

1 State of Arkansas As Engrossed: S2/25/19 H3/13/19 H3/20/19 H3/28/19

2 92nd General Assembly

A Bill

3 Regular Session, 2019

SENATE BILL 342

4

5 By: Senators J. Cooper, Hester, Flipppo, T. Garner, B. Davis, J. Sturch, D. Wallace

6 By: Representative Lundstrum

7

8

For An Act To Be Entitled

9 AN ACT TO AMEND THE LAWS CONCERNING THE CONTRACTORS
10 LICENSING BOARD; TO AMEND THE LICENSING REQUIREMENTS
11 OF CONTRACTORS; TO REQUIRE SUBCONTRACTOR
12 REGISTRATION; TO ACCEPT A BOND IN LIEU OF A FINANCIAL
13 STATEMENT; TO ALLOW FOR EMERGENCY SUSPENSION OF A
14 LICENSE; TO ALLOW THE AWARD OF RESTITUTION; AND FOR
15 OTHER PURPOSES.

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Subtitle

19 TO AMEND THE LAWS CONCERNING THE
20 CONTRACTORS LICENSING BOARD; AND TO AMEND
21 THE LICENSING REQUIREMENTS OF
22 CONTRACTORS.

23

24

25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

26

27 SECTION 1. DO NOT CODIFY. Legislative findings and intent.

28 (a) The General Assembly finds that:

29 (1) Arkansas is taking a leading role in the nationwide pursuit
30 of reforms to the system of occupational licensing;

31 (2) Arkansas became one (1) of eleven (11) states chosen to
32 participate in the Occupational Licensing Policy Learning Consortium, an
33 initiative funded by a grant from the United States Department of Labor and
34 supported in partnership with the National Conference of State Legislatures,
35 the Council of State Governments, and the National Governors Association;

36 (3) Governor Asa Hutchinson appointed seventeen (17) individuals



1 to the Red Tape Reduction Working Group to review and address occupational
2 licensing regulations that create unnecessary barriers to labor market entry;

3 (4) The Red Tape Reduction Working Group issued a final report
4 to the Governor in the fall of 2018 with five (5) recommendations for
5 substantive legislative reform, which are to:

6 (A) Establish an expedited procedure for occupational
7 licensing entities to collectively submit administrative rules that are
8 responsive to new legislation;

9 (B) Extend Acts 2017, No. 781, to allow repeal of
10 subsections of rules;

11 (C) Establish provisions to allow certain agencies to
12 consider occupational relevance with regard to criminal background issues;

13 (D) Authorize occupational licensing entities to identify
14 types of individuals or entities that may be issued temporary or provisional
15 licenses; and

16 (E) Establish a systematic process for review of:

17 (i) New occupational licensure and occupational
18 licensing entities; and

19 (ii) Existing occupational licensure and
20 occupational licensing entities;

21 (5) Several occupational licenses are needlessly regulated and
22 could be deregulated or de-licensed without causing detrimental harm to the
23 citizens of the State of Arkansas and the economy of the this state;

24 (6) Research has found that occupational licensing reduces
25 access to jobs, inhibits geographic mobility, and raises the costs of
26 services;

27 (b) It is the intent of the General Assembly to amend the laws
28 concerning contractors and to allow registration of subcontractors and
29 eliminate the subcontractor licensing requirement.

30
31 SECTION 1. Arkansas Code § 17-25-101, concerning the definitions under
32 the laws regarding contractors and the licensing of contractors, is amended
33 to add additional subsections to read as follows:

34 (e) "Owner" means a person who owns property or is lessee of property;

35 (f) "Person" means any natural person, limited or general partnership,
36 corporation, association, limited liability company, trust or other legal

1 entity, and any organization capable of conducting business, or any
2 combination thereof;

3 (g) "Prime contractor" means a contractor who contracts directly with
4 the owner of property; and

5 (h) "Subcontractor" means a person who contracts directly with a prime
6 contractor or another subcontractor.

7
8 SECTION 2. Arkansas Code § 17-25-102, concerning exemptions under the
9 provisions related to the licensing requirements of contractors, is amended
10 to add an additional subdivision to read as follows:

11 (4)(A) Subcontractors of a licensed contractor who are properly
12 registered with the Contractors Licensing Board under this chapter.

13 (B) The Contractors Licensing Board may issue rules
14 necessary for the:

15 (i) Implementation of a registration process;

16 (ii) Determination of application fees for registration;

17 and

18 (iii) Establishment of civil penalties in the same amounts
19 and under the same procedures as for other license holders under this
20 chapter.

