Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas *As Engrossed: S2/25/19 H3/13/19 H3/20/19 H3/28/19*
92nd General Assembly **A Bill**
Regular Session, 2019 SENATE BILL 342

By: Senators J. Cooper, Hester, Flippo, T. Garner, B. Davis, J. Sturch, D. Wallace
By: Representative Lundstrum

For An Act To Be Entitled

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

Subtitle

TO AMEND THE LAWS CONCERNING THE CONTRACTORS LICENSING BOARD; AND TO AMEND THE LICENSING REQUIREMENTS OF CONTRACTORS.

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

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

(a) The General Assembly finds that:

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

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

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

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

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

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

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

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

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

(E) Establish a systematic process for review of:

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

(ii) Existing occupational licensure and occupational licensing entities;

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

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

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

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

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

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

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

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

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

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

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

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

(i) Implementation of a registration process;

(ii) Determination of application fees for registration; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17-25-104. Injunction.

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

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

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

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

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

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

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

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

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

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

17-25-302. Limitations.

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

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

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

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

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

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

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

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

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

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

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

(A) Be continuous in form;

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

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

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

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

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

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

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

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

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

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

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

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

17-25-307. Expiration.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17-25-310. Replacement.

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

SECTION 18. Arkansas Code § 17-25-316 is amended to read as follows:

17-25-316. Workers' compensation coverage required.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1, 2020.

/s/J. Cooper