

House Bill 218

By: Representative Benton of the 31st

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 provide a statement of legislative intent; to define certain terms; to create
3 the State Licensing Board for Fence Contractors and Automated Gate Operator Contractors;
4 to provide for membership, officers, and the appointment of members; to provide for powers
5 and duties; to provide for the licensure of fence contractors and automated gate operator
6 contractors; to provide for qualifications; to provide for warranty and insurance coverage;
7 to provide for disciplinary procedures; to provide for prohibited practices; to provide for
8 applicability; to provide for an effective date; to provide for related matters; to repeal
9 conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Title 43 of the Official Code of Georgia Annotated, relating to professions and businesses,
13 is amended by adding a new chapter to read as follows:

14 "CHAPTER 52

15 43-52-1.

16 It is the intent of the General Assembly, in the interest of public health, safety, and welfare,
17 to safeguard homeowners, other property owners, tenants, and the general public against
18 faulty, inadequate, inefficient, and unsafe fence contractors and automated gate operator
19 contractors. The practices of fence contracting and automated gate operator contracting
20 are declared to be businesses or professions affecting the public interest, and this chapter
21 shall be liberally construed so as to accomplish the intent and purposes stated in this Code
22 section.

23 43-52-2.

24 As used in this chapter, the term:

25 (1) 'Automated gate' means any gate which operates electronically and is activated by
26 a switch, whether manual, pressure sensitive, motion sensitive, remote control, or other
27 type. Such term includes the power source and controls to an automated gate.

28 (2) 'Automated gate operator installer' means a person who is qualified, or required to
29 be qualified, under this chapter and who, for compensation, contracts to, offers to
30 undertake or undertakes to, submits a bid or a proposal to, or personally or by others
31 performs the installation of any automated gate, including, without limitation, the power
32 source and controls to an automated gate operator.

33 (3) 'Board' means the State Licensing Board for Fence Contractors and Automated Gate
34 Operator Contractors.

35 (4) 'Business organization' means any partnership, corporation, limited liability entity,
36 business trust, joint venture, sole proprietorship, or other legal entity, including an
37 individual person, doing business or seeking, offering, or contracting to do business as
38 a fence contractor or automated gate operator contractor or otherwise performing or
39 acting as a fence contractor or automated gate operator contractor.

40 (5) 'Contracting' means the installation of a fence or an automated gate. The offering of
41 contracting services and the negotiation of or bid or proposal for engagement or a
42 contract requiring performance of these services also constitutes contracting.

43 (6) 'Fence' means any constructed, erected, or buried barrier 100 feet in length or more,
44 other than a structure, designed to separate one area of real estate from another. A fence
45 may be designed for the inclusion, exclusion, or separation of persons or animals or may
46 be purely cosmetic in nature.

47 (7) 'Fence contractor' means a person who is qualified, or required to be qualified, under
48 this chapter and who, for compensation, contracts to, offers to undertake or undertakes
49 to, submits a bid or a proposal to, or personally or by others performs the construction or
50 the management of the installation or construction for an owner of any fencing, including
51 residential, commercial, or agricultural fencing.

52 (8) 'Owner of real property' means a person or entity that has a majority ownership
53 interest in the real property to be improved and for whom an improvement is made or
54 who contracts with or engages, directly or through an agent, the contractor who contracts
55 with or engages directly or indirectly through an agent or the contractor to perform the
56 construction work or services.

57 (9) 'Real property' means the real estate, or an interest therein, upon which a fence or an
58 automated gate is installed.

59 43-52-3.