21
22 SECTION 3. Arkansas Code § 17-25-103(a), concerning penalties and
23 enforcement under the laws regarding licensing of contractors, is amended to
24 read as follows:

25 (a)(1) Any It is a violation of this chapter for any contractor shall
26 be deemed guilty of a misdemeanor and shall be liable to a fine of not less
27 than one hundred dollars (\$100) nor more than two hundred dollars (\$200) for
28 each offense, with each day to constitute a separate offense who to knowingly
29 do any of the following:

30 (1)(A)(A)(i) For a fixed price, commission, fee, or wage
31 attempts to or submits a bid or bids to construct or demolish or contracts to
32 construct or demolish, or undertakes to construct or demolish, or assumes
33 charge in a supervisory capacity or otherwise, or manages the construction,
34 erection, alteration, demolition, or repair of, or has constructed, erected,
35 altered, demolished, or repaired, under his or her or its direction, any
36 building, apartment, condominium, highway, sewer, utility, grading, or any

1 other improvement or structure, when the cost of the work to be done, or
2 done, in the State of Arkansas by the contractor, including, but not limited
3 to, labor and materials, is fifty thousand dollars (\$50,000) or more, without
4 first having procured a license or registration with the proper
5 classification to engage in the business of contracting in this state.

6 ~~(B)(ii)~~ Subdivision ~~(a)(1)(A)(i)~~ of this section
7 ~~shall~~ does not apply to any demolition work or other work necessary to clean
8 up a natural disaster within seventy-two (72) hours following the natural
9 disaster;

10 ~~(2)(B)~~ ~~Shall present or file~~ Presents or files the license or
11 registration certificate of another;

12 ~~(3)(C)~~ ~~Shall give~~ Gives false or forged evidence of any kind to
13 the Contractors Licensing Board or any member thereof in obtaining a
14 certificate of license or registration;

15 ~~(4)(D)~~ ~~Shall impersonate~~ Impersonates another; or

16 ~~(5)(E)~~ ~~Shall use~~ Uses an expired or revoked certificate of
17 license or registration;

18 (2) A violation under subsection (a) of this section is a Class
19 A misdemeanor, with each day of activity constituting a separate offense.

20
21 SECTION 4. Arkansas Code § 17-25-103(b), concerning penalties and
22 enforcement under the laws regarding licensing of contractors, is amended to
23 read as follows:

24 (b) The doing of any act or thing herein prohibited by any applicant,
25 ~~or~~ licensee, or registrant shall, in the discretion of the board, constitute
26 sufficient grounds to refuse a license or registration to an applicant or to
27 revoke the license of a licensee or the registration of a registrant.

28
29 SECTION 5. Arkansas Code § 17-25-104 is amended to read as follows:

30 17-25-104. Injunction.

31 When any contractor ~~not licensed by the Contractors Licensing Board~~
32 ~~shall engage or attempt~~ engages or attempts to engage in the business of
33 contracting as herein defined, in violation of this chapter, the ~~board~~
34 Contractors Licensing Board shall have the right to go into ~~the proper court~~
35 in the jurisdiction in which the work is being performed a court where venue
36 is proper and is of competent jurisdiction and, upon affidavit, secure a writ

1 of injunction, without bond, restraining and prohibiting the contractor from
2 performance of the work then being done or about to commence.

3
4 SECTION 6. Arkansas Code Title 17, Chapter 25, Subchapter 1, is
5 amended to add an additional section to read as follows:

6 17-25-107. Abuse, neglect, or exploitation.

7 (a) The definitions under § 5-28-101 apply to this chapter.

8 (b) Any contractor licensed or registered under this chapter who is
9 found by the Contractors Licensing Board or the Residential Contractors
10 Committee to have abused, neglected, or exploited an endangered person or an
11 impaired person while engaging in the performing the services of a contractor
12 as defined under § 17-25-101 is subject to emergency license or registration
13 suspension under §§ 17-25-309 and 17-25-510.

14 (c) The board may provide evidence, documentation, reports, and
15 information related to the abuse, neglect, or exploitation of an endangered
16 person or an impaired person to any entity with the authority to enforce § 5-
17 28-101 et. seq.

18
19 SECTION 7. Arkansas Code § 17-25-301(a), concerning the significance
20 and proof of a certificate of license by the Contractors Licensing Board, is
21 amended to read as follows:

22 (a) The issuance of a certificate of license or registration by the
23 Contractors Licensing Board shall be evidence that the person, firm, or
24 corporation named ~~therein~~ on the certificate of license or registration is
25 entitled to all of the rights and privileges of a licensed or registered
26 contractor while the license or registration remains unrevoked or unexpired.

27
28 SECTION 8. Arkansas Code § 17-25-302 is amended to read as follows:
29 17-25-302. Limitations.

30 The Contractors Licensing Board shall have power to limit by proper
31 classification the license or registration to the character of work for which
32 the applicant is qualified.

