

House Bill 109

By: Representatives Powell of the 23<sup>rd</sup>, Westmoreland of the 86<sup>th</sup>, Bruce of the 45<sup>th</sup>, Watson of the 60<sup>th</sup>, Post 2 and Maddox of the 59<sup>th</sup>, Post 2

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 43 of the Official Code of Georgia Annotated, relating to professions and  
2 businesses, so as to create the State Licensing Board for Residential Contractors; to define  
3 certain terms; to provide for the composition, powers, and duties of the board; to provide for  
4 the licensing of residential contractors; to provide for fees and an examination; to provide for  
5 the revocation of licenses; to provide for the renewal of licenses; to provide penalties for  
6 engaging in residential contracting without a valid license; to provide for matters relative to  
7 the foregoing; to provide an effective date; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Title 43 of the Official Code of Georgia Annotated, relating to professions and businesses,  
11 is amended by inserting immediately following Chapter 40 the following:

12 "CHAPTER 41

13 43-41-1.

14 As used in this chapter, the term:

15 (1) 'Board' means the State Licensing Board for Residential Contractors.

16 (2) 'Residential contractor' means any person, firm, or corporation that, for a fixed price,  
17 commission, fee, or wage, undertakes to bid upon or to construct or that undertakes to  
18 superintend or manage, on his or her own behalf or for any person, firm, or corporation  
19 that is not licensed as a licensed residential contractor pursuant to this chapter, the  
20 construction of any single-family residence or any improvement to any such structure  
21 where the cost of the undertaking is \$30,000.00 or more. Such term shall not include any  
22 person, firm, or corporation that constructs or alters a building on land owned by that  
23 person, firm, or corporation if such building is intended solely for occupancy by that  
24 person and his or her family, firm, or corporation after completion; provided, however,

1 that, if such building is not occupied solely by such person and his or her family, firm,  
2 or corporation for at least 12 months following completion, it shall be presumed that the  
3 person, firm, or corporation did not intend such building solely for occupancy by that  
4 person and his or her family, firm, or corporation.

5 43-41-2.

6 There is created the State Licensing Board for Residential Contractors consisting of nine  
7 members appointed by the Governor for five-year terms. Five members shall be licensed  
8 residential contractors, two of whom shall be small volume builders and all of whom must  
9 be geographically diverse; one member shall be a registered engineer who practices  
10 structural engineering; and three members shall be public members. The public members  
11 shall have no ties with the residential construction industry and shall represent the interests  
12 of the public at large. Members shall serve until the expiration of their respective terms  
13 and until their successors are appointed and qualified. Vacancies occurring during a term  
14 shall be filled by appointment of the Governor for the remainder of the unexpired term.  
15 The Governor may remove any member of the board for misconduct, incompetence, or  
16 neglect of duty.

17 43-41-3.

18 The board shall meet within 30 days after its appointment by the Governor at a time and  
19 place to be designated by the Governor and organize by electing a chairperson, a vice  
20 chairperson, and a secretary-treasurer, each to serve for one year. The board shall have  
21 power to make such rules and regulations as it deems appropriate, provided the same are  
22 not in conflict with the laws of this state. The secretary-treasurer need not be a member of  
23 the board, and the board is authorized to employ a full-time secretary-treasurer and such  
24 other assistants and make such other expenditures as may be necessary to the proper  
25 carrying out of the provisions of this chapter.

26 43-41-4.

27 The board shall meet at least twice each year for the purpose of transacting such business  
28 as may properly come before it. Due notice of each meeting and the time and place thereof  
29 shall be given to each member in such manner as the bylaws may provide. Five members  
30 of the board shall constitute a quorum. The board shall have the power to:

31 (1) Request from the various state departments and other agencies and authorities of the  
32 state and its political subdivisions and their agencies and authorities such available  
33 information as it may require in its work; and all such agencies and authorities shall  
34 furnish such requested available information to the board within a reasonable time;

1 (2) Provide by regulation for reciprocity with other states in the registration and licensing  
2 of residential contractors, provided that such other states have requirements substantially  
3 equal to the requirements in force in this state for registration, licensure, and certification;  
4 provided, further, that a similar privilege is offered to residents of this state; and

5 (3) Adjust fees on an annual basis.

6 43-41-5.

7 The secretary-treasurer shall keep a record of the proceedings of the board and a register  
8 of all applicants for licenses showing for each the date of application, name, qualifications,  
9 place of business, place of residence, affiliated entities, and whether a license was granted  
10 or refused. The secretary-treasurer shall also prepare during January of each year a roster  
11 showing the names, places of business, affiliated entities, and places of residence of all  
12 licensed residential contractors; such roster shall be printed by the board, with copies  
13 available to licensed residential contractors and members of the public, at cost, upon  
14 request, or furnished without cost, as directed by the board. On or before March 1 of each  
15 year, the board shall submit to the Governor a report of its transactions for the preceding  
16 year and shall file with the Secretary of State a copy of such report, together with a  
17 complete statement of the receipts and expenditures of the board, attested by the affidavits  
18 of the chairperson and the secretary-treasurer, and a copy of the roster of licensed general  
19 contractors.

