

2016 Regular Session

HOUSE BILL NO. 643

BY REPRESENTATIVE CARMODY

CONTRACTORS/CONSTRUCTION: Provides for the regulation of contractors

1 AN ACT

2 To amend and reenact R.S. 37:2150.1(2), (4)(a), (4.1), and (11), 2152(B)(3), (4)(b) and (c),
3 2154(A)(2) and (5), 2155(A) through (D), 2156(G), 2156.1(A)(introductory
4 paragraph), (C), (D)(1)(introductory paragraph) and (c) and (2), 2157(A)
5 (introductory paragraph), 2159(C), 2162(L), 2165(A), 2167, 2170(A)(2), 2171.1,
6 2171.2(B), 2175.1(A)(introductory paragraph), (1), (2), (4)(a), (7), (B), and (D),
7 2175.3, 2175.4, and 2175.6, to enact R.S. 37:2150.1(14) through (16), 2156.1(D)(4)
8 and (5) and (M)(4), 2158(A)(12), 2167.2, 2167.3, 2170(A)(4) through (7), and to
9 repeal R.S. 37:2150.1(7) and (8), 2171, 2175.2, and 2175.5, relative to the regulation
10 of contractors; to provide for definitions; to regulate meetings of the State Licensing
11 Board for Contractors; to provide for members of the board; to regulate
12 recordkeeping of the board; to provide for the Residential Contractors
13 Subcommittee; to regulate licensing requirements and procedures; to provide for
14 license classifications; to regulate procedures for the denial or renewal of licenses;
15 to provide for exceptions; to regulate contract requirements; to provide for prohibited
16 acts; to provide for violations; to provide for penalties; to provide for unlicensed
17 contractors; and to provide for related matters.

18 Be it enacted by the Legislature of Louisiana:

19 Section 1. R.S. 37:2150.1(2), (4)(a), (4.1), and (11), 2152(B)(3), (4)(b) and (c),
20 2154(A)(2) and (5), 2155(A) through (D), 2156(G), 2156.1(A)(introductory paragraph), (C),
21 (D)(1)(introductory paragraph) and (c) and (2), 2157(A) (introductory paragraph), 2159(C),

1 2162(L), 2165(A), 2167, 2170(A)(2), 2171.1, 2171.2(B), 2175.1(A)(introductory
2 paragraph), (1), (2), (4)(a), (7), (B), and (D), 2175.3, 2175.4, and 2175.6 are hereby amended
3 and reenacted and R.S. 37:2150.1(14) through (16), 2156.1(D)(4) and (5) and (M)(4),
4 2158(A)(12), 2167.2, 2167.3, 2170(A)(4) through (7) are enacted to read as follows:

5 §2150.1. Definitions

6 As used in this Chapter, the following words and phrases shall be defined as
7 follows:

8 * * *

9 (2) "Commercial purposes" means any construction project except
10 residential structures with four or less dwelling units. ~~other than residential homes,~~
11 ~~a single residential duplex, a single residential triplex, or a single residential~~
12 ~~fourplex. A construction project consisting of residential homes where the contractor~~
13 ~~has a single contract for the construction of more than two homes within the same~~
14 ~~subdivision shall be deemed a commercial undertaking.~~

15 * * *

16 (4)(a) "Contractor" means any person who undertakes to, attempts to, or
17 submits a price or bid or offers to construct, supervise, superintend, oversee, direct,
18 or in any manner assume charge of the construction, alteration, repair, improvement,
19 movement, demolition, putting up, tearing down, or furnishing labor, or furnishing
20 labor together with material or equipment, or installing the same for any building,
21 highway, road, railroad, sewer, grading, excavation, pipeline, public utility structure,
22 project development, housing, or housing development, improvement, or any other
23 construction undertaking for which the entire cost of same is fifty thousand dollars
24 or more when such property is to be used for commercial purposes. ~~other than a~~
25 ~~single residential duplex, a single residential triplex, or a single residential fourplex.~~
26 ~~A construction project which consists of construction of more than two single~~
27 ~~residential homes, or more than one single residential duplex, triplex, or fourplex,~~
28 ~~shall be deemed to be a commercial undertaking.~~

29 * * *

1 (4.1) "Electrical contractor" means any person who undertakes to, attempts
2 to, or submits a price or bid or offers to construct, supervise, superintend, oversee,
3 direct, or in any manner assume charge of the construction, alteration, repair,
4 improvement, movement, demolition, putting up, tearing down, or furnishing labor
5 together with material and equipment, or installing the same for the wiring, fixtures,
6 or appliances for the supply of electricity to, or use of electricity within, any
7 residential, commercial, or other project, when the cost of the undertaking exceeds
8 the sum of ten thousand dollars. This Paragraph shall not be deemed or construed
9 to limit the authority of a contractor, general contractor, or residential building
10 contractor, as those terms are defined in this Section, nor to require such individuals
11 to become an electrical contractor.

