

Senate Bill 115

By: Senators Shafer of the 48th, Johnson of the 1st, Williams of the 19th, Rogers of the 21st, Pearson of the 51st and others

AS PASSED

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 general contractors, so as to revise the licensure provisions for residential and
 3 general contractors; to revise certain definitions; to provide that the State Licensing Board
 4 for Residential and General Contractors may provide interpretation and guidance on the
 5 policies and procedures of the board; to provide for inactive licenses; to provide for
 6 categories of licenses; to allow the board to contract for the development and administration
 7 of examinations; to revise the manner of renewing licenses; to revise certain dates; to provide
 8 for penalties for intentionally attempting to evade licensing requirements; to provide for
 9 exceptions to licensing requirements; to provide for a period to file applications for
 10 exemption; to provide for the posting of certain licensing requirements and the effective
 11 dates of such requirements; to provide for related matters; to provide an effective date; to
 12 repeal conflicting laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

14 **SECTION 1.**

15 Chapter 41 of Title 43 of the Official Code of Georgia Annotated, relating to residential and
 16 general contractors, is amended by revising paragraphs (4), (5), and (7) of Code Section
 17 43-41-2, relating to definitions, as follows:

18 "(4) 'Contractor,' except as specifically exempted by this chapter, means a person who is
 19 qualified, or required to be qualified, under this chapter and who, for compensation,
 20 contracts to, offers to undertake or undertakes to, submits a bid or a proposal to, or
 21 personally or by others performs the construction or the management of the construction
 22 ~~of improvements to real property for an owner, including~~ of any building, bridge, or
 23 other structure, including a person who installs industrialized buildings as defined in
 24 paragraphs (3) and (4) of Code Section 8-2-111, for the construction or improvement of,
 25 addition to, or the repair, alteration, or remodeling, ~~or demolition~~ of any such building,
 26 bridge, or ~~other structure, including related improvements to the real property,~~ for use by
 27 the owner or by others or for resale to others. The term 'contractor' for purposes of this

1 chapter shall include a person who contracts to, undertakes to, or submits a bid or
2 proposal to perform, or otherwise does himself or herself perform, for an owner:

3 (A) Construction management services relative to the performance by others of such
4 construction activities where the person performing such construction management
5 services is at risk contractually to the owner for the performance and cost of the
6 construction; and

7 (B) Services of a contractor as part of performance of design-build services, whether
8 as a prime contractor, joint venture partner, or as a subcontractor to a design
9 professional acting as prime contractor as part of a design-build entity or combination.
10 Both residential and general contractors, in addition to contractors licensed under Chapter
11 14 of this title to perform such work or any component thereof, shall be permitted to
12 construct storm-water management systems comprising any storm-water conveyance or
13 storm-water detention facility that moves storm or surface water from a specific point on
14 a wholly contained construction project site to another specific point on the same project
15 site and which are wholly contained within the project site and are not part of or
16 connected to any public or private water treatment system, waste-water treatment system,
17 or storm-water system.

18 (5) 'General contractor' means a contractor whose services are unlimited as to the type
19 of work which he or she may do, subject to the financial limitations as may be imposed
20 by a subclassification created pursuant to paragraph (8) of subsection (b) of Code Section
21 43-41-5, and who may contract for, undertake to perform, submit a bid or a proposal or
22 otherwise offer to perform, and perform any activity or work as a contractor requiring
23 licensure under this chapter including within its scope any work requiring licensure under
24 Chapter 14 of this title; provided, however, that any work contractually undertaken by a
25 general contractor in the nature of electrical contracting, plumbing, conditioned air
26 contracting, low voltage contracting, or utility contracting which falls within the licensing
27 requirements of Chapter 14 of this title may not be performed by the general contractor
28 but shall only be performed by a person who is duly licensed to perform such work under
29 Chapter 14 of this title. The construction of all private, commercial, institutional,
30 industrial, public, and other buildings and structures under contract with or engagement
31 directly by an owner shall be undertaken by a general contractor, except as otherwise
32 expressly set forth in or excluded from operation of this chapter."

33 "(7) 'Qualifying agent' means a person who possesses the requisite skill, knowledge, and
34 experience and has the responsibility to supervise, direct, manage, and control all of the
35 contracting activities within the State of Georgia of a contractor doing business in the
36 form of a business organization, with which he or she is affiliated by employment or
37 ownership; who has the responsibility to supervise, direct, manage, and control

1 construction activities on a job any project for which he or she has obtained the building
 2 permit pursuant to Code Section 43-41-14; and whose technical and personal
 3 qualifications have been determined by investigation and examination as provided in this
 4 chapter, except as exempted under Code Section 43-41-8, as attested by the division."