60 (a) There is created the State Licensing Board for Fence Contractors and Automated Gate
61 Operator Contractors consisting of ten members appointed by the Governor for five-year
62 terms, five of whom have extensive work experience in fence construction and five of
63 whom have extensive work experience in automated gate operator installation. The board
64 shall be assigned to the Secretary of State's office for administrative purposes and shall be
65 under the jurisdiction of the division director and shall operate in accordance with and
66 pursuant to the provisions of Chapter 1 of this title, as applicable. The board shall be
67 comprised of two divisions: (1) the fence contractor division, having jurisdiction of and
68 authority over fence contracting, and (2) the automated gate operator contractor division
69 having jurisdiction of and authority over automated gate operator contracting. Five
70 members shall be appointed and serve as members of the fence contractor division of the
71 board and five members shall be appointed and serve as members of the automated gate
72 operator contractor division of the board. Members shall serve until the expiration of their
73 respective terms and until their successors are appointed and qualified. Vacancies
74 occurring during a term shall be filled by appointment of the Governor for the remainder
75 of the unexpired term and such replacement shall meet the requirements and criteria of
76 selection of the person previously holding the vacant position. To be eligible to serve on
77 the fence contractor division of the board, a member shall be and remain actively involved
78 in the fence construction contracting business and shall have been so engaged for a period
79 of not less than five consecutive years before the date of appointment. To be eligible to
80 serve on the automated gate operator contractor division of the board, a member shall be
81 and remain actively involved in the business of installing automated gates and shall have
82 been so engaged for a period of not less than five consecutive years before the date of
83 appointment. The position of any appointive member of the board who, during his or her
84 term of appointment, shall cease to meet the qualifications for original appointment shall
85 be immediately vacated. No member of the board shall be appointed to serve more than
86 two consecutive full terms.

87 43-52-4.

88 (a) The initial members of the board shall be appointed no later than July 1, 2009. The
89 board shall meet within 30 days after its appointment at a time and place to be designated
90 by the Governor and shall organize by electing a chairperson and a vice chairperson, each
91 to serve for a one-year term.

92 (b) The office of chairperson of the board shall be rotated between the two divisions
93 enumerated in this chapter, with the office of vice chairperson to be held by a member of
94 the division other than that in which the chairperson serves, unless the board, through its

95 rules and regulations, provides otherwise. Any vacancy in the office of chairperson shall
96 be filled by the members for the unexpired term. The person selected to fill the vacancy
97 shall be a member of the same division as the chairperson whose departure has created the
98 vacancy.

99 (c) The board shall meet at the call of the chairperson or upon the recommendation of a
100 majority of its members. Six members of the board, including at least three members from
101 each of its divisions, shall constitute a quorum for transaction of business by the board.

102 (d) Each division within the board shall also elect from its membership a chairperson and
103 a vice chairperson who shall each serve for a term of two years. Any vacancy in the office
104 of either the chairperson or vice chairperson shall be filled by one of the members of the
105 respective division for the unexpired term.

106 (e) Any member-elected chairperson of a division may not serve more than two
107 consecutive full terms of office.

108 (f) Each division shall carry out its powers and duties as provided for in this chapter with
109 the assistance of the division director and staff of the professional licensing boards division
110 of the Secretary of State's office and the officers and staff of the board. Each division of
111 the board shall operate and transact its business independently of the other division and of
112 the board at large, except as required by this chapter and to the extent of common interests
113 and functions, including staffing and administration. Each division of the board shall have
114 delegated from the board the power and authority to take all appropriate actions in the
115 organization and administration of each respective division and the effectuation and
116 implementation of the licensing and enforcement processes required under this chapter,
117 subject to ultimate oversight and review by the board.

118 (g) The divisions of the board shall meet at the call of the chairperson of the division.

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

122 (i) The division director, or his or her designee, shall keep a record of the proceedings of
123 the board and its respective divisions.

124 43-52-5.

125 (a) The board shall meet at least twice each year at a time and place determined by the
126 board for the purpose of transacting such business as may properly come before it and of
127 overseeing the operation of its divisions.