* * *

13 (11) "Residential ~~building~~ contractor" means any corporation, partnership,
14 or individual who performs residential contracting. ~~constructs a fixed building or~~
15 ~~structure for sale for use by another as a residence or who, for a price, commission,~~
16 ~~fee, wage, or other compensation, undertakes or offers to undertake the construction~~
17 ~~or superintending of the construction of any building or structure which is not more~~
18 ~~than three floors in height, to be used by another as a residence, when the cost of the~~
19 ~~undertaking exceeds seventy-five thousand dollars.~~ The term "residential ~~building~~
20 contractor" includes all contractors, subcontractors, architects, and engineers who
21 receive an additional fee for the employment or direction of labor, or any other work
22 beyond the normal architectural or engineering services. "Residential ~~building~~
23 contractor" ~~also means any person performing home improvement contracting as~~
24 ~~provided for in Paragraph (7) of this Section when the cost of the undertaking~~
25 ~~exceeds seventy-five thousand dollars.~~ It shall not include the manufactured housing
26 industry or those persons engaged in building residential structures that are mounted
27 on metal chassis and wheels.

* * *

1 (4)

2 * * *

3 (b) The members shall, by a majority vote, designate a member as vice
4 chairman, ~~and a member as secretary-treasurer~~ secretary, and a member as treasurer.

5 (c) The ~~secretary-treasurer~~ treasurer and any administrative employee who
6 shall handle the funds of the board shall furnish bond, in such amount as is fixed by
7 the board, of a surety company qualified to do and doing business in the state of
8 Louisiana. The bond shall be conditioned upon the faithful performance of the duties
9 of office and of the proper accounting of funds coming into his possession.

10 * * *

11 §2154. Meetings; compensation; quorum; license application and issuance
12 procedure

13 A.

14 * * *

15 (2) The board may receive applications for licenses under this Chapter at any
16 time. Upon initial application, the license of a contractor domiciled in the state of
17 Louisiana shall be issued after all requirements have been met and approved by the
18 board ~~at its next regularly scheduled meeting.~~ Upon the initial application of a
19 contractor domiciled outside of the state of Louisiana, except as provided herein, a
20 period of at least sixty days ~~must~~ shall elapse between the date the application is filed
21 and the license is issued. The executive director shall compile a list of all applicants
22 for licensure that are to be considered at a board meeting and mail such list to each
23 board member at least ten days prior to the meeting. The executive director shall
24 certify that the list contains only the names of applicants who have fulfilled all
25 licensure requirements and the board shall only consider applications on such list.

26 * * *

27 (5) ~~All meetings~~ Meetings of the board shall be held in the city of Baton
28 Rouge, Louisiana, or other locations determined by the board and properly noticed
29 as a public meeting place, ~~unless otherwise provided for in the bylaws of the board.~~

1 Before a special meeting may be held, notice thereof stating time, place, and purpose
2 of ~~said~~ the meeting shall be sent by the chairman or vice chairman of the board by
3 ~~registered~~ certified mail or ~~telegram~~ email to the members thereof, addressed to their
4 mailing addresses on file with the board, at least three days before the date of the
5 meeting. No board meeting shall be recessed from one calendar day to another.

6 * * *

7 §2155. Books and records; evidence; reports

8 A. The ~~secretary-treasurer~~ treasurer shall be responsible for receiving and
9 accounting for all money derived from the operation of this Chapter. He shall
10 register all applicants for licenses, showing for each the date of application, the
11 name, qualifications, place of business, place of residence, and whether license was
12 granted or refused and the date on which such license was granted or refused.

13 B. The book and register of this board shall be prima facie evidence of all
14 matters recorded therein; and a certified copy of such book or register, or any part
15 thereof, attested by the ~~secretary-treasurer~~ secretary, shall be received in evidence
16 in all courts of this state in lieu of the original.

17 C. The ~~secretary-treasurer~~ administrator ~~thereof~~ shall keep a roster, showing
18 the names and places of business of all licensed contractors, ~~and shall file same with~~
19 ~~the secretary of state on or before the first day of March of each year.~~ The roster
20 shall be maintained at the office of the board and on its official website.

