copy of the alleged violation and shall fix a
24 day for a hearing upon the matter. The hearing shall be conducted

1 in accordance with the Administrative Procedures Act, and with the
2 administrative rules adopted by the Board.

3 B. The Board or its hearing officer, upon a finding that action
4 is necessary, shall have the power pursuant to this act to
5 administer oaths, take depositions of witnesses within or without
6 the state in the manner provided by the administrative rules adopted
7 by the Board, and shall have power throughout this state to require
8 the attendance of such witnesses and the production of such books,
9 records and papers as it may desire at any hearing and for that
10 purpose the Board may issue a subpoena for any witness or a subpoena
11 duces tecum to compel the production of any books, records or
12 papers.

13 C. The Board may apply for injunctive relief in any court of
14 competent jurisdiction without a bond to enjoin any person from
15 committing any act in violation of this act. Such injunction
16 proceedings shall be in addition to, and not in lieu of, all
17 penalties and other remedies provided for in this act.

18 SECTION 12. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 1151A-12 of Title 59, unless
20 there is created a duplication in numbering, reads as follows:

21 A. The Board may, upon a finding after notice and opportunity
22 for a hearing that a person has violated any provision of this act,
23 take the following disciplinary actions singly or in combination:

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- 1 1. Issue a censure or reprimand by informal admonition for
2 minor misconduct found by the Board, which censure or reprimand
3 shall be subject to disclosure;
- 4 2. Impose restrictions and/or conditions to a license
5 including, but not limited to, the scope of practice, place of
6 practice, supervision of practice, duration of licensed status, type
7 or nature of customer or client served, or additional education or
8 training. The Board may require a licensee to report regularly to
9 the Board on matters regarding the restricted license;
- 10 3. Suspend a license, the duration of which shall be determined
11 by the Board but not longer than one (1) year. After the period of
12 suspension a person may reapply to reinstate a suspended license;
- 13 4. Refuse to renew a license;
- 14 5. Revoke a license. A revocation may be not more than five
15 (5) years. After the period of revocation a person may reapply for
16 a license;
- 17 6. Impose an administrative fine for violation of this act in
18 an amount not to exceed One Thousand Dollars (\$1,000.00) as set
19 forth in the administrative rules adopted by the Board;
- 20 7. Order restitution to be paid to a person who has suffered
21 from a licensee violation of this act;
- 22 8. Accept a voluntary surrender of a license; and
- 23 9. Assess reasonable costs and attorney's fees against a
24 licensee for any investigation and/or administrative proceeding

1 after the licensee has been notified and had opportunity for hearing
2 on the reasonableness of assessing costs and fees.

3 B. The licensee may, within thirty (30) days from the date of
4 receipt of service of the Board's final order, file with the Board
5 written notice of his or her intention to appeal from the order of
6 the Board pursuant to the Administrative Procedures Act.

7 SECTION 13. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 1151A-13 of Title 59, unless
9 there is created a duplication in numbering, reads as follows:

10 A. It is unlawful for any person as provided in this act to
11 engage in the business of, submit a bid or respond to a request for
12 qualification or a request for proposals for construction services
13 as, act or offer to act in the capacity of or purport to have the
14 capacity of a commercial contractor, without having a commercial
15 contractor's license in good standing in the name of the person,
16 unless the person is exempt as provided in this act.

17 B. Acting as a commercial contractor within the meaning of this
18 act without holding a current and valid license issued by this Board
19 is a misdemeanor.

20 1. Upon conviction, for the first offense, the violator shall
21 be fined not less than Fifty Dollars (\$50.00) nor more than Five
22 Hundred Dollars (\$500.00). For the second or any subsequent
23 offense, the violator shall be fined not less than Two Hundred
24 Dollars (\$200.00) nor more than Five Thousand Dollars (\$5,000.00).

1 2. If a person is convicted of a violation of this section and
2 the court sentences the person to a term of probation, the court
3 shall order that as conditions of probation the person does all of
4 the following:

5 a. pay in full taxes that are due to the state government
6 and that arise from the acts or omissions constituting
7 the violation,

8 b. pay in full all taxes that are due to the county in
9 which the violation occurred and that arise from the
10 acts or omissions constituting the violation, and

11 c. pay in full all taxes that are owed to the local
12 municipal government, city or town in which the
13 violation occurred and that arise from the acts or
14 omissions constituting the violation.

15 C. It is a misdemeanor for any person to advertise that he or
16 she is able to perform any service or contract for compensation
17 subject to regulation by the Board under the terms of this act
18 unless a license under the terms of this act is first obtained
19 regardless of whether his or her operations as a contractor are
20 otherwise exempt.

21 D. The Board may investigate any person to the extent necessary
22 to determine if the person is engaged in the unlawful practice of
23 commercial contracting. The Board may refer the matter for
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1 prosecution whether or not the person ceases the unlawful practice
2 of commercial contracting.