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

129 (1) Request from the various departments, agencies, and authorities of the state and its
130 political subdivisions and their agencies and authorities such available information as

131 they may require in their work; and all such departments, agencies, and authorities shall
132 furnish such requested available information to the board and its divisions within a
133 reasonable time;

134 (2) Establish and adjust fees as necessary within the limits set forth in Chapter 1 of this
135 title;

136 (3) Adopt official seals for their use and change them at pleasure;

137 (4) Establish the policies and procedures for regulating fence contracting and automated
138 gate operator contracting and provide interpretation and guidance regarding the
139 implementation and application of such policies and procedures;

140 (5) Determine qualifications for licensure or certification, including such experience
141 requirements as the board deems necessary;

142 (6) Promulgate and adopt rules and regulations necessary to carry out this chapter;

143 (7) Establish and define appropriate categories of fence contractor and automated gate
144 operator contractor licensure based upon financial criteria; and

145 (8) Allow for inactive status pursuant to Code Section 43-1-22.

146 (c)(1) The division director is authorized to make, or cause to be made through
147 employees or contract agents of the board, such investigations as he or she or the board
148 may deem necessary or proper for the enforcement of the provisions of this chapter. Any
149 person properly conducting an investigation on behalf of the board shall have access to
150 and may examine any writing, document, or other material relating to the fitness of any
151 licensee or applicant. The division director or his or her appointed representative may
152 issue subpoenas to compel such access upon a determination that reasonable grounds
153 exist for the belief that a violation of this chapter may have taken place.

154 (2) The results of all investigations initiated by the board shall be reported solely to the
155 board, and the records of such investigations shall be kept for the board by the division
156 director, with the board retaining the right to have access at any time to such records. No
157 part of any such records shall be released, except to the board, for any purpose other than
158 a hearing before the board, nor shall such records be subject to subpoena; provided,
159 however, that the board shall be authorized to release such records to another
160 enforcement agency or lawful licensing authority.

161 (3) The board shall have the authority to exclude all persons during its deliberations on
162 disciplinary proceedings and to discuss any disciplinary matter in private with a licensee
163 or applicant and the legal counsel of that licensee or applicant.

164 (d) A person, firm, corporation, association, authority, or other entity shall be immune
165 from civil and criminal liability for reporting or investigating the acts or omissions of a
166 licensee or applicant which violate the provisions of this chapter or any other provision of
167 law relating to a licensee's or applicant's fitness to practice as a licensed fence contractor

168 and automated gate operator contractor or for initiating or conducting proceedings against
169 such licensee or applicant, if such report is made or action is taken in good faith, without
170 fraud or malice.

171 (e) The denial of a license on grounds other than those enumerated in this chapter, the
172 issuance of a private reprimand, the denial of a license by reciprocity, the denial of a
173 request for reinstatement of a revoked license, or the refusal to issue a previously denied
174 license shall not be considered to be a contested case within the meaning of Chapter 13 of
175 Title 50, the 'Georgia Administrative Procedure Act.' Notice and hearing within the
176 meaning of Chapter 13 of Title 50 shall be required, and the applicant or licensee shall be
177 allowed to appear before the appropriate division if he or she so requests.

178 (f) If any licensee or applicant fails to appear at any hearing after reasonable notice, the
179 board may proceed to hear the evidence against such licensee or applicant and take action
180 as if such licensee or applicant had been present. A notice of hearing, initial or
181 recommended decision, or final decision of the board in a disciplinary proceeding shall be
182 served upon the licensee or applicant by certified mail or statutory overnight delivery,
183 return receipt requested, to the last known address of record with the board. If such
184 material is returned marked 'unclaimed' or 'refused' or is otherwise undeliverable and if the
185 licensee or applicant cannot, after diligent effort, be located, the division director shall be
186 deemed to be the agent for service for such licensee or applicant for purposes of this Code
187 section, and service upon the division director shall be deemed to be service upon the
188 licensee or applicant.

189 (g) The voluntary surrender of a license shall have the same effect as a revocation of the
190 license, subject to reinstatement in the discretion of the board.

191 (h) This Code section shall apply equally to all licensees or applicants whether individuals,
192 partners, or members of any other incorporated or unincorporated associations,
193 corporations, business organizations, or other associations of any kind whatsoever.