21 D. The ~~secretary-treasurer~~ secretary of the board shall keep full and complete
22 minutes of each board meeting whether regular or special, including full information
23 as to each application for license considered and the board's action thereon as well
24 as all expenditures of the board that are approved. These board minutes shall be
25 typed and attested to by the ~~secretary-treasurer~~ secretary and copies thereof shall be
26 made available to each board member and to the public upon adoption of the minutes
27 at the next scheduled meeting of the board. ~~within a period of twenty-one days after~~
28 ~~the adjournment of said meeting.~~

29 * * *

1 §2156. Unexpired licenses; fees; renewals

2 * * *

3 G. No license shall be issued for the subclassification of asbestos removal
4 and abatement under the major classification of hazardous materials as provided in
5 R.S. 37:2156.2(VIII) until the applicant furnishes satisfactory evidence that he or his
6 qualifying party has received ~~certification~~ approval from the Department of
7 Environmental Quality to perform asbestos removal and abatement work.

8 §2156.1. Requirements for issuance of a license

9 A. All persons who desire to become licensed as a contractor, electrical
10 contractor, or mechanical contractor shall make application to the board on a form
11 adopted by the board and shall state the classification of work the applicant desires
12 to perform from a list of major classifications as follows:

13 * * *

14 C. ~~The applicant~~ Any person who desires to become licensed as a contractor,
15 electrical contractor, or mechanical contractor shall furnish the board with a financial
16 statement, current to within twelve months of the date of filing, prepared by an
17 independent auditor and signed by the applicant and auditor before a notary public,
18 stating the assets of the applicant, ~~to be used by the board to determine the financial~~
19 ~~responsibility of the applicant to perform work on a construction undertaking, the~~
20 ~~entire cost of which is fifty thousand dollars or more.~~ Such assets shall include a net
21 worth of at least ten thousand dollars. An applicant without the net worth required
22 herein may furnish the board a bond, letter of credit, or other security acceptable to
23 the board in the amount of such net worth requirement plus the amount of the
24 applicant's negative net worth if any, and the furnishing of such bond, letter of credit,
25 or other security shall be deemed satisfaction of such net worth requirement for all
26 purposes. ~~The financial statement and any information contained therein, as well as~~
27 ~~any other financial information required to be submitted by a contractor, shall be~~
28 ~~confidential and not subject to the provisions of R.S. 44:1 through 37, inclusive.~~
29 Nothing contained in this Subsection shall be construed to require a licensed

1 contractor to provide a financial statement in connection with the renewal of an
2 existing license.

3 D.(1) The applicant for licensure shall designate a qualifying party who shall
4 be the legal representative for the contractor relative to the provisions of this
5 Chapter. The designated qualifying party shall complete an application supplied by
6 the board and pass any examination required by the State Licensing Board of
7 Contractors. The board may deny approval of the qualifying party for good cause,
8 which may include the ability of the proposed principal owner or owners, principal
9 shareholder or shareholders, or qualifying party to engage in the business of
10 contracting as demonstrated by his prior contracting business experience. Evidence
11 which may be considered by the board shall be limited to any legal proceedings
12 against the qualifying party or businesses where the qualifying party was in a
13 position of control at the time a problem arose and the ultimate disposition of such
14 proceedings, any financial history of bankruptcies, unpaid judgments, insolvencies,
15 or any similar evidence. When the qualifying party terminates employment with the
16 licensee, the board shall be notified in writing within thirty days of the disassociation
17 and another qualifying party must qualify within sixty days. The qualifying party or
18 parties are:

19 * * *

20 (c) Any stockholder of a corporation who was an original incorporator or
21 original stockholder as shown in the articles of incorporation: or any member or
22 manager who was an original organizer of a limited liability company as shown in
23 the articles of organization.

24 (2) Upon good showing, the board may ~~waive~~ exempt any qualifying party
25 from the required examinations for any person.

26 * * *

27 (4) No person shall provide copies of any portion of the examination
28 contents for any examination given by or from the board to any individual for the

1 purpose of assisting an examinee to subvert or attempt to subvert an examination
2 given by or for the board.

3 (5) Anyone found in violation of this Subsection shall be ineligible to serve
4 as a qualifying party for a licensee for a period of one year.

5 * * *

6 M. The board shall waive the examination required and grant a mechanical
7 contractor or an electrical contractor license to any person working in the electrical
8 or mechanical construction industry who meets at least one of the following
9 requirements:

10 * * *

11 (4) Any waiver authorized pursuant to this Subsection shall be issued prior
12 to August 1, 2016.

13 * * *

14 §2157. Exemptions

15 A. There are excepted from the provisions of this ~~Chapter~~ Part:

16 * * *

17 §2158. Revocation, suspension, and renewal of licenses; issuance of cease and
18 desist orders; debarment; criminal penalty

19 A. The board may revoke any license issued hereunder, or suspend the right
20 of the licensee to use such license, or refuse to renew any such license, or issue cease
21 and desist orders to stop work, or debar any person or licensee, for any of the
22 following causes:

23 * * *

24 (12) Failing to notify the board of any change in corporate name, trade name,
25 or address of the license holder.