5 SECTION 2.

6 Said chapter is further amended by revising subsections (b) and (c) of Code Section 43-41-3,
 7 relating to the creation of State Licensing Board for Residential and General Contractors, as
 8 follows:

9 "(b) The residential contractor division shall consist of seven members and, except as
 10 otherwise expressly stated in this chapter, shall have jurisdiction of and authority over the
 11 practice of the two subcategories of residential contracting, residential-basic contractors
 12 and residential-light commercial contractors. Five members shall be residential contractors
 13 eligible for licensure under this chapter. Effective July 1, ~~2007~~ 2008, all residential
 14 contractor members shall be required to be licensed under this chapter. At least two of the
 15 residential contractor members shall be qualified to perform residential-light commercial
 16 type projects; three shall be qualified and shall predominantly perform residential-basic
 17 type projects; one shall be a residential contractor whose business predominately involves
 18 remodeling projects; one shall be a residential contractor who constructs at least an average
 19 of 20 residences per year; and all must be geographically diverse. One member shall be
 20 a public building official and one member shall be a public member. The public member
 21 shall have no ties with the residential construction industry and shall represent the interests
 22 of the public at large. The initial member terms on the residential contractor division shall
 23 be staggered so that all terms do not expire simultaneously. Three members shall serve
 24 initial terms of five years, three members shall serve initial terms of four years, and one
 25 member shall serve an initial term of three years. The residential contractor division shall
 26 meet at least six times each year for the purpose of transacting such business as may
 27 properly come before it.

28 (c) The general contractor division shall consist of seven members and, except as
 29 otherwise expressly stated in this chapter, shall have jurisdiction of and authority over the
 30 practice of general contracting. Five members shall be general contractors eligible for
 31 licensure under this chapter. Effective July 1, ~~2007~~ 2008, all general contractor members
 32 shall be required to be licensed under this chapter. At least two of the general contractor
 33 members shall be small-volume builders with an annual contracting volume of less than
 34 \$5 million and all of whom must be geographically diverse. One member shall be a
 35 currently licensed or registered architect or engineer and one member shall be a public
 36 building official. The initial member terms on the general contractor division shall be

1 staggered so that all terms do not expire simultaneously. Three members, including at least
 2 two contractor members, shall serve initial terms of five years; three members, including
 3 at least two contractor members, shall serve initial terms of four years; and one member
 4 shall serve an initial term of three years. The general contractor division shall meet at least
 5 six times each year for the purpose of transacting such business as may properly come
 6 before it."

7 **SECTION 3.**

8 Said chapter is further amended by revising subsections (b) and (f) of Code Section 43-41-5,
 9 relating to board meetings and the power of the board and its divisions, as follows:

10 "(b) The board and its divisions shall have the power to:

11 (1) Request from the various departments, agencies, and authorities of the state and its
 12 political subdivisions and their agencies and authorities such available information as
 13 they may require in their work; and all such departments, agencies, and authorities shall
 14 furnish such requested available information to the board and its divisions within a
 15 reasonable time;

16 (2) Provide by regulation for reciprocity with other states or territories of the United
 17 States in the licensing of residential and general contractors, provided that such other
 18 states have requirements substantially equal to the requirements in force in this state for
 19 registration, licensure, or certification and that any such contractor holding a current and
 20 valid license, certificate, or registration from another state or territory seeking licensure
 21 by way of reciprocity shall demonstrate that such applicant meets, in the discretion of the
 22 respective division, the qualifications, requirements, and criteria set forth in Code Section
 23 43-41-6, other than the requirement to take and pass an examination as set forth in
 24 subsection (d) of Code Section 43-41-6, and that such applicant is otherwise in
 25 compliance with all requirements of the State of Georgia for transaction of such business
 26 within this state; provided, further, that a similar privilege is offered to residents of this
 27 state by the other state or territory;

28 (3) Establish and adjust fees as necessary within the limits set forth in Chapter 1 of this
 29 title;

30 (4) Adopt official seals for their use and change them at pleasure;

31 (5) Establish the policies and procedures for regulating the businesses of residential
 32 contracting and general contracting and provide interpretation and guidance regarding the
 33 implementation and application of such policies and procedures;

34 (6) Determine qualifications for licensure or certification, including such experience
 35 requirements as the board deems necessary; ~~and~~

36 (7) Promulgate and adopt rules and regulations necessary to carry out this chapter;

1 (8) Establish and define appropriate categories of general contractor licensure based
 2 upon financial criteria; and

3 (9) Allow for inactive status pursuant to Code Section 43-1-22."