20 43-41-6.

21 (a) Anyone seeking to be licensed as a residential contractor in this state shall file an  
22 application for an examination on a form provided by the board accompanied by an  
23 examination fee of \$50.00, together with \$100.00 for the license. Before being entitled to  
24 an examination, an applicant must show to the satisfaction of the board from the  
25 application and proofs furnished that the applicant is possessed of a good character and is  
26 otherwise qualified as to competency, ability, integrity, and financial responsibility. The  
27 application shall include a list of all entities that the applicant will be affiliated with as a  
28 licensed residential contractor. All applicants shall provide proof of general liability  
29 insurance in an amount which is not less than that specified by the board and proof of  
30 workers' compensation insurance as required by the laws of this state in their name or that  
31 of an affiliated entity. A certificate by the insurer or other appropriate evidence of such  
32 coverages shall be maintained with the board and shall be a condition of renewal. A  
33 licensee must notify the board in writing within 30 days of any changes in the information  
34 required to be on file with the board, including, but not limited to, the licensee's current  
35 mailing address, insurance coverages, and affiliated entities.

1 (b) The board shall conduct an examination, either oral or written, of all applicants to  
2 ascertain the applicant's ability to make a practical application of his or her knowledge of  
3 the profession of residential construction and to ascertain the applicant's qualifications in  
4 reading plans and specifications, his or her knowledge of estimating costs, construction,  
5 ethics, and other similar matters pertaining to the residential contracting business, and his  
6 or her knowledge as to the responsibilities of a residential contractor to the public and the  
7 requirements of the laws of this state relating to residential contractors, construction, and  
8 liens. If the results of the applicant's examination are satisfactory to the board, then the  
9 board shall issue to the applicant a certificate to engage in business as a residential  
10 contractor in this state, as provided in such certificate.

11 (c) Anyone failing this examination may be reexamined at any regularly scheduled  
12 examination time upon payment of a reexamination fee of \$25.00. Anyone requesting to  
13 take the examination a third or subsequent time shall submit a new application with the  
14 appropriate examination and license fees. Certificates of license shall expire on December  
15 31 following their issuance or renewal and shall become invalid 60 days from that date  
16 unless renewed, subject to the approval of the board. Renewals may be effected any time  
17 during January without reexamination by the payment of a fee of \$75.00 to the  
18 secretary-treasurer. Renewal applications shall be accompanied by evidence of continued  
19 financial responsibility and insurance coverages satisfactory to the board. Renewal  
20 applications received by the board after January shall be accompanied by a late fee of  
21 \$10.00 for each month or part of a month after January. After a lapse of two years, no  
22 renewal shall be effected, and the applicant shall fulfill all requirements of a new applicant  
23 as set forth in this Code section. As a condition of renewal, the board may require  
24 licensees to complete board approved continuing education of not more than three hours  
25 annually.

26 43-41-7.

27 A licensed residential contractor and any affiliated entities shall offer a written warranty  
28 in connection with each contract to construct, or superintend or manage the construction  
29 of, any single-family residence where the cost of the undertaking is \$30,000.00 or more.  
30 The parties to the warranty may agree to submit any or all disputes arising under the  
31 warranty to arbitration. Such agreement to arbitrate shall be enforceable as provided in  
32 Part 1 of Article 1 of Chapter 9 of Title 9, the 'Georgia Arbitration Code.'

33 43-41-8.

34 (a) Notwithstanding any other provision of this chapter, until and including July 1, 2004,  
35 the following persons desiring to qualify under the provisions of this subsection shall be

1 issued a state-wide residential contractor license by the board, provided that such person  
2 submits proper application and pays or has paid the required fees and is not otherwise in  
3 violation of this chapter:

4 (1) Any person holding a license to engage in residential contracting issued to him or her  
5 by any governing authority of any political subdivision which requires passing a written  
6 examination to obtain such license; or

7 (2) Any person who has successfully and efficiently engaged in residential contracting  
8 in this state. To provide that he or she has successfully engaged in residential  
9 contracting, the person shall only be required to give evidence of three successful  
10 residential contracting jobs completed over the period of five years immediately prior to  
11 the time of application or evidence of ten successful residential contracting jobs over the  
12 period of ten years immediately prior to the time of application or evidence that he or she  
13 has participated in or been engaged in residential contracting for seven of the ten years  
14 immediately prior to the time of application. Such applicant shall swear before a notary  
15 public that such evidence is true and accurate prior to its submission to the board.