26 * * *

27 §2159. Classification; bidding and performing work within a classification

28 * * *

1 subcommittee shall be appointed to represent congressional district one, one member
2 to represent congressional districts four and five, one member to represent
3 congressional district three, one member to represent congressional district two, and
4 one member to represent congressional district six.

5 * * *

6 §2167. ~~Licensure required; qualifications; examination; waivers~~ Requirements for
7 issuance of residential contractor license

8 A. ~~No person shall work as a residential building contractor, as defined in this~~
9 ~~Chapter, in this state unless he holds an active license in accordance with the~~
10 ~~provisions of this Chapter.~~ Any person who desires to become licensed as a
11 residential contractor shall meet the following requirements:

12 (1) Make an application to the board on a form adopted by the board.

13 (2) Submit all of the following to the board:

14 B. ~~In order to obtain a license as a residential building contractor an~~
15 ~~applicant shall demonstrate to the subcommittee that he:~~

16 (1) (a) ~~Has submitted certificates evidencing~~ Acceptable proof of workers'
17 compensation coverage in compliance with Title 23 of the Louisiana Revised
18 Statutes of 1950, and general liability insurance in a minimum amount of one
19 hundred thousand dollars or liability protection provided by a liability trust fund as
20 authorized by R.S. 22:46(9)(d) in a minimum amount of one hundred thousand
21 dollars.

22 (b) A financial statement, current to within twelve months of the date of
23 filing, prepared by an independent auditor and signed by the applicant and auditor
24 before a notary public, stating the assets of the applicant. The assets shall include
25 a net worth of at least ten thousand dollars. An applicant without the net worth
26 required herein may furnish the board with a bond, letter of credit, or other security
27 acceptable to the board in the amount of the net worth requirements plus the amount
28 of the applicant's negative net worth, if any, and the furnishing of the bond, letter of

1 credit, or other security shall be deemed as satisfaction of the net worth requirements
2 for all purposes.

3 ~~(2) (3) Has passed Acceptable proof of passing any applicable trade the~~
4 ~~examination administered required by the State Licensing Board for Contractors.~~

5 ~~(3) Has submitted a financial statement prepared by an independent auditor~~
6 ~~and signed by the applicant and auditor before a notary public, stating that the~~
7 ~~applicant has a net worth of at least ten thousand dollars.~~

8 ~~C. The State Licensing Board for Contractors shall administer an~~
9 ~~examination for licensure of residential building contractors at such times and places~~
10 ~~as it shall determine in accordance with the testing procedures of the board. The~~
11 ~~examination shall test the applicant's knowledge of such subjects as the~~
12 ~~subcommittee may consider useful in determining the applicant's fitness to be a~~
13 ~~licensed residential building contractor. The subcommittee shall determine the~~
14 ~~criteria for satisfactory performance.~~

15 ~~D. B. The subcommittee shall waive may exempt the examination and grant~~
16 ~~a residential building contractor's license to any person working in the residential~~
17 ~~building industry who meets at least one of the following requirements: holds a~~
18 ~~builder's construction license issued by the board prior to February 1, 1996, with the~~
19 ~~classification of building construction.~~

20 ~~(1) Holds a builder construction license issued by the State Licensing Board~~
21 ~~for Contractors prior to February 1, 1996.~~

22 ~~(2)-(4) Terminated by Acts 1997, No. 925, §1, eff. Jan. 1, 1998.~~

23 ~~E. The provisions of Paragraphs D(2), (3), and (4) shall terminate on January~~
24 ~~1, 1998.~~

25 * * *

26 §2167.2. Residential classification; bidding and performing work within a
27 classification

28 A.(1) The board, prior to issuing a license to any residential contractor, shall
29 set forth the classification of the residential contractor on the license according to the

1 classification requested by the contractor when the contractor has completed all of
2 the requirements imposed by the board.

3 (2) The board may set forth, by rule, additional specialty classifications and
4 establish the requirements to obtain that license.

5 B. The licensee shall be permitted to bid or perform any type of work
6 included in the classification of the license he was issued.

7 C.(1) The licensee may apply for and receive additions to or changes in its
8 classification by making an application, successfully completing the written
9 examination, and paying the required fees for those additional classifications.

10 (2) Additions or changes to an existing license shall become effective after
11 completion of the requirements imposed by Subsection B of this Section and upon
12 board approval.

13 §2167.3. Denial of licensure or renewal

14 The subcommittee may deny licensure or renewal of a license that conforms
15 to the requirements of R.S. 37:2167 upon a finding by the subcommittee that the
16 applicant has committed one or more of the following:

17 (1) Made a material omission or misrepresentation of fact on its application
18 for registration or renewal.

