

House Bill 635 (AS PASSED HOUSE AND SENATE)

By: Representatives Wiedower of the 121st, Frye of the 122nd, Reeves of the 99th, Persinger of the 119th, Franklin of the 160th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 41 of Title 43 of the Official Code of Georgia Annotated, relating to
2 residential and commercial general contractors, so as to revise provisions relating to the State
3 Licensing Board for Residential and Commercial General Contractors; to revise and clarify
4 qualifications for licensure as a residential or commercial general contractor; to revise
5 provisions relating to examination of applicants; to revise provisions relating to the refusal
6 to grant a license, revocation of a license, or other disciplinary action of the board; to provide
7 for related matters; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Chapter 41 of Title 43 of the Official Code of Georgia Annotated, relating to residential and
11 commercial general contractors, is amended by revising Code Section 43-41-3, relating to
12 creation of State Licensing Board for Residential and Commercial General Contractors,
13 membership, divisions, vacancies, qualifications, terms, and meetings, as follows:

14 "43-41-3.

15 (a) There is created the State Licensing Board for Residential and Commercial General
16 Contractors consisting of 15 members appointed by the Governor for five-year terms. The

board shall be assigned to the Secretary of State's office for administrative purposes and shall be under the jurisdiction of the division director and shall operate in accordance with and pursuant to the provisions of Chapter 1 of this title, as applicable. The board shall be composed of two divisions: the residential contractor division, having jurisdiction of and authority over the two subcategories of residential contracting, residential-basic contractors and residential-light commercial contractors, and the commercial general contractor division. Eight members shall be appointed and serve as members of the residential contractor division of the board and seven members shall be appointed and serve as members of the commercial general contractor division of the board. Members shall serve until the expiration of their respective terms and until their successors are appointed and qualified. Vacancies occurring during a term shall be filled by appointment of the Governor for the remainder of the unexpired term and such replacement shall meet the requirements and criteria of selection of the person previously holding the vacant position. To be eligible to serve on the respective divisions of the board, each contractor member shall be licensed in the category to which the member is appointed and shall remain actively involved in the construction contracting business and shall have been so engaged for a period of not less than five consecutive years before the date of appointment in the particular contracting business, as a residential contractor or commercial general contractor, corresponding to the division for which such person is appointed. The position of any appointed member of the board who, during his or her term of appointment, shall cease to meet the qualifications for original appointment shall be immediately vacated. ~~No member of the board shall be appointed to serve more than two full terms.~~

(b) The residential contractor division shall consist of eight members and, except as otherwise expressly stated in this chapter, shall have jurisdiction of and authority over the practice of the two subcategories of residential contracting, residential-basic contractors and residential-light commercial contractors. Six members shall be residential contractors licensed under this chapter. At least two of the residential contractor members shall be

licensed as residential-light commercial contractors; at least two shall be licensed as residential-basic contractors; one shall be a licensed residential contractor whose business predominantly involves remodeling projects; one shall be a licensed residential contractor who constructs at least an average of 20 residences per year; and all ~~must~~ shall be geographically diverse. One member shall ~~be~~ have experience as a public building official and one member shall be a public member. The public member shall have no ties with the residential construction industry and shall represent the interests of the public at large. The member terms on the residential contractor division shall be staggered so that all terms do not expire simultaneously. The residential contractor division shall meet at least once every two months for the purpose of transacting such business as may properly come before it.

(c) The commercial general contractor division shall consist of seven members and, except as otherwise expressly stated in this chapter, shall have jurisdiction of and authority over the practice of commercial general contracting. Five members shall be commercial general contractors licensed under this chapter. At least two of the commercial general contractor members shall be small-volume builders with an annual contracting volume of less than \$10 million and all of whom ~~must~~ shall be geographically diverse. One member shall be a currently licensed or registered architect or engineer and one member shall ~~be~~ have experience as a public building official. The initial member terms on the commercial general contractor division shall be staggered so that all terms do not expire simultaneously. The commercial general contractor division shall meet at least once every two months for the purpose of transacting such business as may properly come before it."