4 "(f) The denial of a license on grounds other than those enumerated in this chapter, the
 5 issuance of a private reprimand, the denial of a license by reciprocity, the denial of a
 6 request for reinstatement of a revoked license, or the refusal to issue a previously denied
 7 license shall not be considered to be a contested case within the meaning of Chapter 13 of
 8 Title 50, the 'Georgia Administrative Procedure Act.' Notice and hearing within the
 9 meaning of Chapter 13 of Title 50 shall not be required, but the applicant or licensee shall
 10 be allowed to appear before the ~~board~~ appropriate division if he or she so requests."

11 SECTION 4.

12 Said chapter is further amended by revising subsections (a), (f), (i), and (j) of Code Section
 13 43-41-6, relating to eligibility for licensure as residential-basic contractor, residential-light
 14 commercial contractor, and general contractor, as follows:

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

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

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

26 Additionally, all applicants must submit to and successfully pass an examination prepared
 27 by prepared for, or approved by the appropriate division, except where an applicant is
 28 otherwise qualified for licensure and has satisfied the appropriate division requirements and
 29 regulations for licensure pursuant to Code Section 43-41-8 exempting such applicant from
 30 the examination requirement or where the applicant is an individual acting as a qualifying
 31 agent for a business organization and has previously obtained and maintained continuously
 32 a license issued by the appropriate division, either as an individual doing business in his
 33 or her own name or doing business as an individual in a trade name as a sole proprietor or
 34 as a qualifying agent for another business organization."

1 "(f)(1) The residential contractor division and the general contractor division shall each
2 conduct or cause to be conducted an examination of all qualified applicants, except those
3 exempted from the examination requirement pursuant to Code Section 43-41-8.

4 (2) The residential contractor division shall conduct or cause to be conducted separate
5 examinations for applicants for residential-basic and residential-light commercial licenses
6 for the purpose of determining a particular applicant's ability to make a practical
7 application of his or her knowledge of the profession of residential contracting in the
8 particular subcategory for which a license is sought; the applicant's qualifications in
9 reading plans and specifications; his or her knowledge of building codes, estimating
10 costs, construction, ethics, contracting, and other similar matters pertaining to such
11 residential contracting business; his or her knowledge as to the responsibilities of a
12 residential contractor to the public and to owners, subcontractors, and suppliers; and his
13 or her knowledge of the requirements of the laws of this state relating to residential-basic
14 and residential light-commercial contractors, construction, workers' compensation,
15 insurance, and liens.

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

26 (4) If the results of the applicant's examination are satisfactory to the appropriate
27 division, or he or she is exempted from the examination requirement under Code Section
28 43-41-8, and if he or she and any affiliated business organization has met the other
29 qualifications and requirements set forth in this Code section, then the appropriate
30 division shall issue to the applicant a license to engage in business as a residential or
31 general contractor in this state, as provided in such license, in his or her own name as a
32 sole proprietor or as a qualifying agent for the affiliated business organization and in the
33 name of such business organization, pursuant to and in accordance with the requirements
34 set forth in Code Section 43-41-9. A residential contracting license shall indicate for
35 which of the two subcategories, residential-basic or residential-light commercial, the
36 licensee is qualified."

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

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

11 SECTION 5.

12 Said chapter is further amended by revising Code Section 43-41-8, relating to eligibility for
 13 licensure without examination, as follows:

14 "43-41-8.

15 (a) Notwithstanding any other provision of this chapter to the contrary, the following
 16 persons desiring to qualify for a residential contractor license or a general contractor
 17 license under the provisions of this chapter, either individually or as a qualifying agent,
 18 shall be eligible for issuance of such a license by the appropriate division without
 19 examination, provided that such person submits a proper application and proofs, pays or
 20 has paid the required fees, otherwise meets the requirements of Code Section 43-41-6 for
 21 licensure, and is not otherwise in violation of this chapter:

22 (1) Any person who holds a current and valid license to engage in the comparable
 23 category of residential or general contracting issued to him or her by any governing
 24 authority of any political subdivision of this state which requires passing an examination
 25 which is substantially similar to the state examination for residential or general
 26 contractors, provided that such person is a Georgia resident and citizen, if an individual
 27 applying in his or her own behalf, or is seeking licensure as a qualifying agent for a
 28 business organization incorporated in Georgia or otherwise authorized and certified to
 29 transact business in Georgia with a regular office and place of business in Georgia
 30 currently and having had such office and place of business continuously for the five years
 31 immediately preceding such application; provided, further, that the examination results
 32 are made available to the appropriate division. Such application and request for
 33 exemption must be submitted within the time limits set forth in subsection (a) of Code
 34 Section 43-41-17;

35 (2) Any person who has successfully and efficiently engaged in the comparable category
 36 of residential or general contracting in this state as provided in this Code section;