3 E. In addition to all other remedies, when it appears to the
4 Board, either upon complaint or otherwise, that any person as
5 provided in this act has engaged in or is engaging in any act of
6 commercial contracting, practice or transaction which constitutes a
7 violation of this act, or any rule or order of the Board, the Board
8 may serve upon such person not currently licensed under this act, by
9 certified mail or by personal service, a cease and desist order
10 requiring the person to cease and desist immediately, upon receipt
11 of the notice, from engaging in such act, practice or transaction.

12 1. In conjunction with the cease and desist order, the Board
13 may issue a citation for a violation. Each citation shall be in
14 writing and shall clearly describe the violation for which the
15 citation was issued. Each citation shall contain an order to cease
16 and desist and an assessment of a civil penalty in an amount of at
17 least Twenty-five Dollars (\$25.00) for each violation but not more
18 than One Hundred Dollars (\$100.00) for the multiple violations
19 committed on the same day. If, after the issuance of a citation by
20 the Board, the person receiving the citation fails to cease and
21 desist in the violation or violations described in the citation, the
22 Board may assess an additional civil penalty of up to One Hundred
23 Dollars (\$100.00) for each day the violation or violations continue;

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1 2. The Board shall adopt rules covering the assessment of a
2 civil penalty that give due consideration to the gravity of the
3 violation and any history of previous violations; and

4 3. The penalties authorized under this subsection are separate
5 from, and in addition to, all other remedies either civil or
6 criminal.

7 F. Each violation of this act or a rule or order of the Board
8 by a person who is required to be licensed by this act and who does
9 not possess the required license shall constitute a separate
10 offense, and the Board may impose a civil penalty of not to exceed
11 Twenty-five Dollars (\$25.00) for each violation except that for
12 multiple violations committed on the same day the civil penalty
13 shall not exceed One Hundred Dollars (\$100.00) for all such
14 violations. Monies collected from civil penalties shall be
15 deposited in the State General Fund.

16 G. The Board may issue citations containing orders to cease and
17 desist and of civil penalties against persons who have never been
18 licensed under this act who are acting in the capacity of or
19 engaging in the business of a commercial contractor in this state.

20 a. service may be in person or by certified mail at the
21 last known business address or residence address of
22 the person cited, and

23 b. the citation shall be issued by the Board within
24 ninety (90) days after actual discovery of the offense

1 by this state or the political subdivision having
2 jurisdiction.

3 H. After the exhaustion of administrative review procedures
4 pursuant to the Administrative Procedures Act, a certified copy of
5 any Board's order requiring the payment of civil penalties may be
6 filed in the office of the clerk of the district court in any county
7 of this state. The clerk shall handle the Board's order in the same
8 manner as a district court judgment. A Board's order that is filed
9 in the office of the clerk of the district court has the same effect
10 as a district court judgment and may be recorded, enforced or
11 satisfied in a similar manner. A person who files a Board's order
12 under this section is not required to pay a filing fee.

13 I. Notwithstanding any other law, the Board may waive all,
14 except Twenty-five (\$25.00), of the civil penalty if the person
15 against whom the civil penalty is assessed completes all of the
16 requirements for, and is issued, a commercial contractor's license.
17 Any loss or damage to the public caused by the violator's activities
18 shall be remedied before issuance of the license.

19 J. At the request of the Board, and after the issuance of a
20 citation pursuant to this section, or a cease and desist order
21 pursuant to this section, the county, city, or local authority of
22 the state shall cause work on a commercial construction project to
23 cease or be suspended on that project until there is compliance with
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1 the licensing requirements as provided in this act by the commercial
2 contractor on that project.

3 K. Each county, city or other political subdivision or
4 authority of this state or any agency, department, board or
5 commission of this state which requires the issuance of a building
6 permit as a condition precedent to the construction, alteration,
7 improvement, demolition or repair of a building, structure or other
8 improvement to real property for which a license is required under
9 this act, as part of the application procedures which it utilizes,
10 shall require that each applicant for a building permit file a
11 signed statement that the applicant is currently licensed under the
12 provisions of this act with the applicant's license number. If the
13 applicant purports to be exempt from the licensing requirements of
14 this act, the statement shall contain the basis of the asserted
15 exemption and the name and license number of any general,
16 mechanical, electrical or plumbing contractor who will be employed
17 on the work. The local issuing authority may require from the
18 applicant a statement from the Board to verify any purported
19 exemption.

20 L. The filing of an application for a building permit
21 containing false or incorrect information concerning an applicant's
22 commercial contractor's license or transaction privilege license
23 with the intent to avoid the licensing requirements of this act is a
24 violation of this act.

1 SECTION 14. This act shall become effective November 1, 2010.

2 SECTION 15. It being immediately necessary for the preservation
3 of the public peace, health and safety, an emergency is hereby
4 declared to exist, by reason whereof this act shall take effect and
5 be in full force from and after its passage and approval.

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