194 (i) All subpoenas issued pursuant to the authority granted in this chapter shall be subject
195 to the general rules of law with respect to distance, tender of fees and expenses, and
196 protective orders; and any motion made with respect thereto shall be made to and passed
197 on by a judge of the superior court of the county of residence of the person to whom the
198 subpoena is directed.

199 43-52-6.

200 (a) Anyone seeking to be licensed as a fence contractor or as an automated gate operator
201 contractor in this state shall file an application on a form provided by the fence contractor
202 or automated gate operator contractor division, respectively, accompanied by an
203 application fee as provided by the board. Such an application may be submitted either by:

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

207 (2) An individual person affiliated by ownership or employment with and acting as a
208 qualifying agent for a business organization seeking to engage in the profession in the
209 name of the business organization.

210 Additionally, all applicants shall submit to and successfully pass an examination prepared
211 for and approved by the appropriate division.

212 (b) A person shall be eligible for licensure as a fence contractor by the fence contractor
213 division if the person:

214 (1) Is at least 21 years of age;

215 (2) Is qualified as to competency, ability, and integrity; and

216 (3) Has at least two years of proven experience working as or in the employment of a
217 fence contractor or other proven experience deemed substantially similar by the division.

218 (c) A person shall be eligible for licensure as an automated gate operator contractor by the
219 automated gate operator contractor division if the person:

220 (1) Is at least 21 years of age;

221 (2) Is qualified as to competency, ability, and integrity; and

222 (3) Has at least two years of proven experience working as or in the employment of an
223 automated gate operator contractor or other proven experience deemed substantially
224 similar by the division.

225 (d) Before being entitled to take an examination or otherwise qualify for issuance of a
226 license, an applicant must show to the satisfaction of the fence contractor division or
227 automated gate operator contractor division from the application and proofs furnished that
228 the applicant is otherwise qualified as to competency, ability, integrity, and financial
229 responsibility. The application shall include a list of all persons, entities, and business
230 organizations that the applicant will be affiliated with as a licensed fence contractor or
231 automated gate operator contractor, whether by way of employment, ownership, serving
232 as an owner or director, partnership, or membership or by serving as a qualifying agent
233 under this chapter. Applicants for a fence contractor license or an automated gate operator
234 contractor license shall provide proof of a minimum net worth in an amount which is
235 specified by the appropriate division. Additionally, all applicants shall provide proof of
236 such general liability insurance as deemed necessary by the appropriate division and of
237 workers' compensation insurance as required by the laws of this state in their name.
238 However, if and to the extent the applicant is submitted as a person seeking to act as a
239 qualifying agent of a particular business organization, such proofs and information shall
240 relate and pertain to such business organization rather than the individual applicant. All

241 applicants shall also provide their social security numbers, if applying as an individual, or
242 the federal taxpayer identification numbers of any business organization for which the
243 applicant is seeking licensure as a qualifying agent. Applicants shall also provide suitable
244 verification of tax payments in a form and manner and for the duration prescribed by the
245 board; provided, however, that where the application is seeking license as a qualifying
246 agent of a business organization, such tax verification and information shall relate and
247 pertain to that business organization. The decision of the appropriate division as to the
248 qualifications of applicants shall, in the absence of fraud, be conclusive. A certificate by
249 the insurer or other appropriate evidence of such coverages shall be maintained with the
250 appropriate division and shall be a condition of renewal. A licensee, on his or her own
251 behalf or where acting as a qualifying agent on behalf of the business organization so
252 qualified, must notify the appropriate division in writing within 30 days after any changes
253 in the information required to be on file with such division, including, but not limited to,
254 the licensee's and, if the licensee is acting as a qualifying agent for any business
255 organization, such business organization's current mailing address, insurance coverages,
256 and affiliated entities.

257 (e) The fence contractor division and the automated gate operator contractor division shall
258 each conduct or cause to be conducted an examination of all qualified applicants.

