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2 88th General Assembly
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4

As Engrossed: H3/16/11 H3/21/11

A Bill

HOUSE BILL 1938

5 By: Representative Nickels
6

For An Act To Be Entitled

8 AN ACT TO AMEND ARKANSAS LAW CONCERNING THE
9 JURISDICTION OF THE CONTRACTORS LICENSING BOARD; AND
10 FOR OTHER PURPOSES.
11

Subtitle

14 TO AMEND ARKANSAS LAW CONCERNING THE
15 JURISDICTION OF THE CONTRACTORS LICENSING
16 BOARD.
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18
19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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21 *SECTION 1. Arkansas Code Title 17, Chapter 25, Subchapter 3 is amended*
22 *to add a new section to read as follows:*

23 *17-25-317. Workers without legal authorization to work in the United*
24 *States – Prohibition.*

25 *(a) As used in this section, "worker without legal authorization to*
26 *work in the United States" means an individual who cannot present valid and*
27 *appropriate documentation evidencing both identity and authorization to work*
28 *as required by Federal Form 1-9 as existing on January 1, 2011, and using the*
29 *applicable regulations, standards, and guidelines of Federal Form 1-9 as*
30 *existing on January 1, 2011.*

31 *(b) If after notice and hearing, a contractor licensed under this*
32 *chapter is found by the Contractors Licensing Board to knowingly employ a*
33 *worker without legal authorization to work in the United States, the board*
34 *may take one (1) or more of the following actions:*

35 *(A) Impose a civil penalty under § 17-25-103;*

36 *(B) Suspend the contractor's certificate of license;*



1 (C) Revoke the contractor's certificate of license; or
 2 (D) Impose additional penalties authorized under § 17-25-
 3 101 et seq.

4 (c) When applying to the Contractors Licensing Board for the initial
 5 issuance of a certificate of license or the renewal of a certificate of
 6 license, a contractor shall state in writing that he or she:

7 (1) Is legally authorized to work in the United States; and
 8 (2) Does not employ a worker without legal authorization to work
 9 in the United States.

10 (d) The board shall promulgate rules necessary to carry out the
 11 provisions of this section.

12
 13 SECTION 2. Arkansas Code § 17-25-501 is amended to read as follows:
 14 17-25-501. Purpose.

15 It is the intent of this subchapter to protect homeowners and the
 16 purchasers of homes constructed in this state by establishing reasonable and
 17 adequate licensing and regulation of homebuilders and home improvement
 18 contractors. It is intended that this subchapter apply to everyone not
 19 specifically excluded. It is also the intent of this subchapter that the
 20 Residential ~~Building~~ Contractors Committee be located with the Contractors
 21 Licensing Board and that the staff and appropriation for the board be
 22 utilized to implement this subchapter.

23
 24 SECTION 3. Arkansas Code § 17-25-502 is amended to read as follows:
 25 17-25-502. Definitions.

26 For purposes of this subchapter:

27 ~~(1) "Committee" means the Residential Building Contractors~~
 28 ~~Committee created by this subchapter;~~

29 (1) "Home improvement contractor" means any person, firm,
 30 partnership, co-partnership, association, corporation, or other organization
 31 or any combination that attempts to or submits a bid, or contracts,
 32 undertakes, or assumes charge in a supervisory capacity or otherwise manages
 33 the reconstruction, alteration, renovation, repair, modification,
 34 improvement, removal, demolition, or addition to any preexisting single-
 35 family residence or the property and structures appurtenant thereto;

36 (2) "Residential building contractor" means any person, firm,

1 partnership, copartnership, association, corporation, or other organization
 2 or any combination ~~thereof~~, which for a fixed price, commission, fee, or
 3 wage, attempts to or submits a bid to construct or contract or undertakes to
 4 construct or assumes charge in a supervisory capacity or otherwise manages
 5 the construction of ~~a single family residences~~ single-family residence or the
 6 property and structures appurtenant to the residence; and

7 (3) ~~"Single family~~ Single-family residence" means any project
 8 consisting of one (1) but not more than four (4) units of new construction
 9 for residential occupancy, ~~when the cost of the project is twenty thousand~~
 10 ~~dollars (\$20,000) or more. This definition does not apply to subcontractors~~
 11 ~~of licensed residential building contractors or to remodeling operations.~~

12
 13 SECTION 4. Arkansas Code § 17-25-503(a)(1), concerning the Residential
 14 Contractors Committee, is amended to read as follows:

15 (a)(1) There is created the "Residential Building Contractors
 16 Committee", to consist of seven (7) members.

17
 18 SECTION 5. Arkansas Code § 17-25-504 is amended to read as follows:
 19 17-25-504. Authority.

20 The Residential ~~Building~~ Contractors Committee may:

21 (1) Issue, modify, suspend, and revoke ~~residential building~~
 22 ~~contractor's~~ licenses issued by the committee;

23 (2) Establish qualifications for ~~residential building~~
 24 ~~contractor's~~ licenses issued by the committee;

25 (3) Enforce this subchapter and the committee's ~~regulations~~
 26 rules;

27 (4) Issue ~~regulations~~ rules necessary for the implementation of
 28 this subchapter;

29 (5) Levy civil penalties ~~in the same amounts and under the same~~
 30 ~~procedures as prescribed for the Contractors Licensing Board~~ under this
 31 subchapter;

32 (6) Issue orders of abatement in the same manner and to the same
 33 extent as authorized for the ~~board~~ Contractors Licensing Board under § 17-25-
 34 103; and

35 (7) Seek any other civil remedies which are available to the
 36 board.