19 (2) Failed to pay either the required registration fee or renewal fee.

20 (3) Failed to perform contracts or has performed contracts in an
21 unworkmanlike manner or has failed to complete contracts with no good cause.

22 (4) Engaged in fraud or bad faith with respect to contracts.

23 * * *

24 §2170. Exceptions

25 A. There are excepted from the provisions of this Chapter:

26 * * *

1 cancel, any payments made by you under the contract, except for certain emergency work
2 already performed by the contractor, shall be returned to you within ten business days
3 following receipt by the contractor of your cancellation notice.

4 I HEREBY CANCEL THIS TRANSACTION

5 _____
6 (Date)
7 _____

8 (Insured's Signature)"

9 B. At the time of signing, the owner shall be furnished with a copy of the
10 contract signed by both the ~~home improvement~~ residential contractor and the owner.
11 No work shall begin prior to the signing of the contract and transmittal to the owner
12 of a copy of the contract.

13 * * *

14 D.(1) A person who has entered into a written contract with a ~~home~~
15 ~~improvement~~ residential contractor to provide goods or services in connection with
16 the repair or replacement of a roof system to be paid from the proceeds of a property
17 or casualty insurance policy may cancel the contract within seventy-two hours after
18 the insured party has been notified by the insurer that all or any part of the claim has
19 been denied. Cancellation shall be evidenced by the insured party giving written
20 notice of cancellation to the ~~home improvement~~ residential contractor at the address
21 stated in the contract. Notice of cancellation, if given by mail, shall be by certified
22 mail, return receipt requested, and shall be effective upon deposit into the United
23 States mail, postage prepaid, and properly addressed to the ~~home improvement~~
24 residential contractor. Notice of cancellation need not take a particular form and shall
25 be sufficient if it indicates, by any form of written expression, the intention of the
26 insured party not to be bound by the contract.

27 (2) Within ten days after a contract referred to in this Subsection has been
28 cancelled, the ~~home improvement~~ residential contractor shall tender to the owner or
29 possessor of the residential real estate any payments, partial payments, or deposits

1 made by the insured party and any note or other evidence of indebtedness. If,
2 however, the ~~home improvement~~ residential contractor has performed any
3 emergency services, acknowledged by the insured in writing to be necessary to
4 prevent damage to the premises, the home improvement contractor shall be entitled
5 to the reasonable value of such services.

6 * * *

7 §2175.3. ~~Home improvement~~ Residential contracting; prohibited acts; violations

8 A. The following acts are prohibited by persons performing ~~home~~
9 improvement residential contracting services:

10 (1)(a) ~~Operating without a certificate of registration issued by the~~
11 subcommittee Working as a residential contractor, as defined in this Chapter, in this
12 state without possession of an active license in accordance with the provisions of this
13 Chapter.

14 (b) Any home improvement contractor license holder who possesses a
15 certification of registration from the subcommittee as of August 1, 2016, shall be
16 entitled to complete any preexisting contract it has entered into in excess of seven
17 thousand five hundred dollars without having to obtain a residential contractor
18 license as provided for in this Chapter. However, the home improvement contractor
19 shall be required to obtain a residential contractor's license prior to bidding or
20 entering into any contracts in excess of seven thousand five hundred dollars after
21 August 1, 2016.

22 (2) Abandoning or failing to perform, without justification, any contract or
23 project engaged in or undertaken by a ~~registered home improvement~~ licensed
24 residential contractor, or deviating from or disregarding plans or specifications in
25 any material respect without the consent of the owner.

26 (3) Failing to credit the owner any payment they have made to the ~~home~~
27 improvement residential contractor in connection with a ~~home improvement~~
28 residential contracting ~~transaction~~ services.

1 (4) Making any material misrepresentation in the procurement of a contract
2 or making any false promise likely to influence, persuade, or induce the procurement
3 of a contract.

4 (5) ~~Violation~~ Violating of the applicable building code of the state or
5 municipality.

6 (6) Failing to notify the subcommittee of any change of corporate name,
7 trade name or address, ~~or conducting a home improvement contracting business in~~
8 ~~any name other than the one in~~ in which the ~~home improvement~~ residential
9 contractor is registered.

10 (7) Performing residential contracting services in any name other than the
11 one in which the residential contractor is licensed.

12 (8) Failing to pay for materials or services rendered in connection with his
13 operating as a ~~home improvement~~ residential contractor where he has received
14 sufficient funds as payment for the particular construction work, project, or operation
15 for which the services or material were rendered or purchased.

16 (9) Making a false representation that the person is a state licensed general
17 contractor.