259 (f) Any otherwise qualified applicant failing this examination may be reexamined at any
260 scheduled examination within one year of the date of original application upon payment
261 of a reexamination fee, in an amount to be set by the board, without need to resubmit an
262 application, unless any information set forth in the previously submitted application is no
263 longer accurate or complete. Anyone requesting to take the examination a third or
264 subsequent time shall wait at least one calendar year after the taking of the last examination
265 and shall submit a new application with the appropriate examination fees.

266 (g) A fence contractor license or automated gate operator contractor license shall be issued
267 to an applicant who successfully completes the respective requirements therefor upon the
268 payment of fees prescribed by the board.

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

274 (i) The division director shall give advance notice to each person holding a license under
275 this chapter of the date of the expiration of the certificate of registration and the amount of
276 the fee required for renewal at least two months prior to the expiration date, but the failure

277 to receive such notice shall not avoid the expiration of any license not renewed in
278 accordance with this Code section.

279 (j) As a condition of renewal, the appropriate division shall require licensees to complete
280 division approved continuing education of not less than three hours annually.

281 43-52-7.

282 (a) A fence contractor and any affiliated entities shall offer a written warranty in
283 connection with each contract to construct, or superintend or manage the construction of
284 a fence where the total value of the work or activity or the compensation to be received by
285 the contractor for such activity or work exceeds \$2,500.00. The fence contractor division
286 shall establish the minimum requirements of such warranty. The parties to the warranty
287 may agree to submit any or all disputes arising under the warranty to arbitration. Such
288 agreement to arbitrate shall be enforceable as provided in Part 1 of Article 1 of Chapter 9
289 of Title 9, the 'Georgia Arbitration Code.'

290 (b) An automated gate operator contractor and any affiliated entities shall offer a written
291 warranty in connection with each contract to construct, or superintend or manage the
292 installation of an automated gate where the total value of the work or activity or the
293 compensation to be received by the contractor for such activity or work exceeds \$1,000.00.
294 The automated gate operator contractor division shall establish the minimum requirements
295 of such warranty. The parties to the warranty may agree to submit any or all disputes
296 arising under the warranty to arbitration. Such agreement to arbitrate shall be enforceable
297 as provided in Part 1 of Article 1 of Chapter 9 of Title 9, the 'Georgia Arbitration Code.'

298 43-52-8.

299 (a) In addition to the powers and authorities conferred upon the board and its divisions
300 pursuant to Chapter 1 of this title, the fence contractor division and the automated gate
301 operator contractor division shall have the power, respectively, to reprimand any person
302 or licensee, or to suspend, revoke, or refuse to grant, renew, or restore a license to any
303 person or licensee if such person or licensee is found by the appropriate division to have
304 engaged in any fraud or deceit in obtaining a license or otherwise to have engaged in gross
305 negligence, repeated or persistent incompetence, intentional misconduct in the practice of
306 his or her profession, or willful violation of any provisions of this chapter.

307 (b) For purposes of this Code section, a person or business organization operating on an
308 expired, revoked, lapsed, or suspended license shall be considered unlicensed.

309 (c) The separate divisions may issue a stop-work order for all unlicensed work falling
310 within their respective jurisdictions upon finding probable cause to believe that work which
311 requires a license under this chapter is being performed by a person without such a current,

312 valid license. Such an order may be enforced by injunctive relief, cease and desist orders,
313 or other related actions within the power and authority of the board and its respective
314 divisions.

315 (d) The division having jurisdiction shall investigate and sanction any license holder found
316 to have engaged in fraud, deceit, gross negligence, repeated or persistent incompetence, or
317 intentional misconduct in the practice of fence contracting or automated gate operator
318 contracting; and sanctions shall be assessed against any such fence contractor or automated
319 gate operator contractor licensed under this chapter either individually or as a business
320 organization acting through a qualifying agent. Such charges, unless dismissed without
321 hearing by the division as unfounded, shall be heard and determined by that division in
322 accordance with the provisions of Chapter 13 of Title 50, the 'Georgia Administrative
323 Procedure Act.'

324 (e) The divisions shall each adopt and publish rules and regulations, consistent with the
325 provisions of this chapter, governing the suspension and revocation of licenses.