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*SECTION 6. Arkansas Code § 17-25-505 is amended to read as follows:
17-25-505. License from committee required.*

(a) ~~No~~ A person shall not act as a residential building contractor after July 1, 2001, unless licensed by the Residential ~~Building~~ Contractors Committee or exempted from licensure under this subchapter.

(b) A person shall not act as a home improvement contractor on or after July 1, 2013, unless:

- (1) Licensed by the Residential Contractors Committee; or*
- (2) Exempt from licensure under this subchapter.*

SECTION 7. Arkansas Code § 17-25-506(a), concerning applications for licenses from the Residential Building Contractors Committee, is amended to read as follows:

17-25-506. Application for license.

(a) Applications for licensure shall be made on forms prescribed by the Residential ~~Building~~ Contractors Committee and shall have attached thereto:

- (1) A compiled financial statement with each ~~new~~ application;*
- and*
- (2) Such other information as required by the committee.*

*SECTION 8. Arkansas Code § 17-25-507 is amended to read as follows:
17-25-507. Applicant qualifications.*

(a) In determining the qualifications of any applicant for original license or any renewal license, the Residential ~~Building~~ Contractors Committee shall consider, among other things, the following:

- (1) Experience;*
- (2) Ability;*
- (3) The manner of performance of previous contracts;*
- (4) Financial condition;*
- (5) Citizenship, legal residency, or legal status to work in the*

United States;

~~(5)~~(6) Any other fact tending to show ability and willingness to conserve the public health and safety; and

~~(6)~~(7) Default in complying with the provisions of this

1 subchapter or any other law of the state.

2 (b) The committee may limit a license issued by the committee to the
3 character of work for which the applicant is qualified to perform.

4
5 SECTION 9. Arkansas Code § 17-25-508 is amended to read as follows:
6 17-25-508. Name of licensed contractor.

7 ~~Residential building contractors~~ A contractor licensed under this
8 subchapter may act as such only in the name under which they are licensed by
9 the Residential ~~Building~~ Contractors Committee.

10
11 SECTION 10. Arkansas Code § 17-25-509 is amended to read as follows:
12 17-25-509. Written examination.

13 (a) Except as otherwise provided in this section, ~~no~~ a person shall
14 not be licensed as a residential building contractor unless the person has
15 passed a written examination prescribed by the Residential ~~Building~~
16 Contractors Committee.

17 ~~(b) Persons licensed by the Contractors Licensing Board shall not be~~
18 ~~required to submit to written examination by the committee but must meet all~~
19 ~~other requirements for licensure as a residential building contractor.~~

20 ~~(c) A property owner who acts as a residential building contractor for~~
21 ~~the purpose of constructing his or her own residence is not required to be~~
22 ~~licensed under this subchapter unless the person constructs more than one (1)~~
23 ~~residence per calendar year.~~

24 (b)(1) Until June 30, 2013, the committee shall waive the written
25 examination for a person who submits proof of:

26 (A) Having obtained five (5) building permits within the
27 three (3) years preceding the date of application;

28 (B) Having obtained one (1) building permit within the
29 preceding twelve (12) months; or

30 (C) Experience in construction acceptable to the
31 committee.

32 (2) Subsection (b)(1) of this section does not apply to
33 applicants for residential building contractor.

34
35 SECTION 11. Arkansas Code § 17-25-510 is amended to read as follows:
36 17-25-510. Hearings regarding violations.

1 (a) The Residential ~~Building~~ Contractors Committee may conduct
2 hearings regarding alleged violations of this subchapter or regulations
3 promulgated thereunder, and the hearings shall be conducted in accordance
4 with the Arkansas Administrative Procedure Act, § 25-15-201 et seq. The
5 committee shall within a reasonable time make findings and determinations as
6 a result of the hearings.

7 (b) A contractor who, after notice and hearing, is found to have
8 committed the following actions shall pay to the Contractors Licensing Board
9 a civil penalty of not less than one hundred dollars (\$100) nor more than
10 four hundred dollars (\$400) for each day that any of the following violations
11 occurred:

12 (1) Acting as a contractor without a license in violation of
13 this chapter;

14 (2) Presenting or filing the license certificate of another;

15 (3) Given false or forged evidence of any kind to the board in
16 obtaining a certificate of license;

17 (4) Using an expired or revoked certificate of license;

18 (5) Giving false or fraudulent evidence of a contractor's
19 license to another person or entity; or

20 (6) Committing other violations under this chapter.

21 (c) The committee may, after notice and hearing, revoke the
22 certificate of license of any contractor licensed under this subchapter who
23 is found guilty of:

24 (1) Fraud or deceit in obtaining a license;

25 (2) Aiding or abetting another contractor or person to violate
26 this chapter; or

27 (3) Gross negligence, incompetence, or misconduct in the
28 contractor's business.

