HOUSE OF REPRESENTATIVES - FLOOR VERSION

STATE OF OKLAHOMA

1st Session of the 53rd Legislature (2011)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 928 By: Newberry of the Senate

and

Jordan and Shelton of the House

COMMITTEE SUBSTITUTE

An Act relating to roofing contractors; amending Sections 3, 5, 7, 8 and 9, Chapter 479, O.S.L. 2010 (59 O.S. Supp. 2010, Sections 1151.3, 1151.5, 1151.7, 1151.8 and 1151.9), which relate to the Roofing Contractor Registration Act; providing for suspension of registration for certain number of violations within certain time period; directing disclosure of place of incorporation; requiring suspension of registration for insurance cancellation; authorizing cancellation of contract for change in standing; providing for payment for costs and labor; requiring updated authorization to continue certain work; prohibiting certain authority from requiring certificate when registration is exempt; modifying application fee; providing for refund of certain fee; exempting churches and certain charitable entities using volunteer labor; authorizing cancellation of contract within certain time after denial of insurance claim; requiring notice of cancellation; directing attachment of certain form; requiring refund of payments within certain time period for certain cancellation; construing certain violation; setting penalty; requiring certain statement of insurance; requiring certain persons provide proof of insurance; prohibiting certain entities from imposing additional requirements; providing for codification;

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providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY Section 3, Chapter 479, O.S.L. 2010 (59 O.S. Supp. 2010, Section 1151.3), is amended to read as follows:

Section 1151.3 A. A person may not engage in the business nor act in the capacity of a roofing contractor within this state nor may that person bring or maintain any claim, action, suit, or proceeding in any court of this state related to the person's business or capacity as a roofing contractor without a valid registration as provided in ~~this act~~ the Roofing Contractor Registration Act.

B. A person who fails to obtain a valid registration prior to acting as a roofing contractor as defined in ~~this act~~ the Roofing Contractor Registration Act, a person who acts as a roofing contractor while his or her registration is suspended or revoked, or a person who violates any provision of ~~this act~~ the Roofing Contractor Registration Act shall be guilty of a misdemeanor, upon conviction, punishable by a fine not to exceed Five Hundred Dollars ($500.00) for each violation. More than one violation in any twelve-month period shall be grounds for the suspension of the

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registration, and shall cause the person to be ineligible for registration for a period not to exceed twelve (12) months.

SECTION 2. AMENDATORY Section 5, Chapter 479, O.S.L. 2010 (59 O.S. Supp. 2010, Section 1151.5), is amended to read as follows:

Section 1151.5 A. To obtain a roofing contractor registration under ~~this act~~ the Roofing Contractor Registration Act, an applicant who is eighteen (18) years of age or older shall submit, on forms the registrar prescribes, an application under oath containing a statement of the applicant's experience and qualifications as a roofing contractor, if any, the applicant's name, physical address, business name and address and place of incorporation, if different, information on any other person who will be authorized to act as the business entity, and the applicant's phone number. A copy of the roofing contractor's certificate of liability insurance shall be filed with the application and shall be not less than Five Hundred Thousand Dollars ($500,000.00). Any insurance company issuing a liability policy to a roofing contractor pursuant to the provisions of ~~this act~~ the Roofing Contractor Registration Act shall be required to notify the Construction Industries Board in the event such liability policy is cancelled for any reason or lapses for nonpayment of premiums. All registrations granted under the Roofing Contractor Registration Act shall be suspended on the date of the

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policy cancellation. The registrar must receive proof of insurance prior to restoring the registration. In addition, the roofing contractor shall submit proof that the contractor has secured workers' compensation coverage satisfactory under the Workers' Compensation Act, or an affidavit of exemption or self-insurance as authorized pursuant to the Workers' Compensation Act. If the registrar deems it appropriate or necessary, the registrar may also require other information to be included on the application form to assist the registrar in registering the person as a contractor. The application shall contain statements that the applicant desires the issuance of a roofing contractor registration certificate; that the applicant will comply with the provisions of ~~this act~~ the Roofing Contractor Registration Act; that the applicant will comply with state laws and local ordinances relating to standards and permits; that the applicant has or has not been registered or licensed as a roofing contractor in another state and whether any disciplinary action was taken against such registration or license or whether it is still in good standing; and that the nonresident applicant appoints the Secretary of State as legal service agent for all lawful process to be served upon the applicant for work performed in this state or as otherwise provided in ~~this act~~ the Roofing Contractor Registration Act.