18 (9) ~~Failing to possess any insurance required by federal law.~~

19 (10) Advertising or promising to pay or rebate all or any portion of an
20 applicable insurance deductible as an inducement to the sale of goods or services in
21 connection with the repair or replacement of a roof system. For the purposes of this
22 Section, a promise to pay or rebate the insurance deductible shall include granting
23 any allowance or offering any discount against the fees to be charged or paying the
24 insured party any form of compensation for any reason, including but not limited to
25 permitting the ~~home improvement~~ residential contractor to display a sign or any
26 other type of advertisement at the insured party's premises, or paying an insured
27 party for providing a letter of referral or recommendation. If a ~~home improvement~~
28 residential contractor violates this Paragraph:

1 (a) The insurer to whom the insured party tendered the claim shall not be
2 obligated to consider the estimate prepared by the ~~home improvement~~ residential
3 contractor.

4 (b) The insured party or the applicable insurer may bring an action against
5 the ~~home improvement~~ residential contractor in a court of competent jurisdiction for
6 damages sustained as a result of the ~~home improvement~~ residential contractor's
7 violation.

8 ~~(11) Failing to obtain any insurance required by federal law.~~

9 B.~~(1)~~ iolations of this Section shall subject the violator to the administrative
10 sanctions as prescribed in this Part.

11 ~~(2) A violation of Paragraph (A)(10) of this Section shall constitute a~~
12 ~~prohibited practice under the Unfair Trade Practices and Consumer Protection Law,~~
13 ~~R.S. 51:1401 et seq., and shall be subject to the enforcement provisions of that~~
14 ~~Chapter.~~

15 §2175.4. ~~Home improvement~~ Residential contracting; violations; administrative
16 civil penalties

17 A. If the subcommittee determines that any ~~registrant is liable for violation~~
18 residential contractor has violated of any of the provisions contained in this Part, the
19 subcommittee may suspend the ~~registrant's certificate of registration~~ residential
20 contractor's license for such period of time as shall be determined by the
21 subcommittee, revoke the ~~registrant's certificate of registration~~ residential
22 contractor's license, or reprimand the ~~registrant~~ residential contractor.

23 B.(1) ~~The subcommittee may assess an administrative penalty not to exceed~~
24 ~~one hundred dollars or twenty-five percent of the total contract price, whichever is~~
25 ~~greater, payable within thirty days of their order, for each violation of any of the~~
26 ~~provisions of this Part, committed by the home improvement contractor who is~~
27 ~~registered or who is required to be registered, plus any administrative costs incurred~~
28 ~~by the subcommittee.~~ Any licensed residential contractor who violates any
29 provisions of this Part shall, after notice and a hearing, be liable to the board for a

1 fine not to exceed one thousand dollars plus costs and attorney fees for each offense.

2 If the board brings an action against a person pursuant to this Section and fails to

3 prove its case, then it shall be liable to the licensee for the payment of his reasonable

4 litigation expenses as defined in R.S. 49:965.1(D)(1).

5 (2) Any residential contractor who is not properly licensed and who violates

6 any provisions of this Part shall, after notice and a hearing, be liable to the board for

7 a fine not to exceed ten percent of the total cost of the project plus any costs and

8 attorney fees for each offense.

9 C. In determining whether to impose an administrative penalty, the
10 ~~administrator~~ subcommittee shall consider the seriousness of the violation, the effect
11 of the violation on the complainant, any good faith on the part of the ~~home~~
12 ~~improvement~~ residential contractor, and the ~~home-improvement~~ residential
13 contractor's history of previous violations.

14 §2175.6. ~~Home-improvement~~ Residential contracting; claims of ~~unregistered~~
15 unlicensed persons

16 ~~No home-improvement~~ A residential contractor who ~~fails to obtain a~~
17 ~~certificate of registration as provided for in this Part~~ is not properly licensed shall not
18 be entitled to file a statement of claim or a statement of lien or privilege with respect
19 to monetary sums allegedly owed under any contract, whether express, implied, or
20 otherwise, when any provision of this Part Chapter requires that the ~~home~~
21 ~~improvement~~ residential contractor ~~possess a certificate of registration issued by the~~
22 ~~subcommittee~~ be licensed in order to have properly entered into such a contract.

23 Section 2. R.S. 37:2150.1(7) and (8), 2171, 2175.2, and 2175.5 are hereby repealed
24 in their entirety.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 643 Original

2016 Regular Session

Carmody

Abstract: Provides for the State Licensing Board for Contractors and regulates contractors.

Proposed law makes technical changes.

Present law provides for definitions. Proposed law amends or removes certain definitions. Proposed law adds definitions of the terms "cost of project", "residential contracting", and "residential structure".