1 provided, however, that such person shall be either a resident and citizen of the state of
2 Georgia or, if applying as a qualifying agent for a business organization, such business
3 organization shall be either incorporated in Georgia or is a business organization
4 otherwise authorized and certified to transact business in Georgia with a regular office
5 and place of business in Georgia currently and having had such office and place of
6 business continuously for the five years immediately preceding such application;
7 provided, further, that such application and request for exemption is submitted within the
8 time limits set forth in subsection (a) of Code Section 43-41-17. To prove that he or she
9 has successfully engaged in residential-basic or residential-light commercial projects, the
10 person shall be required to give evidence of three successful projects located in Georgia
11 which were successfully completed over the period of five years immediately prior to the
12 time of application; evidence of ten successfully completed residential-basic or
13 residential-light commercial projects located in Georgia over the period of ten years
14 immediately prior to the time of application; or evidence that he or she has participated
15 in or been engaged in residential-basic or residential-light commercial construction in a
16 supervisory or management capacity for seven of the ten years immediately prior to the
17 time of application. To prove that he or she has successfully engaged in commercial
18 general contracting, the person submitting the application shall be required to give
19 evidence of five successful general contracting projects located in Georgia which were
20 successfully completed over the period of five years immediately prior to the time of
21 application or evidence of ten successful general contracting projects located in Georgia
22 which were successfully completed over the period of ten years immediately prior to the
23 time of application, such projects having been performed either by such person acting as
24 an individual or by a business organization in which such individual person was affiliated
25 by employment or ownership and over which such person had general oversight and
26 management responsibilities; ~~and~~

27 (3) Any person who holds a current and valid license to practice a comparable category
28 of residential or general contracting issued by another state or territory of the United
29 States, where either such state or territory has entered into a reciprocal agreement with
30 the board and divisions for the recognition of contractor licenses issued in that state or
31 territory, or such application is pursuant to and in accordance with the regulations and
32 requirements for reciprocity promulgated by the divisions in accordance with
33 subsection (b) of Code Section 43-41-5. Additionally, such application shall meet the
34 following requirements:

35 (A) The criteria for issuance of such license or certification by such other state or
36 territory, including the requirement to successfully complete an examination, were
37 substantially equivalent to Georgia's current license criteria;

1 (B) The application requirements and application form submitted to the other state or
 2 territory upon which such license was issued ~~and the examination form and substance~~
 3 are available for review by the appropriate division and the examination results are
 4 made available to the appropriate division;

5 (C) The applicant shall demonstrate that he or she meets the qualifications,
 6 requirements, and criteria set forth in subsections (a), (b), (c), and (d) of Code Section
 7 43-41-6; and

8 (D) The applicant is otherwise in compliance with all requirements of this state for
 9 transaction of such business within this state; provided, however, that such application
 10 and request for exemption shall be submitted ~~starting January 1, 2007, and continuing~~
 11 ~~thereafter.~~ in accordance with subsection (a) of Code Section 43-41-17; and

12 (4) Any person who holds a current and valid license issued under this chapter to engage
 13 in the comparable category of residential or general contracting which license was issued
 14 to him or her in their capacity either as an individual licensee or as a qualifying agent for
 15 a business organization.

16 (b) Any applicant for issuance of a residential contractor or general contractor license
 17 under this title who shall seek exemption from the examination requirement under
 18 ~~subsection (f) of Code Section 43-41-6~~ this Code section, on any basis set forth above, shall
 19 have the burden of establishing to the satisfaction and within the discretion of the
 20 appropriate division that the requirements for such exemption have been satisfied. The
 21 decision of such division as to the satisfaction of the requirements for such exemption from
 22 taking the examination shall, in the absence of fraud, be conclusive."

23 SECTION 6.

24 Said chapter is further amended by revising Code Section 43-41-9, relating to licensing of
 25 individuals and organizations, as follows:

26 "43-41-9.

27 (a) If an individual applicant proposes to engage in residential or general contracting in the
 28 individual's own name or a trade name where the individual is doing business as a sole
 29 proprietorship, the license shall be issued only to that individual. Where an applicant under
 30 this chapter is seeking issuance of a residential or general contractor license on behalf and
 31 for the benefit of a business organization seeking to engage in residential or general
 32 contracting as a business organization, ~~or in any name other than the applicant's legal name~~
 33 ~~or trade name where the applicant is doing business as a sole proprietorship~~, the application
 34 for a license under this chapter must be submitted by and through an individual qualifying
 35 agent for such business organization or entity and expressly on behalf of such business
 36 organization or entity. In such case, the license shall be issued to the individual qualifying

1 agent and to the affiliated business organization or entity on whose behalf the application
2 was made. It shall be unlawful for any person, firm, corporation, or association to operate
3 a business organization or entity engaged in the business of residential or general
4 contracting without first obtaining a license from the appropriate division after the effective
5 date of the licensing requirements as specified in subsection (a) of Code Section 43-41-17.

