

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 HOUSE BILL 1981

By: Pittman

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5
6 AS INTRODUCED

7 An Act relating to professions and occupations;
8 creating the State Licensing for Paint Contractors
9 Act; providing short title; stating certain duties of
10 the Department of Labor relating to such act;
11 prohibiting certain rules; defining terms; creating
12 the Examination Commission for Paint Contractors;
13 providing for membership, appointment, terms,
14 qualifications, vacancies, removal, service,
15 reimbursement, meetings, officers and quorum count;
16 requiring the Department of Labor to keep certain
17 records and account for certain funds; requiring the
18 deposit of certain funds in the Paint Contractors
19 Revolving Fund; stating certain duties of the
20 Commission; requiring the Department to keep a
21 register of all applicants; specifying information to
22 be kept; providing for prima facie evidence of
23 certain facts; specifying roster as public record;
24 providing for costs; requiring certain report;
providing for powers and duties of the Department;
providing for powers and duties of the Commission;
providing requirements and qualifications for
licensure; requiring certain fees; specifying
licenses; requiring the Commission to conduct certain
examinations; stating purposes; authorizing the
issuance of certain certificates of licensure under
certain conditions; delineating examinees;
authorizing certain reexaminations upon payment of
certain fees; requiring the submission of new
application under certain circumstances; 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

1 charges, and providing procedures related thereto;
2 requiring the Department to promulgate certain
3 disciplinary rules; requiring the Department to
4 provide a system of recordkeeping for disciplinary
5 actions; specifying records; providing for certain
6 reissuance under certain conditions; providing for
7 rights of the paint contractor; limiting professional
8 acts of licensee which are not regulated under this
9 act; providing jurisdiction pursuant to other
10 occupational licenses; prohibiting relief from other
11 laws or codes; requiring compliance with act by
12 certain date; prohibiting certain acts; prohibiting
13 certain persons from being held criminally liable
14 under certain circumstances; authorizing certain
15 restraining orders and injunction relief under
16 certain conditions, and providing procedures related
17 thereto; authorizing the district court to have
18 certain jurisdiction; requiring certain architects
19 and engineers to notify bidders of certain
20 information; providing for reciprocity; creating the
21 Paint Contractors Revolving Fund, and providing
22 procedures related thereto; providing for
23 codification; and providing an effective date.
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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 Paint Contractors 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:

1 The Department of Labor is hereby authorized, empowered and
2 directed, through the Commissioner of Labor, to make, prescribe,
3 enforce, amend and repeal rules governing the examination and
4 licensing of persons desiring or intending to engage in the business
5 trade of paint contracting, the establishment and levying of
6 administrative fines, the initiation of disciplinary proceedings,
7 the requesting of prosecution of and initiation of injunctive
8 proceedings against any person who violates any of the provisions of
9 the State Licensing for Paint Contractors Act or any rule
10 promulgated pursuant to this act, and to establish requirements for
11 the issuance of a license as a paint contractor. Provided however,
12 the rules shall not be inconsistent with the terms and conditions
13 provided for in the State Licensing for Paint Contractors Act.

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

17 As used in the State Licensing for Paint Contractors Act:

18 1. "Commission" means the Examination Commission for Paint
19 Contractors;

20 2. "Commissioner" means the Commissioner of Labor;

21 3. "Department" means the Department of Labor; and

22 4. "Paint contractor" includes all paint contractors,
23 subcontractors, independent contractors and persons engaged in paint
24 contract labor who through negotiations or competitive bidding enter

1 into contracts to furnish paint and painting services or both and
2 the required equipment to perform the painting contract for a fixed
3 price and who in pursuit of independent business undertake a job in
4 whole or in part retaining substantial control of the method and
5 manner of accomplishing the desired result, and means any person,
6 firm, joint venture, partnership, copartnership, association,
7 corporation, or other organization engaged in the primary business
8 of the painting. The term contractor shall not include the state or
9 any agency, institution, or political subdivision of the state or
10 any duly constituted authority of a political subdivision.