Present law provides for and regulates membership of the State Licensing Bd. for Contractors ("board"). Proposed law allows the board to meet outside of Baton Rouge when the meeting and location have been properly noticed as a public meeting.

Present law requires appointment of a vice chairman and a secretary-treasurer. Proposed law requires the appointment of a vice chairman, secretary, and treasurer.

Present law requires the board to issue a license to the contractor who meets all requirements at its next regularly scheduled meeting. Proposed law removes the timing element required of the board to issue the license.

Present law requires notice of any meeting to be sent to members of the board by either registered mail or telegram. Proposed law requires notice of any meeting to be sent to the members of the board by either certified mail or email.

Present law makes the secretary-treasurer responsible for attesting to the book and register of the board, the receiving and accounting for all money derived from operation of present law, the maintenance of a roster, and keep full and complete minutes of board meetings. Proposed law makes the treasurer responsible for accounting for all money derived from operation of present law. Proposed law makes the secretary responsible for attesting to the book and register of the board. Proposed law makes an administrator of the board responsible for maintenance of a roster. Proposed law makes the secretary responsible for keeping full and complete minutes of board meetings.

Present law provides relative to the receipt of a certification from the Dept. of Environmental Quality ("DEQ") to perform asbestos removal and abatement work. Proposed law provides relative to the receipt of approval from DEQ to perform asbestos removal and abatement work.

Present law requires contractors to make an application to the board indicating the classification of work that the applicant desires to perform. Proposed law specifies that electrical and mechanical contractors are also subject to this provision of present law. Present law requires the applicant to furnish a financial statement to the board. Proposed law removes a provision of present law making that financial statement confidential and removes a provision of present law stating the purpose of the financial statement requirement. Proposed law further specifies that electrical and mechanical contractors are also subject to this provision of present law.

Present law requires an applicant to designate a qualifying party who shall be the legal representative of the applicant. Present law requires the qualifying party to also submit an

application. Proposed law further requires the qualifying party to pass any examination required by the board.

Present law enumerates a list of persons considered as qualifying parties. Proposed law adds any member or manager who was an original organizer of a limited liability company as shown in the articles of organization.

Present law allows the board to waive the required examinations for any person. Proposed law allows the board to exempt any qualifying party from the examination requirements.

Proposed law makes it a violation of present law for anyone to assist a qualifying party in cheating relative to an examination required by the board. Proposed law also qualifies that anyone found in violation of the provision of proposed law is ineligible to serve as a qualifying party for a licensee for a period of 1 year.

Proposed law requires that any waiver authorized pursuant to present law shall be issued prior to August 1, 2016.

Present law provides for exceptions from the provisions of the applicable Chapter. Proposed law provides for exceptions from the provisions of the applicable Part.

Present law enumerates a list of circumstances whereby the board may revoke any license issued hereunder, or suspend the right of the licensee to use the license, or refuse to renew any the license, or issue cease and desist orders to stop work, or debar any person or licensee. Proposed law adds failure to notify the board of any change in corporate name, trade name, or address of the license holder to the enumerated list.

Present law requires the board to approve any additions or changes to an existing license at the next regularly scheduled meeting after the completion of the specified requirements included in present law. Proposed law removes the necessity of approving the additions or changes at the next regularly scheduled meeting.

Present law provides for violations. Proposed law adds the assessment of costs against any person found to be in violation of present law.

Present law establishes the Residential Building Contractors Subcommittee ("subcommittee"). Proposed law renames the subcommittee as the Residential Contractors Subcommittee.

Present law repeatedly references residential building contractors. Proposed law removes all of those references and substitutes the term "residential contractor".

Present law establishes license requirements and qualifications for residential building contractors. Proposed law amends those requirements by requiring the following:

- (1) Applying to the board on a board-approved form.
- (2) Submitting the following information to the board:
 - (a) Acceptable proof of workers' compensation and general liability insurances meeting specified standards.
 - (b) A financial statement meeting specified standards including proof that the applicant shall include a net worth of at least \$10,000. If the applicant does not have a net worth of at least \$10,000, then the applicant can furnish certain specified security to the board in the amount of \$10,000 plus the amount of the negative net worth of the applicant if any exists.
- (3) Passing any applicable trade the examination administered required by the board.

Present law requires the subcommittee to exempt any person holding a builders construction license issued by the board prior to February 1, 1996, including the classification of building construction, from examination requirements. Proposed law makes the exemptions permissive rather than mandatory.

Proposed law removes certain provisions of present law regarding administration of examinations by the board. Proposed law removes an outdated sunset provision and references to repealed law.

Proposed law requires the board to set forth a classification as a residential contractor on the license once all requirements for licensure have been met. Proposed law allows the board to establish additional classifications by rule.