6 The appropriate division shall not issue a license to any business organization or entity to
7 engage in residential or general contracting unless such business organization or entity
8 employs at least one currently licensed individual residential or general contractor serving
9 as its qualifying agent who is actually engaged by ownership or employment in the practice
10 of residential or general contracting for such business organization or entity ~~on a full-time~~
11 ~~basis~~ and provides adequate supervision and is responsible for the projects of such business
12 organization or entity. A business organization may allow more than one person to act as
13 a qualifying agent for such organization, subject to each such individual qualifying agent
14 having successfully satisfied the requirements for issuance of a license under this chapter
15 and having obtained issuance of such a license by the appropriate division. Each such
16 business organization shall have at least one qualifying agent in order to be considered
17 authorized to engage in such contracting business.

18 (b) The application for a license by a qualifying agent must include an affidavit on a form
19 provided by the board attesting that the individual applicant has final approval authority
20 for all construction work performed by the business organization or entity within the State
21 of Georgia and that the individual applicant has final approval authority on all business
22 matters, including contracts and contract performance and financial affairs of the business
23 organization or entity.

24 (c) A joint venture is considered a separate and distinct organization for licensing purposes
25 under this chapter and must be qualified and licensed in accordance with the appropriate
26 division's rules and regulations either:

27 (1) In its own name as a separate business organization; or

28 (2) By each of the members of the joint venture doing business as a residential contractor
29 or general contractor holding, as an individual or as a business organization acting
30 through its qualifying agent, a valid and current residential or general contractor's license
31 issued by the appropriate division.

32 Each such licensed individual or qualifying agent shall be considered a qualifying agent
33 of such joint venture.

34 (d) If, during the period encompassed by a license issued to a qualifying agent acting for
35 and on behalf of an affiliated business organization, there is a change in any information
36 that is required to be stated on the application, the business organization shall, within 45

1 days after such change occurs, ~~mail~~ furnish the correct information to the appropriate
2 division.

3 (e)(1) At least one qualifying agent shall be licensed under this chapter in order for the
4 business organization to obtain a license as a residential or general contractor. If any
5 qualifying agent ceases to be affiliated with such business organization, for any reason,
6 he or she shall so inform the division having jurisdiction. In addition, if such qualifying
7 agent is the only qualifying agent licensed hereunder affiliated with the business
8 organization, the business organization shall promptly notify the appropriate division of
9 the termination of the relationship with that qualifying agent and shall have 120 days
10 from the termination of the qualifying agent's affiliation with the business organization
11 to employ another qualifying agent and submit an application for licensure under the new
12 qualifying agent. The submission of such application shall serve to maintain the licensed
13 status of the business organization pending and subject to approval of such application
14 by the appropriate division; provided that, should such application be denied by that
15 division, then, after passage of the 120 day period, the business organization shall cease
16 to be considered licensed as a residential or a general contractor unless and until a new
17 application is submitted and approved by the appropriate division. In such circumstance,
18 the affected business organization may not thereafter engage in residential or general
19 contracting until a new qualifying agent is employed, unless the appropriate division has
20 granted a temporary nonrenewable license to the financially responsible officer, the
21 president or chief executive officer, a partner, or, in the case of a limited partnership, the
22 general partner, who thereafter shall assume all responsibilities of a qualifying agent for
23 the business organization or entity. This temporary license shall only allow the entity to
24 proceed with incomplete contracts already in progress. For the purposes of this
25 paragraph, an incomplete contract is one which has been awarded to, or entered into by,
26 the business organization prior to the cessation of affiliation of the qualifying agent with
27 the business organization or one on which the business organization was the low bidder
28 and the contract is subsequently awarded, regardless of whether any actual work has
29 commenced under the contract prior to the qualifying agent ceasing to be affiliated with
30 the business organization.

31 (2) The A person licensed under this chapter either as an individual doing business in his
32 or her name or doing business in a trade name as a sole proprietor may serve as a
33 qualifying agent for a business organization upon application and demonstration of
34 satisfaction by such business organization of all financial and insurance requirements
35 pursuant to Code Section 43-41-6. A qualifying agent may serve in such capacity for
36 more than one business organization, provided that he or she shall satisfy the criteria for
37 servng in such capacity with regard to each such business organization. A qualifying

1 agent shall inform the division having jurisdiction in writing when he or she proposes to
 2 engage in contracting in his or her own name or in affiliation as a qualifying agent with
 3 another business organization, and he or she or such new business organization shall
 4 supply the same information to the division as required of applicants under this chapter.
 5 Such person shall be deemed to be a licensed residential or general contractor for the
 6 original term of his or her license for the purpose of engaging in contracting as an
 7 individual in his or her own name, provided that he or she qualified for such license based
 8 on his or her own personal qualifications as to financial responsibility and insurance.
 9 Otherwise, such individual shall be required to submit a new application demonstrating
 10 satisfaction of such financial and insurance requirements ~~himself or herself~~ in order to
 11 engage in the business of contracting under this chapter as an individual in his or her own
 12 name or doing business as an individual in a trade name as a sole proprietor or by the
 13 business organization he or she desires to qualify in order to obtain a license for such
 14 other business organization, but such person shall be entitled to continue engaging in the
 15 business of residential or general contracting in accordance with and under his or her
 16 previously issued license unless and until the appropriate division determines that the
 17 person seeking issuance of the license no longer meets these requirements.