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

14 There is hereby created until July 1, 2015, in accordance with
15 the Oklahoma Sunset Law, the Examination Commission for Paint
16 Contractors. The Commission shall be composed of five (5) members
17 appointed by the Department of Labor for staggered terms. The
18 Department of Labor shall select members only from lists of names
19 provided by the paint contracting industries of this state. After
20 the initial appointments, the terms shall each be for five (5)
21 years. Each of the members shall be a paint contractor. Members
22 shall serve until the expiration of their respective terms and until
23 their successors are appointed and qualified. Vacancies occurring
24 during a term shall be filled by appointment of the Department for

1 the remainder of the unexpired term. The Department may remove any
2 member of the Commission for misconduct, incompetency, or neglect of
3 duty. No Commission member shall serve more than two complete
4 consecutive terms. Department members shall be reimbursed for
5 expenses incurred in the performance of their official duties in
6 accordance with the State Travel Reimbursement Act.

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

10 A. The initial meeting of the Commission shall be at the call
11 of the Department of Labor. At the meeting a chair and vice-chair
12 shall be elected from and by the membership of the Commission.
13 Meetings shall be held at least four times each year at the call of
14 the chair. At the first meeting each year the officers shall be
15 elected. Three members of the Commission shall constitute a quorum.

16 B. The Department shall keep a record of the proceedings of the
17 Commission and shall receive and account for all monies derived from
18 the operation of the State Licensing for Paint Contractors Act. The
19 funds required for the operation of the Commission shall be
20 deposited in the Paint Contractors Revolving Fund.

21 C. Duties of the Commission shall include, but not be limited
22 to, serving the Commissioner in an advisory capacity, assisting in
23 formulating rules pursuant to the State Licensing for Paint
24 Contractors Act, and assisting and advising the Department on the

1 examination of applicants for licenses as contractors, in accordance
2 with such rules and the terms and conditions as provided in this
3 act.

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

7 A. The Department shall issue a paint contractor license and a
8 journeyman painter license.

9 B. The Department of Labor shall keep a record of the
10 proceedings of the Commission and a register of all applicants for
11 license showing for each the date of application, name,
12 qualifications, place of business, place of residence, and whether
13 license was granted or refused. The books and register of the
14 Commission shall be prima facie evidence of all matters recorded
15 therein. A roster showing the names and places of business and of
16 residence of all licensed paint contractors shall be prepared by the
17 Commission during the month of March of each year. The roster shall
18 be printed by the Commission out of the Paint Contractors Revolving
19 Fund of the Department with copies being made available to
20 contractors and members of the public in accordance with the
21 Oklahoma Open Records Act.

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

1 A. The Department of Labor shall have the power and duty to:

2 1. Promulgate rules for the implementation of the State
3 Licensing for Paint Contractors Act; and

4 2. Provide for personnel for the physical and technical
5 issuance, renewal, suspension, revocation, modification, or denial
6 of licenses to engage in contractor work and provide for
7 investigations of licensees pursuant to the State Licensing for
8 Paint Contractors Act.

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

11 1. Enter upon public and private property for the purpose of
12 inspecting licenses and paint contractor work for compliance with
13 the provisions of this act and the rules of the Department
14 promulgated pursuant thereto;

15 2. Provide for examinations of applicants;

16 3. Provide for investigations and inspections;

17 4. Enforce the rules promulgated pursuant to this act;

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

20 6. Initiate disciplinary proceedings, requests of prosecution
21 of and initiation of injunctive proceedings against any person who
22 violates any of the provisions of this act or any rule promulgated
23 pursuant to this act;

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

5 8. Conduct investigations into the qualifications of applicants
6 for licensure; and

7 9. Exercise all incidental powers as necessary and proper to
8 implement and enforce the provisions of this act and the rules of
9 the Department promulgated pursuant thereto.

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

13 A. Anyone seeking to be licensed as a paint contractor or
14 journeyman painter in this state shall file an application for an
15 examination on a form provided by the Commission, at least thirty
16 (30) days before any regular or special meeting of the Commission,
17 accompanied by an examination fee and a license fee in the amount
18 of Two Thousand Five Hundred Dollars (\$2,500.00) for a four-year
19 paint contractor license and Five Hundred Dollars (\$500.00) for a
20 four-year journeyman painter license. Before being entitled to an
21 examination, an applicant must show to the satisfaction of the
22 Commission from the application and proof furnished that the
23 applicant is possessed of a good character and is otherwise
24 qualified as to competency, ability, integrity, and financial

1 responsibility, and that the applicant has not committed or done any
2 act which, if committed or done by any licensed paint contractor,
3 would be grounds under the provisions set forth in the State
4 Licensing for Paint Contractors Act for the suspension or revocation
5 of a contractor's license or committed or done any act involving
6 dishonesty, fraud, or deceit, or that the applicant has never been
7 refused a license as a paint contractor or had such license revoked,
8 either in this state or in another state, for reasons that should
9 preclude the granting of the license applied for, and that the
10 applicant has never been convicted of a felony involving moral
11 turpitude relating to paint contracting or involving embezzlement or
12 misappropriation of funds or property entrusted to the applicant.