Proposed law allows applicants to make changes or additions to their license after paying all fees and meeting all qualifications as required by the board.

Proposed law subjects any changes or additions to a license to board approval.

Proposed law allows the subcommittee to deny licensure of an applicant when the applicant has done any of the following:

- (1) Made a material omission or misrepresentation of fact on its application for registration or renewal.
- (2) Failed to pay either the required registration fee or renewal fee.
- (3) Failed to perform contracts or has performed contracts in an unworkmanlike manner or has failed to complete contracts with no good cause.
- (4) Engaged in fraud or bad faith with respect to contracts.

Present law exempts certain persons from the applicable provisions of present law. Proposed law removes persons performing the work of a residential building contractor in areas or municipalities that do not have a permitting procedure from the enumerated list of exemptions. Proposed law adds the following persons to the list:

- (1) A homeowner who physically performs residential contracting services on his personal residence.
- (2) The state or any of its political subdivisions.
- (3) Any person who performs labor or services for a residential contractor for wages or salary and who does not act in the capacity of a residential contractor.
- (4) An individual who physically performs residential work on other property he owns when the residential work has a value of less than seven thousand five hundred dollars.
- (5) Any person who works exclusively in any of the following areas when the cost of the project does not exceed fifty thousand dollars:
 - (a) Landscaping.
 - (b) Interior painting or wall covering.

Present law requires any agreement to perform home improvement contracting services, as defined in the applicable Part, in an amount in excess of \$1,500 to be in writing and adhere to specified requirements. Present law requires any agreement to perform residential contracting services, as defined in the applicable Chapter, in an amount in excess of \$1,500

to be in writing and adhere to specified requirements. Proposed law adds the following to the list of specified requirements for any residential contracting agreement:

- (1) Documentation of subcontractor agreements.
- (2) Inclusion of the residential contractor license number.
- (3) Written documentation of any change or work orders.

Present law establishes an enumerated list of prohibited acts for residential contractors. Proposed law adds working as a residential contractor, as defined in present law, in this state without possession of an active license in accordance with present law. Proposed law clarifies that any home improvement contractor license holder who possesses a certification of registration from the subcommittee as of August 1, 2016 shall be entitled to complete any preexisting contract it has entered into in excess of \$7,500 without having to obtain a residential contractor license as provided by resent law. However, the home improvement contractor shall be required to obtain a residential contractor's license prior to bidding or entering into any contracts in excess of \$7,500 after August 1, 2016. Proposed law adds failure to notify the subcommittee of a change in corporate name to the list of prohibited acts. Proposed law removes failure to obtain any insurance required by federal law and removes classification of certain violations as a prohibited practice as defined in present law (R.S. 51:1401, et seq.).

Present law authorizes the subcommittee to assess an administrative penalty and regulates those assessments. Proposed law removes present law and deems any violation of present law by a licensed residential contractor to subject the licensee to be liable to the board for a fine not to exceed \$1,000 plus costs and attorney fees for each offense after being notified and offered the opportunity of a hearing. Proposed law provides that if the board brings an action against a licensee and fails to prove its case, then the board is liable to the licensee for the payment of his reasonable litigation expenses as defined in present law (R.S. 49:965.1). Proposed law further specifies that any residential contractor not properly licensed who violates the provisions of present law shall be liable to the board for a fine not to exceed 10% of the total cost of the project in violation plus costs and attorney fees for each offense after being notified and offered the opportunity of a hearing

Present law clarifies that any home improvement contractor who fails to obtain a certificate of registration as provided by present law shall not be entitled to certain claims or relief. Proposed law clarifies that any residential contractor who is not properly licensed shall not be entitled to certain claims or relief.

Proposed law repeals present law (R.S. 37:2171, 2175.2, and 2175.5).

(Amends R.S. 37:2150.1(2), (4)(a), (4.1), and (11), 2152(B)(3), (4)(b) and (c), 2154(A)(2) and (5), 2155(A)-(D), 2156(G), 2156.1(A)(intro. par.), (C), (D)(1)(intro. par.) and (c) and (2), 2157(A)(intro. para.), 2159(C), 2162(L), 2165(A), 2167, 2170(A)(2), 2171.1, 2171.2(B), 2175.1(A)(intro. para.), (1), (2), (4)(a), (7), (B), and (D), 2175.3, 2175.4, and 2175.6; Adds R.S. 37:2150.1(14)-(16), 2156.1(D)(4) and (5) and (M)(4), 2158(A)(12), 2167.2, 2167.3, 2170(A)(4)-(7); Repeals R.S. 37:2150.1(7) and (8), 2171, 2175.2, and 2175.5)