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B. The registrar shall refuse to register any person if the registrar determines:

1. The application contains false, misleading, or incomplete information;

2. The applicant fails or refuses to provide any information requested by the registrar;

3. The applicant fails or refuses to pay the required fees;

4. The applicant is ineligible for registration due to a suspended or revoked registration in this state;

5. The nonresident applicant has a revoked or suspended registration or license required by law for roofing contractors in another state; or

6. The applicant has failed or refuses to submit any taxes due in this state.

C. The registrar shall notify the applicant in writing if the registrar denies a registration or renewal certificate, and shall provide the applicant an opportunity to respond to or cure any defect in the written application or renewal for a period of ten (10) days from the date of the written notification. An applicant aggrieved by a decision of the registrar denying a registration or renewal may appeal the decision as provided in the Administrative Procedures Act, or the applicant may reapply after a ninety-day waiting period, if otherwise eligible under the provisions of ~~this~~

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~~act~~ the Roofing Contractor Registration Act. The application and renewal fees shall not be refundable.

D. The registrar shall classify as not in good standing the registration of any roofing contractor who fails to:

1. Maintain liability insurance coverage;

2. Maintain workers' compensation coverage satisfactory under the Workers' Compensation Act, or provide an affidavit of exemption or self-insurance as authorized pursuant to the Workers' Compensation Act;

3. File, renew, or properly amend any fictitious name certificate;

4. Maintain an active status of a corporation or registration as a foreign corporation, a limited liability company or registration as a foreign limited liability company, a limited liability partnership registration or foreign limited liability partnership registration, or a limited partnership certificate or limited partnership or foreign limited partnership certificate of authority, with the Office of the Secretary of State;

5. File or renew a trade name registration;

6. Maintain or renew a roofing contractor registration as provided in ~~this act~~ the Roofing Contractor Registration Act;

7. Notify the registrar of a change in name, address, legal business entity, legal service agent, or adjudication by a court of

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competent jurisdiction for any act or omission specified in subsection A of Section ~~14~~ 1151.14 of this ~~act~~ title or a violation of ~~this act~~ the Roofing Contractor Registration Act;

8. Maintain a registration as required by law in another state while registered in this state as a nonresident roofing contractor; or

9. File and pay all taxes when due in this state.

E. The registrar shall send a written notice to the person when his or her registration is not in good standing. Any roofing contractor who has been notified by the registrar that his or her registration is not in good standing shall cease soliciting or entering new roofing services and projects as of the date of such notification; however, the roofing contractor shall be allowed to complete roofing projects where actual physical work has begun prior to the date of issuance of the notice that his or her registration is not in good standing. The roofing contractor must disclose the change in standing to any homeowner or other person who has an interest in any job covered under the Roofing Contractor Registration Act. Upon notice of a change in standing, the homeowner shall have the option to cancel the contract. The roofing contractor will be owed the actual cost incurred for materials and the market value of labor already incurred on the job. The roofing contractor must obtain an updated authorization from the homeowner

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and other parties of interest if there is an agreement to continue the job as originally negotiated. If the roofing contractor fails to correct the deficiency specified in the notice by evidence satisfactory to the registrar within thirty (30) days of the date of the notice, or if the roofing contractor solicits or enters into new roofing services contracts or projects while the roofing contractor's registration is not in good standing, or while such registration is suspended or revoked, the roofing contractor shall be in violation of the provisions of ~~this act~~ the Roofing Contractor Registration Act. Any registration that remains not in good standing for a sixty-day period shall be suspended on the sixtieth day from the date of issuance of the notice to the roofing contractor that his or her registration is not in good standing. Any registration the remains not in good standing, and is suspended for such cause, shall be revoked on the ninetieth day from the date of issuance of the notice to the roofing contractor that his or her registration is not in good standing. The registrar shall notify the roofing contractor upon suspension or revocation of his or her registration for failure to comply in bringing such registration into good standing as required by law. The roofing contractor may reinstate his or her registration to good standing by paying the required fees provided in Section ~~12~~ 1151.12 of this ~~act~~ title and complying with all other requirements for issuance of a registration

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in good standing. Any person aggrieved by the decision of the registrar to suspend or revoke a registration pursuant to this section may appeal such decision as provided in the Administrative Procedures Act.