13 B. The Commission shall conduct an examination, either oral or
14 written, of all applicants for licensure to ascertain the ability of
15 the applicant to make a practical application of the applicant's
16 knowledge of the profession of paint contracting, under the
17 classification contained in the application, and to ascertain the
18 qualifications of the applicant in reading plans and specifications,
19 knowledge of estimating costs, painting, ethics and other similar
20 matters pertaining to the paint contracting business and knowledge
21 of the applicant as to the responsibilities of a paint contractor to
22 the public and of the requirements of the laws of this state
23 relating to paint contractors and liens. If the results of the
24 examination of the applicant shall be satisfactory to the

1 Commission, the Commission shall issue to the applicant a
2 certificate to engage as a paint contractor in this state, as
3 provided in the certificate.

4 C. If an applicant is an individual, examination may be taken
5 by the applicant's personal appearance for examination or by the
6 appearance for examination of one or more of the applicant's
7 responsible managing employees, and if a copartnership or
8 corporation, or any other combination or organization, by the
9 examination of one or more of the responsible managing officers or
10 members of the personnel of the applicant, and if the person so
11 examined shall cease to be connected with the applicant, then in
12 such event the license shall remain in full force and effect for a
13 period of thirty (30) days thereafter and then be canceled, but the
14 applicant shall then be entitled to a reexamination, all pursuant to
15 the rules to be promulgated by the Department. Provided, that the
16 holder of such license shall not bid on or undertake any additional
17 paint contracts from the time such examined employee shall cease to
18 be connected with the applicant until the applicant's license is
19 reinstated as provided in the State Licensing for Paint Contractors
20 Act.

21 D. Anyone failing to pass this examination may be reexamined at
22 any regular meeting of the Commission upon payment of an examination
23 fee of Three Hundred Dollars (\$300.00). Anyone requesting to take
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1 the examination a third or subsequent time shall submit a new
2 application with the appropriate examination and license fees.

3 E. To apply for a journeyman painter license, a person must
4 have thre (3) years of apprenticeship before applying and taking the
5 journeyman painter license examination.

6 F. A certificate of license shall expire four (4) years after
7 the date of issuance or renewal and shall become invalid sixty (60)
8 days from that date unless renewed, subject to the approval of the
9 Commission. Renewals may be effected any time during the month of
10 January without reexamination by the payment of a fee to the
11 Commission. The amount of the renewal fee shall be set by the
12 Department of Labor. No later than November 30 of each year, the
13 Commission shall mail written notice of the amount of the renewal
14 fees for the upcoming year to the last address of record for each
15 paint contractor licensed pursuant to the State Licensing for Paint
16 Contractors Act. Renewal applications shall be accompanied by
17 evidence of continued financial responsibility satisfactory to the
18 Commission. Renewal applications received by the Commission after
19 January shall be accompanied by a late payment fee of Ten Dollars
20 (\$10.00) for each month or part after January. After a lapse of two
21 (2) years no renewal shall be effected and the applicant shall
22 fulfill all requirements of a new applicant as set forth in this
23 section.

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

4 A. The Department of Labor, upon recommendation of the
5 Commission, shall have the power to revoke the certificate of
6 license of any paint contractor or journeyman painter licensed
7 pursuant to this act who is found guilty of any fraud or deceit in
8 obtaining a license, or gross negligence, incompetency or misconduct
9 in the practice of the profession, or willful violation of any
10 provisions of the State Licensing for Paint Contractors Act. Any
11 person may prefer charges of such fraud, deceit, negligence or
12 misconduct against any paint contractor licensed pursuant to the
13 State Licensing for Paint Contractors Act. The charges shall be in
14 writing and sworn to by the complainant and submitted to the
15 Commission. The charges, unless dismissed without hearing by the
16 Commission as unfounded or trivial, shall be heard and determined by
17 the Commission in accordance with the provisions of the
18 Administrative Procedures Act.