SECTION 2.

Said chapter is further amended in Code Section 43-41-4, relating to chairperson and vice chairperson, meetings and quorums, and assistance from professional licensing boards division, by revising subsection (h) as follows:

"(h) The board shall not take action on any matter specifically delegated to and under the authority and control of the one of its divisions unless ~~at least four~~ a majority of its members from the affected division are present and participating in such action or decision."

SECTION 3.

Said chapter is further amended by revising Code Section 43-41-6, relating to application and appropriate fee, eligibility for licensure as residential-basic contractor, residential-light commercial contractor, or commercial general contractor, examination of qualified applicants, renewal of licenses, and continuing education requirements, as follows:

"43-41-6.

(a) Anyone seeking to be licensed as a residential contractor or as a commercial general contractor in this state shall file an application on a form provided by the residential contractor or commercial general contractor division, respectively, accompanied by an application fee as provided by the board. Such an application may be submitted either by:

(1) An individual person seeking issuance of a license in his or her own name for purposes of engaging in the profession of residential or commercial general contracting in his or her own name or doing business as an individual in a trade name as a sole proprietorship; or

(2) An individual person affiliated by ownership or employment with and acting as a qualifying agent for a business organization seeking to engage in the profession of residential or commercial general contracting in the name of the business organization in accordance with and pursuant to Code Section 43-41-9.

Additionally, all applicants ~~must submit to and~~ shall successfully pass an examination ~~prepared by, prepared for, or~~ approved by the appropriate division, except where an applicant is otherwise qualified for licensure and has satisfied the appropriate division requirements and regulations for licensure pursuant to Code Section 43-41-8 exempting

such applicant from the examination requirement or where the applicant is an individual acting as a qualifying agent for a business organization and has previously obtained and maintained continuously a license issued by the appropriate division, either as an individual doing business in his or her own name or doing business as an individual in a trade name as a sole proprietor or as a qualifying agent for another business organization.

(b) A person shall be eligible for licensure as a residential-basic contractor by the residential contractor division if the person:

(1) Is at least 21 years of age;

(2) Is of a good character and is otherwise qualified as to competency, ability, integrity, and financial responsibility; and

(3) Has at least two years of ~~proven~~ verifiable experience ~~working as or in~~ under the direct employment of a licensed residential contractor, predominantly in with a primary focus on the residential-basic category, or other proven verifiable experience deemed that the division deems to be substantially similar by the division, and in scope and nature, including, but not limited to, experience performing activities, work, or services requiring licensure under Chapter 14 of this title. Such experience shall be verified through an affidavit, executed by the applicant's employer or such other person with knowledge of such experience, attesting under oath that the applicant has such experience.

~~(4) Has had significant responsibility for the successful performance and completion of at least two projects falling within the residential-basic category in the two years immediately preceding application.~~

(c) A person shall be eligible for licensure as a residential-light commercial contractor by the residential-light commercial subdivision if the person:

(1) Is at least 21 years of age;

(2) Is of a good character and is otherwise qualified as to competency, ability, integrity, and financial responsibility; and

(3) Meets eligibility requirements according to one of the following criteria:

(A) Has received a baccalaureate degree from an accredited four-year college or university in the field of engineering, architecture, construction management, building construction, or other field acceptable to the division ~~and has at least one year of proven experience working as or in the employment of a residential contractor, commercial general contractor, or other proven experience deemed substantially similar by the division;~~

(B) Has a combination, equaling at least four years in the aggregate, acceptable to the division of academic credits from any accredited college-level courses in the field of engineering, architecture, construction management, building construction, or other field acceptable to the division and proven verifiable practical experience working as or in the employment of a residential contractor, commercial general contractor, or other proven verifiable experience ~~deemed that the division deems to be~~ substantially similar ~~by the division equaling at least four years in the aggregate~~ in nature and in scope, including, but not limited to, performing activities, work, or services requiring licensure under Chapter 14 of this title. For purposes of this subparagraph, all university, college, junior college, or community college-level courses shall be considered accredited college-level courses and any experience shall be verified through an affidavit, executed by the applicant's employer or such other person with knowledge of such experience, attesting under oath that the applicant has such experience; or