326 (f) Each division may reissue a license to any person whose license has been revoked or
327 lift a suspension of a license to such person provided that four or more members of the
328 division vote in favor of such reissuance or lifting for reasons that division deems
329 sufficient.

330 43-52-9

331 The issuance of a license by the fence contractor or the automated gate operator contractor
332 division shall be evidence that the person named therein, including both the individual
333 licensee and any business organization for whom such licensee is a qualifying agent, is
334 entitled to all the rights and privileges of a licensed fence contractor or automated gate
335 operator contractor while such license remains unrevoked or unexpired.

336 43-52-10.

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

338 (1) Contracts for or bids upon or engages in the construction of any of the projects or
339 works enumerated in the definitions of fence contractor or automated gate operator
340 contractor in Code Section 43-41-2 without having first complied with the appropriate
341 provisions of this chapter or who shall attempt to practice fence contracting or automated
342 gate operator contracting in this state except as provided for in this chapter;

343 (2) Falsely represents, advertises, or holds out himself or herself or an affiliated business
344 organization as a fence contractor or automated gate operator contractor licensee duly
345 authorized to perform work under such classification of licensure pursuant to this chapter;

346 (3) Represents or attempts to use or presents as his or her own the license of another
347 person or, in the case of a business organization, a person other than its qualifying agent;
348 (4) Gives false or forged evidence of any kind to the board or its divisions or to any
349 member of the board in maintaining a license;
350 (5) Uses an expired, suspended, or revoked license to continue engaging in fence
351 contracting or automated gate operator contracting; or
352 (6) Operates a business organization engaged in contracting after 120 days following the
353 termination of its only qualifying agent without designating another primary qualifying
354 agent.
355 shall be guilty of a misdemeanor and shall, upon conviction, be punished for each such
356 offense by a fine of not less than \$500.00 or imprisonment of three months, or by both a
357 fine and imprisonment in the discretion of the court.
358 (b) Except as otherwise provided in this Code section, any person who violates any
359 provision of this chapter shall be guilty of a misdemeanor.

360 43-52-11.

361 (a) The board shall have the authority to refuse to grant a license to an applicant or to
362 revoke the license of a person licensed by the board or to discipline a person licensed by
363 the board upon a finding by a two-thirds vote of the board that the applicant or licensee has
364 committed any of the following acts:
365 (1) Obtaining a license by fraud or misrepresentation or otherwise knowingly giving
366 false or forged evidence to the board or its divisions;
367 (2) Being convicted or found guilty of or entering a plea of guilty or nolo contendere to
368 a criminal act constituting a felony in any jurisdiction which directly relates to the
369 practice of fence contracting or automated gate operator contracting or the ability to
370 practice fence contracting or automated gate operator contracting;
371 (3) Performing any act which assists a person or entity in the prohibited unlicensed
372 practice of contracting if the licensee knows or has reasonable grounds to know that the
373 person or entity is unlicensed;
374 (4) Knowingly combining or conspiring with an unlicensed person by allowing his or her
375 license to be used with the intent to evade the provisions of this chapter;
376 (5) Failing in any material respect to comply with the provisions of this chapter or
377 violating a rule, regulation, or lawful order of the board or its divisions;
378 (6) Signing a statement with respect to a project or contract falsely indicating that the
379 work is bonded; knowingly and falsely indicating by written statement issued to the
380 owner that payment has been made for all subcontracted work, labor, and materials and
381 for all materials furnished and installed which statement is reasonably relied upon and