19 B. The Department shall adopt rules consistent with the
20 provisions of the State Licensing for Paint Contractors Act
21 governing the suspension and revocation of licenses.

22 C. The Department shall establish and maintain a system whereby
23 detailed records are kept regarding complaints against each
24 licensee. This record shall include, for each licensee, the date

1 and nature of each complaint, investigatory action taken by the
2 Commission, any findings by the Commission, and the disposition of
3 the matter.

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

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

11 No person shall be required to hold a license under this act
12 prior to January 1, 2012. The issuance of a certificate of license
13 or limited license by the Commission shall be evidence that the
14 person, firm, or corporation named therein is entitled to all the
15 rights and privileges of a licensed or limited licensed paint
16 contractor while the license remains unrevoked or unexpired. A
17 licensed paint contractor holding a license which qualifies the
18 licensee for work as described in the State Licensing for Paint
19 Contractors Act shall be authorized to perform the work without any
20 additional occupational license notwithstanding the provisions of
21 any other occupational licensing statute. A license issued by any
22 other occupational licensing board having jurisdiction over any work
23 described in the State Licensing for Paint Contractors Act shall
24 qualify such licensee to perform the work for which the license

1 | qualifies the licensee without obtaining the license from the
2 | Commission.

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

6 | Beginning January 1, 2012, any person, firm, or corporation not
7 | being duly authorized who shall contract for or bid upon the
8 | painting of any of the projects or works without having first
9 | complied with the provisions hereof, or who shall attempt to
10 | practice painting in this state, except as provided for in the State
11 | Licensing for Paint Contractors Act, and any person, firm, or
12 | corporation presenting or attempting to file as the person's own the
13 | licensed certificate of another or who shall give false or forged
14 | evidence of any kind to the Commission or to any member thereof in
15 | maintaining a certificate of license or who falsely shall
16 | impersonate another or who shall use an expired or revoked
17 | certificate of license, and any architect or engineer who recommends
18 | to any project owner the award of a paint contract to anyone not
19 | properly licensed under the State Licensing for Paint Contractors
20 | Act shall be deemed guilty of a misdemeanor. When it appears to the
21 | Department that any person, firm, or corporation is violating any of
22 | the provisions of the State Licensing for Paint Contractors Act or
23 | of the rules of the Department promulgated under the State Licensing
24 | for Paint Contractors Act, the Commissioner may apply to the

1 district court for a restraining order and injunction to restrain
2 the violation, and the district courts have jurisdiction to grant
3 the requested relief, irrespective of whether or not criminal
4 prosecution has been instituted or administrative sanctions imposed
5 by reason of the violation.

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

9 To the extent that other states which provide for the licensing
10 of paint contractors provide for similar action, the Department of
11 Labor in its discretion may grant licenses of the same or equivalent
12 classification to paint contractors licensed by other states,
13 without written examination upon satisfactory proof furnished to the
14 Commission that the qualifications of the applicants are equal to
15 the qualifications of holders of similar licenses in this state and
16 upon payment of the required fee. An out-of-state paint contractor
17 may perform work under the license of an in-state paint contractor,
18 but shall use state-licensed journeyman painters, or apprentices
19 currently enrolled in a federally recognized apprenticeship program.

20 SECTION 13. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 1172 of Title 59, unless there
22 is created a duplication in numbering, reads as follows:

23 There is hereby created in the State Treasury a revolving fund
24 for the Department of Labor to be designated the "Paint Contractors

1 Revolving Fund". The fund shall be a continuing fund, not subject
2 to fiscal year limitations, and shall consist of all monies received
3 by the Department from fees and administrative fines pursuant to the
4 State Licensing for Paint Contractors Act. All monies accruing to
5 the credit of said fund are hereby appropriated and may be budgeted
6 and expended by the Commission for the purpose of implementing the
7 provisions of the State Licensing for Paint Contractors Act.
8 Expenditures from said fund shall be made upon warrants issued by
9 the State Treasurer against claims filed as prescribed by law with
10 the Director of the Office of State Finance for approval and
11 payment.

12 SECTION 14. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 1173 of Title 59, unless there
14 is created a duplication in numbering, reads as follows:

15 The sale of solvent-based material is restricted to persons
16 licensed under the State Licensing for Paint Contractors Act.
17 Household spray paints dispensed from an aerosol can shall be exempt
18 from the State Licensing for Paint Contractors Act.

19 SECTION 15. This act shall become effective November 1, 2011.
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