33
34 SECTION 9. Arkansas Code § 17-25-303(a)(1)(A), concerning the
35 application, renewal, and fees required for licensure as a contractor, is
36 amended to read as follows:

1 (a)(1)(A) ~~Any~~ A person desiring to be licensed or registered as a
2 contractor in this state shall make and file with the Contractors Licensing
3 Board thirty (30) days before any regular or special meeting ~~thereof~~ of the
4 board, a written application on a form ~~as may then be~~ prescribed by the
5 board, for examination by the board.

6
7 SECTION 10. Arkansas Code § 17-25-303(b), concerning the application,
8 renewal, and fees required for licensure as a contractor, is amended to read
9 as follows:

10 (b) Thereafter, an annual renewal license or registration fee to be
11 determined by the board but not to exceed one hundred dollars (\$100) shall be
12 paid by each licensee or registrant to defray the costs and expenses of the
13 administration of this chapter.

14
15 SECTION 11. Arkansas Code § 17-25-304, concerning financial statements
16 filed with the Contractors Licensing Board, is amended to add an additional
17 subsection to read as follows:

18 (c)(1) In lieu of providing a financial statement for a person or
19 entity required to be licensed or registered by the Contractors Licensing
20 Board as required by subsections (a) and (b) of this section, an applicant
21 may provide a surety bond from:

22 (A) A surety authorized to transact surety business in the
23 State of Arkansas; and

24 (B) A surety listed on the current United States
25 Department of the Treasury's List of Approved Sureties; and

26 (2) The surety bond shall be in an amount ten (10) times the
27 required net worth for the applicant's license or registration classification
28 with his or her initial or renewal application.

29 (3) The surety bond provided under this subsection shall:

30 (A) Be continuous in form;

31 (B)(i) Be maintained in effect for as long as the
32 applicant maintains the license or registration issued by the board;

33 (ii) If an applicant submits a financial statement
34 acceptable to the Contractors Licensing Board, the surety bond may be
35 cancelled;

36 (C)(i) List the State of Arkansas as obligee for the bond.

1 (ii) The State shall have priority over all other
2 claims to recover against the bond;

3 (D) Be for the benefit of any person who is damaged by:

4 (i) An act or omission of the applicant constituting
5 a breach of construction contract or a contract for the furnishing of labor,
6 materials, or professional services for construction undertaken by the
7 applicant; or

8 (ii) An unlawful act or omission of the applicant in
9 performing the services of a contractor as defined under § 17-25-101; and

10 (E) Be in addition to, and not in lieu of, any other
11 surety bond required of the applicant by law or rule, or by any party to a
12 contract with the applicant.

13 (5)(A) The surety bond provided in subsection (c) of this
14 section may only be canceled by notification to the board by the surety and
15 the applicant sixty days before cancellation.

16 (B) When the surety bond is canceled, the licensee or
17 registrant shall provide a replacement bond or submit a financial statement
18 as required by § 17-25-304 before the effective date of the cancellation or
19 the license or registration of the licensee or registrant shall be suspended.

20 (6) The board may adopt rules necessary to enforce this
21 subsection.

22
23 SECTION 12. Arkansas Code § 17-25-307 is amended to read as follows:
24 17-25-307. Expiration.

25 All certificates of license or registration to engage ~~in the business~~
26 ~~of contracting~~ in performing the services of a contractor as defined under §
27 17-25-101 in the State of Arkansas shall expire at 12:00 midnight on the day
28 before the anniversary date of ~~their~~ issuance unless otherwise designated by
29 the Contractors Licensing Board, and ~~they~~ all certificates of license or
30 registration shall become invalid on that day unless renewed.

31
32 SECTION 13. Arkansas Code § 17-25-308(a), concerning the grounds for
33 revocation of a contractor's license, is amended to read as follows:

34 (a) The Contractors Licensing Board may revoke the certificate of
35 license or registration of any contractor licensed or registered under this
36 chapter who is found guilty of any fraud or deceit in obtaining a license or

1 registration or for aiding or abetting any contractor or person to violate
2 the provisions of this chapter or for gross negligence, incompetence, or
3 misconduct in the conduct of the contractor's business.

4
5 SECTION 14. Arkansas Code § 17-25-309(a), concerning the procedure for
6 revocation and reissuance of a contractor's license, is amended to read as
7 follows:

8 (a) Any person may prefer charges in connection with the foregoing
9 against any contractor licensed or registered under this chapter.

10
11 SECTION 15. Arkansas Code § 17-25-309(f) and (g), concerning the
12 procedure for revocation and reissuance of a contractor's license, are
13 amended to read as follows:

14 (f) If after the hearing the board finds the facts as alleged and of
15 such character as to disqualify the contractor, then the board shall revoke
16 the license or registration of the contractor, but in that event no refund
17 shall be made of the license or registration fee.