18 (3) Upon a favorable determination by the division having jurisdiction, after
 19 investigation of the financial responsibility, if applicable, and insurance of the ~~qualifying~~
 20 ~~agent and the new business organization~~ applicant, the division shall ~~issue~~ notify the
 21 applicant, whether the applicant was previously approved as an individual or a qualifying
 22 agent, that the applicant is approved, without an examination, for a new license ~~in the~~
 23 ~~name of the qualifying agent and in the name of the new affiliated business organization.~~

24 (f) Disciplinary action and other sanctions provided in this chapter may be administered
 25 against a business organization operating under a license issued through its licensed
 26 qualifying agent or agents in the same manner and on the same grounds as disciplinary
 27 actions or sanctions against an individual or license holder acting as its qualifying agent
 28 under this chapter. The divisions or the board may deny the license to a qualifying agent
 29 for any business organization if the qualifying agent or business organization has been
 30 involved in past disciplinary actions or on any grounds for which individual licenses can
 31 be denied.

32 (g) Each qualifying agent shall pay the appropriate division an amount equal to the original
 33 fee for a license applied for on behalf of a new business organization. If the qualifying
 34 agent for a business organization desires to qualify additional business organizations, the
 35 division shall require him or her to present evidence of the financial responsibility, if
 36 applicable, and insurance of each such organization.

1 (h) All qualifying agents for a business organization are jointly and equally responsible for
 2 supervision of all operations of the business organization, for all field work at all sites, and
 3 for financial matters within the State of Georgia, both for the organization in general and
 4 for each specific job for which his or her license was used to obtain the building permit.

5 (i) Any change in the status of a qualifying agent is prospective only. A qualifying agent
 6 shall for purposes of application of this chapter and the enforcement and disciplinary
 7 mechanisms thereunder be and remain responsible for his or her actions or omissions as
 8 well as those of the business organization for which such person had acted as a qualifying
 9 agent occurring during his or her period of service as such qualifying agent as and to the
 10 extent set forth in this chapter. A qualifying agent is not responsible for his or her
 11 predecessor's actions, but is responsible, even after a change in status, for matters for
 12 which he or she was responsible while in a particular status. Further, nothing in this
 13 chapter shall be interpreted as a basis for imposition of civil liability against an individual
 14 qualifying agent by any owner or other third party claimant beyond the liability that would
 15 otherwise exist legally or contractually apart from and independent of the individual's
 16 status as a qualifying agent."

17 **SECTION 7.**

18 Said chapter is further amended by revising Code Section 43-41-12, relating to penalty for
 19 violating provisions, as follows:

20 "43-41-12.

21 (a) Any person, whether an individual or a business organization, who:

22 (1) Contracts for or bids upon or engages in the construction of any of the projects or
 23 works enumerated in the definitions of residential contractor or general contractor in
 24 Code Section 43-41-2 without having first complied with the appropriate provisions of
 25 this chapter or who shall attempt to practice residential contracting or general contracting
 26 in this state except as provided for in this chapter;

27 (2) Falsely represents, advertises, or holds himself or herself or an affiliated business
 28 organization out as a residential contractor or general contractor licensee duly authorized
 29 to perform work under such classification of licensure pursuant to this chapter;

30 (3) Represents or attempts to use or presents as his or her own the license of another
 31 person or, in the case of a business organization, a person other than its qualifying agent;

32 (4) Gives false or forged evidence of any kind to the board or its divisions or to any
 33 member of the board in maintaining a license;

34 (5) Uses an expired, suspended, or revoked license to continue engaging in residential
 35 contracting or general contracting; or

1 (6) Operates a business organization engaged in contracting after 120 days following the
 2 termination of its only qualifying agent without designating another primary qualifying
 3 agent, except as provided in Code Section 43-41-9; or

4 (7) Intentionally and repeatedly misrepresents or manipulates the value or percentage of
 5 work at the time of contract under subsections (e) and (f) of Code Section 43-41-17 to
 6 avoid the licensing requirements of this chapter,

7 shall be guilty of a misdemeanor and shall, upon conviction, be punished for each such
 8 offense by a fine of not less than \$500.00 or imprisonment of three months, or both fine
 9 and imprisonment in the discretion of the court.