(C) Has a total of at least four years of proven verifiable active experience working in a construction industry related field, at least two of which shall have been as or in the employment of a residential contractor, or other proven verifiable experience deemed acceptable by the division. Such experience shall be verified through an affidavit, executed by the applicant's employer or such other person with knowledge of such experience, attesting under oath that the applicant has such experience; and

~~(4) Has had significant responsibility for the successful performance and completion of at least two projects falling within the residence-light commercial category in the four years immediately preceding application.~~

(d) A person shall be eligible for licensure as a commercial general contractor by the commercial general contractor division if the person:

(1) Is at least 21 years of age;

(2) Is of a good character and is otherwise qualified as to competency, ability, integrity, and financial responsibility; and

(3) Meets eligibility requirements according to one of the following criteria:

(A) Has received a baccalaureate degree from an accredited four-year college or university in the field of engineering, architecture, construction management, building construction, or other field acceptable to the division ~~and has at least one year of proven experience working as or in the employment of a commercial general contractor or other proven experience deemed substantially similar by the division;~~

(B) Has a combination, equaling at least four years in the aggregate, acceptable to the division of academic credits from any accredited college-level courses in the field of engineering, architecture, construction management, building construction, or other field acceptable to the division and proven verifiable practical experience working as or in the employment of a commercial general contractor or other proven verifiable experience ~~deemed that the division deems to be~~ substantially similar ~~by the division equaling at least four years in the aggregate~~ in nature and in scope, including, but not limited to, performing activities, work, or services requiring licensure under Chapter 14 of this title. For purposes of this subparagraph, all university, college, junior college, or community college-level courses shall be considered accredited college-level courses and any experience shall be verified through an affidavit, executed by the applicant's employer or such other person with knowledge of such experience, attesting under oath that the applicant has such experience; or

(C) Has a total of at least four years of proven active experience working in a construction industry related field, at least two of which shall have been as or in the employment of a commercial general contractor, or other proven experience deemed acceptable by the division and at least one of which shall have been in or relating to administration, marketing, accounting, estimating, drafting, engineering, supervision, or project management, or functions deemed substantially similar by the division. Such experience shall be verified through an affidavit, executed by the applicant's employer or such other person with knowledge of such experience, attesting under oath that the applicant has such experience.

(e)(1) ~~Before being entitled to take an examination or otherwise qualify~~ qualifying for issuance of a license, an applicant ~~must~~ shall show to the satisfaction of the residential contractor division or commercial general contractor division from the application and proofs furnished that the applicant is possessed of a good character and is otherwise qualified as to competency, ability, and integrity. The application shall include a list of all persons, entities, and business organizations that the applicant will be affiliated with as a licensed residential contractor or commercial general contractor, whether by way of employment, ownership, serving as an owner or director, partnership, or membership or by serving as a qualifying agent under this chapter. All applicants shall also provide their social security numbers, if applying as an individual, or the federal taxpayer identification numbers of any business organization for which the applicant is seeking licensure as a qualifying agent. Applicants for a commercial general contractor's license shall also provide suitable verification of tax payments in a form and manner and for the duration prescribed by the commercial general contractor division; provided, however, that, where the application is seeking license as a qualifying agent of a business organization, such tax verification and information shall relate and pertain to that business organization.

(2) ~~Before qualifying for issuance of a license, but not before being entitled to take an examination,~~ an applicant ~~must~~ shall show to the satisfaction of the appropriate division

that the applicant is qualified as to financial responsibility. Applicants for a commercial general contractor license shall provide proof of a minimum net worth in an amount specified by the commercial general contractor division. All applicants shall provide proof of general liability insurance in an amount specified by the appropriate division and proof of workers' compensation insurance as required by the laws of this state. If the applicant is submitted as a person seeking to act as a qualifying agent of a business organization, then such proof shall pertain to that business organization rather than the individual applicant, subject to the limitations set forth in Code Section 43-41-9. A certificate by the insurer or other appropriate evidence of insurance coverages shall be maintained with the appropriate division and shall be a condition of renewal.