SECTION 3. AMENDATORY Section 7, Chapter 479, O.S.L. 2010 (59 O.S. Supp. 2010, Section 1151.7), is amended to read as follows:

Section 1151.7 The holder of a roofing contractor registration certificate is entitled to engage in the roofing business within this state pursuant to the provisions of ~~this act~~ the Roofing Contractor Registration Act, and subject to the following limitations:

1. A roofing contractor's registration certificate number shall be valid and in good standing at the time of soliciting a project and during subsequent job performance;

2. A roofing contractor's registration certificate number shall be submitted when applying for any permit issued by the state, or any of its political subdivisions, for commercial or residential roofing services or projects, if a permit is required by such authority, and shall be written upon each permit issued. Provided, however, no permitting authority shall require a roofing contractor registration certificate as a condition to issuing a permit when registration is exempt pursuant to Section 1151.9 of this title;

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3. A roofing contractor's registration certificate cannot be shared or used by any other individual or business entity; provided, however, a business firm, partnership, association, corporation, limited liability company, or other group or combination thereof acting as a unit may be granted a single roofing registration certificate number for use by designated roofing contractors acting as agents for the business entity when the application for registration contained sufficient information on each member, partner, officer and agent and the registrar issued a single certificate number to such persons as a business unit;

4. Upon any change to the name, address, business entity, or legal service agent of a roofing contractor or upon adjudication by a court of competent jurisdiction for a violation of ~~this act~~ the Roofing Contractor Registration Act or an act or omission specified in subsection A of Section ~~14~~ 1151.14 of this ~~act~~ title, the registrar shall be notified in writing;

5. A roofing contractor shall comply with state laws and local ordinances relating to standards and permits for roofing services and projects; and

6. A roofing contractor must pay taxes due in this state.

SECTION 4. AMENDATORY Section 8, Chapter 479, O.S.L. 2010 (59 O.S. Supp. 2010, Section 1151.8), is amended to read as follows:

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Section 1151.8 A. At the time of making application for a roofing contractor registration certificate pursuant to ~~this act~~ the Roofing Contractor Registration Act, the applicant shall pay to the registrar a fee ~~to be set by the registrar, which shall not exceed Three Hundred Dollars ($300.00)~~ of Seventy-five Dollars ($75.00) for the annual registration certificate.

B. All monies collected by the registrar for roofing contractor registration applications, renewals and other fee assessments shall be deposited by the registrar and credited to the Roofing Contractor Registration Revolving Fund and such funds shall be used by the ~~Construction Industries Board~~ registrar to implement and administer the provisions of ~~this act~~ the Roofing Contractor Registration Act.

C. The fee to be submitted with an application for a roofing contractor registration may be prorated as set by the ~~registrar~~ provisions of the Roofing Contractor Registration Act. Unless prorated at the time of initial registration, fees shall be paid in the amount stated in subsection A of this section and such registration certificates shall expire June 30 each year.

D. A renewal fee for a roofing contractor registration shall be ~~set by the registrar, which shall not exceed Three Hundred Dollars ($300.00)~~ Seventy-five Dollars ($75.00) for the annual renewal registration certificate.

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E. Any person having registered prior to July 15, 2011, shall be entitled to a fee refund for any amount paid in excess of the fee stated in subsection A of this section. The registrar shall make the fee refund on the date of expiration of the current registration period for which the fee charged was in excess of the amount stated in subsection A of this section.

SECTION 5. AMENDATORY Section 9, Chapter 479, O.S.L. 2010 (59 O.S. Supp. 2010, Section 1151.9), is amended to read as follows:

Section 1151.9 A. The Roofing Contractor Registration Act does not apply to:

1. An actual owner of residential or farm property who physically performs, or has employees who perform, roofing services including, construction, installation, renovation, repair, maintenance, alteration, waterproofing, or removal of materials or structures on ~~his or her own dwelling or another structure located on the residential or farm~~ property owned by such person ~~without the assistance of any registered roofing contractor as such term is defined by this act~~;

2. Any authorized employee, representative or representatives of the United States Government, the State of Oklahoma, or any county, municipality, or other political subdivision of this state; ~~and~~