10 (b) Any architect or engineer who recommends to any project owner the award of a
 11 contract to anyone known by such architect or engineer not to be properly licensed under
 12 this chapter shall be subject to such penalties as provided in subsection (a) of this Code
 13 section and also to any appropriate disciplinary action by the appropriate division.

14 (c) Except as otherwise provided in this Code section, any person who violates any
 15 provision of this chapter shall be guilty of a misdemeanor."

16 SECTION 8.

17 Said chapter is further amended by revising Code Section 43-41-14, relating to the role of
 18 building inspectors and penalty for noncompliance with chapter, as follows:

19 "43-41-14.

20 (a) Any person, whether an individual or a business organization acting through a
 21 qualifying agent, intending to perform work as a residential or general contractor, upon
 22 making application to the building inspector or such other authority of any incorporated
 23 municipality or county in this state charged with the duty of issuing building or other
 24 permits for contemplated construction work requiring performance by either a licensed
 25 residential contractor or a licensed general contractor shall, before being entitled to the
 26 issuance of such permit, furnish to such inspector or authority, personally or through his
 27 or her authorized agent specifically designated to act on his or her behalf in a sworn written
 28 document submitted contemporaneously or previously submitted and maintained by such
 29 inspector or authority, his or her residential contractor or general contractor license number
 30 and the identity of any business organization for which such applicant is serving as
 31 qualifying agent that is undertaking or contracting as a residential contractor or a general
 32 contractor to construct or manage the construction. It shall be unlawful for any such
 33 building inspector or other authority to issue or allow the issuance of such building permit
 34 unless the applicant has furnished his or her residential contractor or general contractor
 35 license number and the identity of any such business organization relative to performance
 36 of the work for which a permit has been applied. A building inspector or other authority

1 shall issue such building permit under the terms of this Code section to any person,
 2 including an individual licensee acting on his or her own behalf or a licensee acting as a
 3 qualifying agent for a business organization and such business organization, upon evidence
 4 reasonably establishing that such person is duly licensed as a residential or general
 5 contractor under this chapter, either individually or as a business organization acting under
 6 a duly licensed qualifying agent. Any building inspector or other such authority that issues
 7 a building permit to a person known by such building inspector or authority not to be
 8 properly licensed under this chapter shall be guilty of a misdemeanor and, upon conviction,
 9 shall be subject to a fine of not more than \$500.00.

10 (b) The licensing requirements imposed by this chapter and the effective dates of such
 11 licensing requirements must be posted by any county or municipality in this state charged
 12 with the duty of issuing building or other permits for construction work requiring
 13 performance by either a licensed residential contractor or a licensed general contractor in
 14 the same location in which such building or other permits are issued."

15 SECTION 9.

16 Said chapter is further amended by revising subsections (a), (b), (e), (f), (i), and (j) of Code
 17 Section 43-41-17, relating to effective date of licensing and sanctioning provisions, and
 18 adding a new subsection (n) as follows:

19 "(a) The licensing requirements imposed by this chapter and the sanctions and
 20 consequences relating thereto shall not become effective and enforceable until ~~January~~
 21 July 1, 2008. On and after such date, no person, whether an individual or a business
 22 organization, shall have the right to engage in the business of residential contracting or
 23 general contracting without a current, valid residential contractor license or general
 24 contractor license, respectively, issued by the division under this chapter or, in the case of
 25 a business organization, unless such business organization shall have a qualifying agent as
 26 provided in this chapter holding such a current, valid residential contractor or general
 27 contractor license on behalf of such organization issued to such qualifying agent as
 28 provided in this chapter. Notwithstanding the foregoing, persons seeking licensure under
 29 this chapter and exemption from examination under paragraphs (1) and (2) of subsection
 30 (a) of Code Section 43-41-8 shall submit their applications, including all necessary proof
 31 of the basis of exemption from examination for such license, starting January 1, 2006. The
 32 period for submission of such applications and requests for exemption from the
 33 examination requirements shall extend thereafter for a period of ~~12~~ 18 months.
 34 Furthermore, notwithstanding the foregoing, any person seeking licensure under this
 35 chapter and exemption from examination under paragraph (3) of subsection (a) of Code

1 Section 43-41-8 may submit his or her application, including all necessary proof of the
2 basis of such exemption starting January 1, 2007, and continuing thereafter.