16 (b) The decision of the board as to the qualifications of applicants taking the required  
17 examination shall, in the absence of fraud, be conclusive.

18 (c) On and after July 1, 2004, no partnership, corporation, or other legal entity shall have  
19 the right to engage in the business of residential contracting unless there is regularly  
20 connected with such entity a person or persons who have valid residential contractor  
21 licenses issued to them as provided.

22 (d) The provisions of this Code section shall preempt any local ordinance which might be  
23 enacted after the effective date of this chapter.

24 43-41-9.

25 (a) The board shall have the power to revoke the license of any residential contractor  
26 licensed under this chapter who is found guilty of any fraud or deceit in obtaining a license,  
27 gross negligence, incompetence, or misconduct in the practice of his or her profession or  
28 willful violation of any provisions of this chapter. Any person may prefer charges of such  
29 fraud, deceit, negligence, incompetence, or misconduct against any residential contractor  
30 licensed under this chapter. Such charges shall be in writing and sworn to by the  
31 complainant and submitted to the board. Such charges, unless dismissed without hearing  
32 by the board as unfounded, shall be heard and determined by the board in accordance with  
33 the provisions of Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'

34 (b) The board shall adopt and publish rules and regulations, consistent with the provisions  
35 of this chapter, governing the suspension and revocation of licenses.

1 (c) The board shall establish and maintain a system whereby detailed records are kept  
2 regarding complaints against each licensee. This record shall include, for each licensee,  
3 the date and nature of each complaint, investigatory action taken by the board, any findings  
4 by the board, and the disposition of the matter.

5 (d) The board may reissue a license to any person whose license has been revoked;  
6 provided, however, that five or more members of the board vote in favor of such reissuance  
7 for reasons the board deems sufficient.

8 (e) The board shall immediately notify the Secretary of State of its findings in the case of  
9 the revocation of a license or of the reissuance of a revoked license.

10 43-41-10.

11 The issuance of a license by the board shall be evidence that the person named therein is  
12 entitled to all the rights and privileges of a licensed residential contractor while such  
13 license remains unrevoked or unexpired.

14 43-41-11.

15 Any person not being duly authorized who shall contract for or bid upon the construction  
16 of any of the projects or works enumerated in the definition of residential contractor in  
17 Code Section 43-41-1 without having first complied with the provisions of this chapter or  
18 who shall attempt to practice residential contracting in this state except as provided for in  
19 this chapter, any person representing or attempting to file as his or her own the licensed  
20 certificate of another or who shall give false or forged evidence of any kind to the board  
21 or to any member of the board in maintaining a license or who falsely shall impersonate  
22 another or who shall use an expired or revoked license, and any architect or engineer who  
23 recommends to any project owner the award of a contract to anyone not properly licensed  
24 under this chapter shall be deemed guilty of a misdemeanor and shall, upon conviction, be  
25 punished for each such offense by a fine of not less than \$500.00, or imprisonment of three  
26 months, or both fine and imprisonment in the discretion of the court.

27 43-41-12.

28 Whenever it appears to the board that any person, firm, or corporation is violating any of  
29 the provisions of this chapter or of the rules and regulations of the board promulgated under  
30 this chapter, the board may apply to the superior court for a restraining order and injunction  
31 to restrain the violation, and the superior court shall have jurisdiction to grant the requested  
32 relief, irrespective of whether or not criminal prosecution has been instituted or  
33 administrative sanctions have been imposed by reason of the violation.

1 43-41-13.  
2 Any person, firm, or corporation, upon making application to the building inspector or such  
3 other authority of any incorporated city, town, or county in this state charged with the duty  
4 of issuing building or other permits for the construction of any single-family dwelling or  
5 any improvement to any such structure where the cost thereof is to be \$30,000.00 or more  
6 shall, before being entitled to the issuance of such permit, furnish to such inspector or  
7 authority his or her residential contractor licensing number and any affiliated entities that  
8 are contracting to construct or to superintend or manage the construction. It shall be  
9 unlawful for any such building inspector or other authority to issue or allow the issuance  
10 of such building permit unless the applicant has furnished his or her residential contractor  
11 licensing number and any affiliated entities under this chapter to carry out or to superintend  
12 or manage the work for which a permit has been applied. A building inspector or other  
13 authority shall issue such building permit under the terms of this Code section to any  
14 person, firm, or corporation upon evidence of an affiliated licensed residential contractor.  
15 Any building inspector or other such authority that is subject to and violates the terms of  
16 this Code section shall be guilty of a misdemeanor and subject to a fine of not more than  
17 \$500.00."

18 **SECTION 2.**

19 This Act shall become effective on January 1, 2004.

20 **SECTION 3.**

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