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3. Any person who furnishes any fabricated or finished product, material, or article of merchandise which is not incorporated into or attached to real property by such person so as to become affixed thereto; or

4. Churches or other charitable entities that provide roof repairs or replacements at no charge using volunteer labor.

B. Any administrative or governing body with authority to enter into public contracts shall require individual roofing contractor registration for purposes of such persons submitting or entering into any bid or contract.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1151.21 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. When a person indicates a residential contractor will be paid by the proceeds of a property and casualty insurance policy and the person enters into a written contract with a residential contractor to provide goods and services with the understanding the insured is to pay from the proceeds of a property and casualty insurance policy claim, the person may cancel the contract within seventy-two (72) hours after the insured has received written notice from the insurer that all or any part of the claim has been denied. Cancellation is evidenced by the insured giving written notice of cancellation to the residential contractor at the address stated in

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the contract. Notice of cancellation, if given by mail, is effective upon deposit into the United States mail, postage prepaid and properly addressed to the contractor. Notice of cancellation need not take a particular form and is sufficient if it indicates, by any form of written expression, the intention of the insured not to be bound by the contract.

B. Before entering into a contract referred to in subsection C of this section, the residential contractor shall:

1. Furnish the insured a statement in boldface letters in a minimum size of twelve-point type, in substantially the following form: "You may cancel this contract at any time within seventy-two (72) hours after you have received written notification from your insurer that your claim to pay for the goods and services to be provided under this contract has been denied. See attached Notice of Cancellation for an explanation of this right."; and

2. Furnish the insured a Notice of Cancellation form, fully completed in duplicate, attached to the contract, but easily detachable, containing a statement in boldface letters in a minimum size of ten-point type, containing the following statement:

"NOTICE OF CANCELLATION

If your insurer denies all or any part of your claim to pay for goods and services to be provided under this contract, you may cancel the contract by mailing or delivering a signed and dated

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copy of this cancellation notice or any other written notice to _____ (name of contractor) at _____ (address of contractor's place of business) at any time within seventy-two (72) hours after you have received written notice that your claim has been denied. If you cancel, any payments made by you under the contract will be returned to you within ten (10) business days following receipt by the contractor of your cancellation notice.

I HEREBY CANCEL THIS TRANSACTION

_____

(date)

_____

(insured's signature)"

C. Within ten (10) days after a contract referred to in subsection A of this section has been cancelled, the contractor shall tender to the insured any payments made by the insured and any note or other evidence of indebtedness. If, however, the contractor has performed any emergency services, acknowledged by the insured in writing to be necessary to prevent damage to the premises, the contractor is entitled to the reasonable value of such services.

D. Any violation of this section by a residential contractor shall be considered a violation of the Roofing Contractor Registration Act, and shall be subject to the misdemeanor penalties prescribed in Section 1151.3 of Title 59 of the Oklahoma Statutes.

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SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1151.22 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. Any contract entered into under the Roofing Contractor Registration Act shall include a statement that all individuals performing work under the contract are covered by workers' compensation insurance.

B. If the individuals performing work under the contract are not covered by workers' compensation insurance, the contractor shall provide a written statement to the homeowner advising that the individuals performing work under the contract are not covered by workers' compensation insurance, which shall be signed by all parties to the contract and attached to the contract.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1151.23 of Title 59, unless there is created a duplication in numbering, reads as follows:

A subcontractor or an independent contractor hired by a general contractor to engage in the business of roofing shall provide proof of liability insurance as provided for in subsection A of Section 1151.5 of Title 59 of the Oklahoma Statutes. It shall be the responsibility of the general contractor to ensure the subcontractor or independent contractor has complied with this section.

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SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1151.24 of Title 59, unless there is created a duplication in numbering, reads as follows:

No political subdivision or governmental entity created by or acting on the authority of a political subdivision shall use the Roofing Contractor Registration Act to impose any additional registration or permitting requirement.

SECTION 10. This act shall become effective July 1, 2011.

SECTION 11. 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.

COMMITTEE REPORT BY: COMMITTEE ON ECONOMIC DEVELOPMENT, TOURISM AND FINANCIAL SERVICES, dated 04-07-2011 - DO PASS, As Amended and Coauthored.

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