3 (b) As a matter of public policy, any contract entered into on or after ~~January~~ July 1, 2008,
4 for the performance of work for which a residential contractor or general contractor license
5 is required by this chapter and not otherwise exempted under this chapter and which is
6 between an owner and a contractor who does not have a valid and current license required
7 for such work in accordance with this chapter shall be unenforceable in law or in equity by
8 the unlicensed contractor. For purposes of this subsection, a contractor shall be considered
9 unlicensed only if the contractor was unlicensed on the effective date of the original
10 contract for the work, if stated therein, or, if not stated, the date the last party to the contract
11 executed such contract, if stated therein. If the contract does not establish such a date, the
12 contractor shall be considered unlicensed only if the contractor was unlicensed on the first
13 date upon which the contractor provided labor, services, or materials under the contract.
14 Notwithstanding any other provision of law to the contrary, if a contract is rendered
15 unenforceable under this subsection, no lien or bond claim shall exist in favor of the
16 unlicensed contractor for any labor, services, or materials provided under the contract or
17 any amendment thereto. This subsection shall not affect the rights of parties other than the
18 unlicensed contractor to enforce contract, lien, or bond remedies. This subsection shall not
19 affect the obligations of a surety that has provided a bond on behalf of an unlicensed
20 contractor. It shall not be a defense to any claim on a bond or indemnity agreement that
21 the principal or indemnitor is unlicensed for purposes of this subsection."

22 "(e) Nothing in this chapter shall prevent any person holding a valid license issued by the
23 State Construction Industry Licensing Board, or any division thereof, pursuant to Chapter
24 14 of this title from performing any work defined in the Code sections under which the
25 license held by said person was issued. Furthermore, nothing in this chapter shall preclude
26 a person licensed under Chapter 14 of this title to perform plumbing, conditioned air
27 contracting, utility contracting, electrical contracting, or low-voltage contracting from
28 offering to perform, performing, engaging in, or contracting to engage in the performance
29 of construction work or services directly with an owner, which work ~~or services~~ would
30 otherwise require a ~~general contractor~~ license under this chapter, where the total scope of
31 the work to be performed is predominantly of the type for which such contractor is duly
32 licensed to perform under Chapter 14 of this title such that any other work involved is
33 incidental to and an integral part of the work performed within the scope of such license
34 under said chapter and does not exceed the greater of \$10,000.00 or 25 percent of the total
35 value at the time of contracting of the work to be performed; provided, however, that such
36 contractor may not delegate or assign the responsibility to directly supervise and manage
37 the performance of such other work to a person unless such person is licensed under this

1 chapter and the work being performed by such person is within the scope of that person's
2 license.

3 (f) Nothing in this chapter shall preclude a specialty contractor from offering or
4 contracting to perform or undertaking or performing for an owner limited, specialty, or
5 specific trade contractor work, ~~which does not entail the delegation or assignment to or~~
6 ~~engagement of any other person or entity, other than direct employees, to supervise,~~
7 ~~manage, or oversee the performance of any portion of the work undertaken.~~ However,
8 nothing in this chapter shall permit a specialty contractor to perform work falling within
9 the licensing requirements of Chapter 14 of this title where such specialty contractor is not
10 duly licensed under such chapter to perform such work. The board shall by rule or policy
11 by January 1, 2008 identify specialty contractors or other criteria to determine eligibility
12 under the exemption of this subsection. The specialty contractor otherwise exempted from
13 license requirements under this chapter may perform work for an owner that would
14 otherwise require a license under this chapter where the total scope of the work to be
15 performed is predominately of the type for which such specialty contractor is duly
16 recognized as exempt under this subsection by the board, provided that such other work
17 involved is incidental to and an integral part of the exempt work performed by the specialty
18 contractor and does not exceed the greater of \$10,000.00 or 25 percent of the total value
19 at the time of contracting of the work to be performed."

20 "(i) Nothing in this chapter shall preclude an architect licensed pursuant to Chapter 4 of
21 this title or an interior designer registered pursuant to Chapter 4 of this title or an engineer
22 registered pursuant to Chapter 15 of this title from performing work or providing services
23 within the scope of his or her registration for the practice of architecture or interior design
24 or license for practicing engineering.

25 (j) Nothing in this chapter shall preclude an architect licensed pursuant to Chapter 4 of this
26 title or an interior designer registered pursuant to Chapter 4 of this title or an engineer
27 licensed pursuant to Chapter 15 of this title from offering to perform or offering or
28 rendering design-build services to an owner; provided, however, that such offer or contract
29 shall clearly indicate at the time of such offer or contract that all services of a general
30 contractor incident to the design-build performance shall be performed by a duly licensed
31 general contractor in compliance with other provisions of this chapter and that all services
32 so offered or provided falling within the scope of the licensing requirements of this chapter
33 are offered and rendered by a licensed general contractor in accordance with this chapter."

34 "(n) Nothing in this chapter shall apply to the construction or installation of manufactured
35 homes as defined in paragraph (4) of Code Section 8-2-131."

1 **SECTION 10.**

2 This Act shall become effective upon its approval by the Governor or upon its becoming law
3 without such approval.

4 **SECTION 11.**

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