(3) The decision of the appropriate division as to the qualifications of applicants shall, in the absence of fraud or willful or wanton misconduct, be conclusive.

(4) A licensee, on his or her own behalf or where acting as a qualifying agent on behalf of the business organization so qualified, ~~must~~ shall notify the appropriate division in writing within 30 days of any changes in the information required to be on file with such division, including, but not limited to, the licensee's and, if the licensee is acting as a qualifying agent for any business organization, such business organization's current mailing address, insurance coverages, and affiliated entities.

(f)(1) The residential contractor division and the commercial general contractor division shall each ~~conduct or cause to be conducted an~~ approve an appropriate examination of which all ~~qualified~~ applicants, except those exempted from the examination requirement pursuant to Code Section 43-41-8, shall pass in order to be eligible for licensure under this chapter.

(2) The residential contractor division shall ~~conduct or cause to be conducted~~ approve separate examinations for applicants for residential-basic and residential-light commercial licenses for the purpose of determining a particular applicant's ability to make a practical application of his or her knowledge of the profession of residential contracting in the

particular subcategory for which a license is sought; the applicant's qualifications in reading plans and specifications; his or her knowledge of building codes, estimating costs, construction, ethics, contracting, and other similar matters pertaining to such residential contracting business; his or her knowledge as to the responsibilities of a residential contractor to the public and to owners, subcontractors, and suppliers; and his or her knowledge of the requirements of the laws of this state relating to residential-basic and residential-light commercial contractors, construction, workers' compensation, insurance, and liens.

(3) The commercial general contractor division shall ~~conduct or cause to be conducted~~ approve an examination to ascertain the particular applicant's ability to make a practical application of his or her knowledge of the profession of commercial general contracting; the applicant's qualifications in reading plans and specifications; his or her knowledge of building codes, estimating costs, construction, ethics, contracting, and other similar matters pertaining to the commercial general contracting business; his or her knowledge as to the responsibilities of a commercial general contractor to the public and to owners, subcontractors, and suppliers; and his or her knowledge of the requirements of the laws of this state relating to commercial general contractors, construction, workers' compensation, insurance, surety bonding, and liens.

(4) If the results of the applicant's examination are satisfactory to the appropriate division, or he or she is exempted from the examination requirement ~~under~~ pursuant to Code Section 43-41-8, and if he or she and any affiliated business organization has met the other qualifications and requirements set forth in this Code section, then the appropriate division shall issue to the applicant a license to engage in business as a residential or commercial general contractor in this state, as provided in such license, in his or her own name as a sole proprietor or as a qualifying agent for the affiliated business organization and in the name of such business organization, pursuant to and in accordance with the requirements set forth in Code Section 43-41-9. A residential

contracting license shall indicate for which of the two subcategories, residential-basic or residential-light commercial, the licensee is qualified.

(g) Any otherwise qualified applicant failing ~~this~~ any examination required under this Code section may be reexamined at any regularly scheduled examination ~~within one year of the date of original application upon payment of a reexamination fee, in an amount to be set by the board;~~ without need to resubmit an application, unless any information set forth in the previously submitted application is no longer accurate or complete. ~~Anyone requesting to take the examination a fourth or subsequent time shall wait at least one calendar year after the date of original application and shall submit an application with the appropriate examination fees.~~

(h) A residential contractor license, indicating whether relating to the residential-basic or residential-light commercial category, or commercial general contractor license shall be issued to an applicant who successfully completes the respective requirements therefor upon the payment of fees prescribed by the board.

(i) Such licenses shall be renewable biennially. Licenses may be renewed subsequent to their expiration within six months of the date of expiration by submitting a renewal as prescribed by the board and paying a late renewal fee as determined by the board. After six months ~~has~~ have elapsed from the date of expiration, such license may be reinstated in accordance with the rules and regulations of the board.