29
30 SECTION 12. Arkansas Code § 17-25-511 is amended to read as follows:
31 17-25-511. Appeal from committee decision.

32 Any person aggrieved by an action or decision of the Residential
33 ~~Building~~ Contractors Committee may appeal to the Contractors Licensing Board
34 within ten (10) calendar days after the action or decision under procedures
35 prescribed by the board. Aggrieved parties shall be granted an opportunity to
36 address the board regarding the committee's actions, and the final actions of

1 the board shall be binding upon the committee.

2
3 SECTION 13. Arkansas Code § 17-25-512 is amended to read as follows:

4 17-25-512. Expiration of license -- Fees.

5 All licenses issued by the Contractors Licensing Board shall expire one
6 (1) year after the date of issuance unless otherwise provided by the
7 Residential ~~Building~~ Contractors Committee. The committee may charge
8 reasonable examination fees and delinquency fees and may charge a fee not to
9 exceed one hundred dollars (\$100) for new licenses or renewal of a license.
10 All fees and other moneys collected by the committee shall be disposed of as
11 provided by § 17-25-205 and shall be used by the board to implement this
12 subchapter.

13
14 SECTION 14. Arkansas Code § 17-25-513 is amended to read as follows:

15 17-25-513. ~~Exemption for personal homebuilder~~ Exemptions.

16 ~~Nothing in this subchapter shall be construed as requiring a person who~~
17 ~~acts as a residential building contractor in the construction of his or her~~
18 ~~own residence to obtain a license from the Residential Building Contractors~~
19 ~~Committee unless the person builds more than one (1) residence during any~~
20 ~~year.~~

21 The following shall be exempted from the licensing requirements of this
22 subchapter:

23 (1) A person who acts as a residential building contractor in
24 the construction of his or her residence unless he or she builds more than
25 one (1) residence during any calendar year;

26 (2) The owner of a single-family residence acting as his or her
27 own home improvement contractor on his or her own property;

28 (3)(A) A person or entity acting as a residential building
29 contractor or a home improvement contractor on any project, when the cost of
30 the work done or to be done does not exceed one thousand dollars (\$1,000).

31 (B) Subdivision (3)(A) of this section does not apply to a
32 project in which the construction work necessary to complete the project is
33 divided into separate contracts of amounts less than one thousand dollars
34 (\$1,000);

35 (4) A subcontractor of a contractor licensed by the Residential
36 Contractors Committee; and

1 (5) A person or entity licensed as a contractor by another
2 licensing agency, board, or commission of the State of Arkansas if the
3 contractor is performing work within the scope of the license held by the
4 person or entity.

5
6 SECTION 15. Arkansas Code 17-25-514 is amended to read as follows:
7 17-25-514. Workers' compensation required.

8 (a) A ~~residential building~~ contractor required to be licensed by the
9 Residential ~~Building~~ Contractors Committee as a residential building
10 contractor or home improvement contractor shall secure the payment of
11 workers' compensation under § 11-9-401 et seq.

12 (b) The committee shall require proof of current workers' compensation
13 coverage before issuing or renewing a license as a residential building
14 contractor or home improvement contractor.

15 (c)(1) If a contractor fails to maintain workers' compensation
16 coverage or fails to maintain proof of current workers' compensation coverage
17 on file with the committee, the committee shall revoke the contractor's
18 license.

19 (2) A contractor's license that has been revoked due to failure
20 to maintain workers' compensation coverage may be reinstated upon receipt of
21 proof that the contractor has secured workers' compensation coverage.

22 (d) The committee shall promulgate rules necessary to enforce this
23 section.

24
25 SECTION 16. Arkansas Code Title 17, Chapter 25, Subchapter 5 is
26 amended to add an additional section to read as follows:

27 17-25-515. Workers without legal authorization to work in the United
28 States – Prohibition.

29 (a) As used in this section, "worker without legal authorization to
30 work in the United States" means an individual who cannot present valid and
31 appropriate documentation evidencing both identity and authorization to work
32 as required by Federal Form 1-9 as existing on January 1, 2011, and using the
33 applicable regulations, standards, and guidelines of Federal Form 1-9 as
34 existing on January 1, 2011.

35 (b) If after notice and hearing, a contractor licensed under this
36 subchapter is found by the Residential Contractors Committee to knowingly

1 employ a worker without legal authorization to work in the United States, the
2 committee may take one (1) or more of the following actions:

3 (A) Impose a civil penalty under § 17-25-510;

4 (B) Suspend the contractor's certificate of license;

5 (C) Revoke the contractor's certificate of license; or

6 (D) Impose additional penalties authorized under this
7 subchapter.

8 (c) When applying to the committee for the initial issuance of a
9 certificate of license or the renewal of a certificate of license, a
10 contractor shall state in writing that he or she:

11 (1) Is legally authorized to work in the United States; and

12 (2) Does not employ a worker without legal authorization to work
13 in the United States.

14 (d) The committee shall promulgate rules necessary to carry out the
15 provisions of this section.

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17 /s/Nickels
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