382 actually results in a financial loss to the owner; or falsely indicating that workers'
383 compensation and general liability insurance are provided;
384 (7) Committing fraud or deceit in the practice of contracting, including falsely
385 advertising, representing, or holding himself or herself or an affiliated business
386 organization out as having a valid and current license under this chapter;
387 (8) Committing gross negligence, repeated or persistent negligence, or negligence
388 resulting in a significant danger to life or property;
389 (9) Proceeding on any job without obtaining applicable local building permits and
390 inspections;
391 (10) Using or attempting to use a license that has expired or has been suspended or
392 revoked; or
393 (11) Failing to satisfy within a reasonable time the terms of a final civil judgment
394 obtained against the licensee or the business organization qualified by the licensee
395 relating to the practice of the licensee's profession.
396 (b) The appropriate division may take any one or more of the following actions against any
397 license holder found by the division to have committed any one or more of the acts listed
398 in subsection (a) of this Code section:
399 (1) Place the license holder on probation or reprimand the license holder;
400 (2) Revoke a license, including the license of a person as an individual as well as that of
401 a qualifying agent of a business organization together with the interest of the business
402 organization qualified thereby in such license; suspend such a license for a stated period
403 of time not exceeding one year; or deny the issuance or renewal of the license;
404 (3) Require financial restitution to a consumer for financial harm directly related to a
405 violation of a provision of this chapter;
406 (4) Impose an administrative fine not to exceed \$5,000.00 for each violation; or
407 (5) Assess costs associated with the investigation and prosecution.
408 (c) In determining penalties in any final order of the board or a division, the board or
409 division shall follow the penalty guidelines established by the board's or division's rules
410 and regulations.
411 (d) The board or a division may assess interest or penalties on all fines imposed under this
412 chapter against any person or business organization which has not paid the imposed fine
413 by the due date established by rule, regulation, or final order.
414 (e) If the board or a division finds any contractor has violated the provisions of this
415 chapter, the board or division may as a part of its disciplinary action require such contractor
416 to obtain continuing education in the areas of contracting affected by such violation.

417 43-52-12.

418 (a) The licensing requirements imposed by this chapter and the sanctions and
419 consequences relating thereto shall not become effective and enforceable until July 1, 2010.
420 On and after such date, no person, whether an individual or a business organization, shall
421 have the right to engage in the business of fence contracting or automated gate operator
422 contracting without a current, valid fence contracting or automated gate operator
423 contracting license, respectively, issued by the division under this chapter or, in the case
424 of a business organization, unless such business organization shall have a qualifying agent
425 as provided in this chapter holding such a current, valid fence contractor or automated gate
426 operator contracting license on behalf of such organization issued to such qualifying agent
427 as provided in this chapter.

428 (b) As a matter of public policy, any contract entered into on or after July 1, 2010, for the
429 performance of work for which a fence contractor or automated gate operator contracting
430 license is required by this chapter and not otherwise exempted under this chapter and which
431 is between an owner and a contractor who does not have a valid and current license
432 required for such work in accordance with this chapter shall be unenforceable in law or in
433 equity by the unlicensed contractor. For purposes of this subsection, a person shall be
434 considered unlicensed only if the person was unlicensed on the effective date of the
435 original contract for the work, if stated therein, or, if not stated, the date the last party to the
436 contract executed such contract, if stated therein. If the contract does not establish such a
437 date, the contractor shall be considered unlicensed only if the contractor was unlicensed on
438 the first date upon which the contractor provided labor, services, or materials under the
439 contract. Notwithstanding any other provision of law to the contrary, if a contract is
440 rendered unenforceable under this subsection, no lien or bond claim shall exist in favor of
441 the unlicensed contractor for any labor, services, or materials provided under the contract
442 or any amendment thereto. This subsection shall not affect the rights of parties other than
443 the unlicensed contractor to enforce contract, lien, or bond remedies. This subsection shall
444 not affect the obligations of a surety that has provided a bond on behalf of an unlicensed
445 contractor. It shall not be a defense to any claim on a bond or indemnity agreement that
446 the principal or indemnitor is unlicensed for purposes of this subsection.

447 (c) Any person who holds a license issued under this chapter may engage in the business
448 of fence contracting or automated gate operator contracting, but only as prescribed by the
449 license, throughout the state and no municipality or county may require any such person
450 licensed under this chapter to comply with any additional licensing requirements imposed
451 by such municipality or county relative to the performance of covered work subject to the
452 licensing requirements under this chapter."

453

SECTION 2.

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

456

SECTION 3.

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