(j) The division director shall give advance notice to each person holding a license under this chapter of the date of the expiration of the certificate of registration and the amount of the fee required for renewal at least one month prior to the expiration date, but the failure to receive such notice shall not avoid the expiration of any license not renewed in accordance with this Code section.

(k) As a condition of renewal, the appropriate division may require licensees to complete division approved continuing education of not more than three hours annually for a

283 residential-basic contractor license, six hours annually for a residential-light commercial
284 contractor license, and eight hours annually for a commercial general contractor license."

285 **SECTION 4.**

286 Said chapter is further amended in Code Section 43-41-16, relating to grounds for revocation
287 of license, authorized action by division in event of wrongdoing, interest and penalties, and
288 continuing education as requirement for resumption of standing, by revising subsection (a)
289 as follows:

290 "(a) The board shall have the authority to refuse to grant a license to an applicant or to
291 revoke the license of a person licensed by the board or to discipline a person licensed by
292 the board upon a finding by a majority of the board that the applicant or licensee has
293 committed any of the following acts:

294 (1) Obtaining a license by fraud or misrepresentation or otherwise knowingly giving
295 false or forged evidence to the board or its divisions;

296 (2) Being convicted or found guilty of or entering a plea of guilty or nolo contendere to
297 a criminal act constituting a felony in any jurisdiction which directly relates to the
298 practice of residential or commercial general contracting or the ability to practice
299 contracting;

300 (3) Performing any act which assists a person or entity in the prohibited unlicensed
301 practice of contracting if the licensee knows or has reasonable grounds to know that the
302 person or entity is unlicensed;

303 (4) Knowingly combining or conspiring with an unlicensed person by allowing his or her
304 license to be used with the intent to evade the provisions of this chapter. When an
305 individual license holder allows his or her license to be used to qualify one or more
306 business organizations, including where such qualifying agent for a person engaged in
307 general contracting does not actually possess and exercise the power and authority
308 required of a qualifying agent under ~~paragraph (7) of Code Section 43-41-2 and Code~~

~~Section~~ Code Sections 43-41-2 and 43-41-9, such act constitutes prima-facie evidence of an intent to evade the provisions of this chapter;

(5) Failing in any material respect to comply with the provisions of this chapter or violating a rule, regulation, or lawful order of the board or its divisions;

(6) Abandoning a construction project in which the contractor who is the individual license holder or a business organization for whom the license holder is a qualifying agent is engaged or under contract as a residential or commercial general contractor. A project may be presumed abandoned after 90 days if the contractor has ceased work on or terminated performance on the project without just cause and without proper notification to the owner, including the reason for the termination, cessation, or abandonment;

(7) Signing a statement with respect to a project or contract falsely indicating that the work is bonded; knowingly and falsely indicating by written statement issued to the owner that payment has been made for all subcontracted work, labor, and materials and for all materials furnished and installed which statement is reasonably relied upon and actually results in a financial loss to the owner; or falsely indicating that workers' compensation and general liability insurance are provided;

(8) Committing fraud or deceit in the practice of contracting, including falsely advertising, representing, or holding himself or herself or an affiliated business organization out as having a valid and current license under this chapter;

(9) Committing gross negligence, repeated or persistent negligence, or negligence resulting in a significant danger to life or property;

(10) Proceeding on any job without obtaining applicable local building permits and inspections;

(11) Using or attempting to use a license that has expired or has been suspended or revoked;

(12) Knowingly or intentionally engaging any subcontractor to perform work within the scope of the general or residential construction contract which requires a license under Chapter 14 of this title who does not possess a current and valid license for such work;
or

(13) Failing to satisfy within a reasonable time the terms of a final civil judgment obtained against the licensee or the business organization qualified by the licensee relating to the practice of the licensee's profession; or

(14) Knowingly entering into a contractual arrangement, whether oral or written, for or otherwise permitting the use of his or her license issued under this chapter by an individual who is not licensed in accordance with this chapter or by a business entity that has not been authorized under the provisions of this chapter to lawfully engage in contracting or perform the functions of a contractor."

SECTION 5.

All laws and parts of laws in conflict with this Act are repealed.