18 (g) Within its discretion and upon proper application or hearing, the
19 board may reissue a license or registration to any contractor whose license
20 or registration has been revoked.

21
22 SECTION 16. Arkansas Code § 17-25-309, concerning the procedure for
23 revocation and reissuance of a contractor's license, is amended to add an
24 additional subsection to read as follows:

25 (h)(1) When abuse, neglect, or exploitation of an endangered person or
26 an impaired person is found by the board to have occurred, the board may:

27 (A) State in writing that due to imminent physical or
28 other harm to the endangered person or impaired person, the situation merits
29 the emergency suspension of a license or registration; and

30 (B) Proceed with the suspension of a license or
31 registration without a hearing or upon any abbreviated hearing that the board
32 finds practicable to suspend the license or registration;

33 (2) The emergency suspension shall become effective immediately,
34 unless otherwise stated in the written determination by the board.

35 (3) The emergency suspension may be effective for a period of
36 thirty (30) days or less and the emergency suspension shall not be renewable.

1 (4) When an emergency suspension is ordered, a formal suspension
2 or revocation proceeding shall be promptly instituted and acted upon in
3 accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et
4 seq.

5
6 SECTION 17. Arkansas Code § 17-25-310 is amended to read as follows:
7 17-25-310. Replacement.

8 A certificate of license or registration to replace any lost,
9 destroyed, or mutilated certificate may be issued subject to the rules ~~and~~
10 ~~regulations~~ of the Contractors Licensing Board.

11
12 SECTION 18. Arkansas Code § 17-25-316 is amended to read as follows:
13 17-25-316. Workers' compensation coverage required.

14 (a) A contractor required to be licensed or registered by the
15 Contractors Licensing Board shall obtain and maintain workers' compensation
16 coverage as required under the Workers' Compensation Law, § 11-9-101 et seq.

17 (b) The board shall require proof of current workers' compensation
18 coverage before issuing or renewing a license or registration to a contractor
19 required to have workers' compensation coverage under the Workers'
20 Compensation Law § 11-9-101 et seq.

21 (c)(1) If a contractor fails to maintain workers' compensation
22 coverage or fails to maintain proof of current workers' compensation coverage
23 on file with the board, the board may revoke or suspend the contractor's
24 license or registration.

25 (2) A contractor's license or registration that has been revoked
26 or suspended due to failure to maintain workers' compensation coverage may be
27 reinstated upon receipt by the board of proof that the contractor has secured
28 workers' compensation coverage.

29 (d) The board shall promulgate rules necessary to enforce this
30 section.

31
32 SECTION 19. Arkansas Code § 17-25-401(a)(2), concerning the definition
33 of "contractor" under the laws regarding contractors licensing, is amended to
34 read as follows:

35 (2) ~~The term~~ As used in this subchapter "contractor" includes:

36 (A) All original, prime, and general contractors; and

1 (B) A contractor who is required to obtain a contractor's
2 license or registration under the state licensing law of this state, § 17-25-
3 101 et seq.

4
5 SECTION 20. Arkansas Code § 17-25-505, concerning the requirement of a
6 license from the Residential Contractors Committee, is amended to add a new
7 subsection to read as follows:

8 (c) Any person, firm, partnership, copartnership, association,
9 corporation, limited liability company, or other organization that fails to
10 procure a license as required under this subchapter shall be deemed guilty of
11 a Class A misdemeanor with each day in violation of the requirement to
12 constitute a separate offense.

13
14 SECTION 21. Arkansas Code § 17-25-510, concerning hearings by the
15 Residential Contractors Committee regarding violations, is amended to add an
16 additional subsection to read as follows:

17 (d)(1) When abuse, neglect, or exploitation of an endangered person or
18 an impaired person is found by the committee to have occurred, the committee
19 may:

20 (A) State in writing that due to imminent physical or
21 other harm to the endangered person or impaired person, the situation merits
22 the emergency suspension of a license or registration; and

23 (B) Proceed with the suspension of a license or
24 registration without a hearing or upon any abbreviated hearing that the
25 committee finds practicable to suspend the license or registration;

26 (2) The emergency suspension shall become effective immediately,
27 unless otherwise stated in the written documentation by the board.

28 (3) The emergency suspension may be effective for a period of
29 longer than thirty (30) days and the emergency suspension shall not be
30 renewable.

31 (4) When an emergency suspension is ordered, a formal suspension
32 or revocation proceeding shall be promptly instituted and acted upon in
33 accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et
34 seq.

35
36 SECTION 22. EFFECTIVE DATE. This act is effective on and after July

1 1, 2020.

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/s/J. Cooper

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APPROVED: 4/9/19

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