

House Bill 832

By: Representative Powell of the 33rd

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 change certain provisions as to eligibility for
3 licensure without examination; to eliminate certain exceptions; to change a definition; to
4 change cross-references to eliminated provisions; to provide for related matters; to repeal
5 conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Chapter 41 of Title 43 of the Official Code of Georgia Annotated, relating to residential and
9 general contractors, is amended by revising paragraph (7) of Code Section 43-41-2, relating
10 to definitions, as follows:

11 "(7) 'Qualifying agent' means a person who possesses the requisite skill, knowledge, and
12 experience and has the responsibility to supervise, direct, manage, and control all of the
13 contracting activities within the State of Georgia of a contractor doing business in the
14 form of a business organization, with which he or she is affiliated by employment or
15 ownership; who has the responsibility to supervise, direct, manage, and control
16 construction activities on any project for which he or she has obtained the building permit

17 pursuant to Code Section 43-41-14; and whose technical and personal qualifications have
 18 been determined by investigation and examination as provided in this chapter, ~~except as~~
 19 ~~exempted under Code Section 43-41-8, as attested by the division."~~

20

SECTION 2.

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

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

- 29 (1) An individual person seeking issuance of a license in his or her own name for
 30 purposes of engaging in the profession of residential or general contracting in his or her
 31 own name or doing business as an individual in a trade name as a sole proprietorship; or
 32 (2) An individual person affiliated by ownership or employment with and acting as a
 33 qualifying agent for a business organization seeking to engage in the profession of
 34 residential or general contracting in the name of the business organization in accordance
 35 with and pursuant to Code Section 43-41-9.

36 Additionally, all applicants must submit to and successfully pass an examination prepared
 37 by, prepared for, or approved by the appropriate division, ~~except where an applicant is~~
 38 ~~otherwise qualified for licensure and has satisfied the appropriate division requirements and~~
 39 ~~regulations for licensure pursuant to Code Section 43-41-8 exempting such applicant from~~
 40 ~~the examination requirement~~ or where the applicant is an individual acting as a qualifying
 41 agent for a business organization and has previously obtained and maintained continuously
 42 a license issued by the appropriate division, either as an individual doing business in his

43 or her own name or doing business as an individual in a trade name as a sole proprietor or
44 as a qualifying agent for another business organization."

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

48 (2) The residential contractor division shall conduct or cause to be conducted separate
49 examinations for applicants for residential-basic and residential-light commercial licenses
50 for the purpose of determining a particular applicant's ability to make a practical
51 application of his or her knowledge of the profession of residential contracting in the
52 particular subcategory for which a license is sought; the applicant's qualifications in
53 reading plans and specifications; his or her knowledge of building codes, estimating
54 costs, construction, ethics, contracting, and other similar matters pertaining to such
55 residential contracting business; his or her knowledge as to the responsibilities of a
56 residential contractor to the public and to owners, subcontractors, and suppliers; and his
57 or her knowledge of the requirements of the laws of this state relating to residential-basic
58 and ~~residential light-commercial~~ residential-light commercial contractors, construction,
59 workers' compensation, insurance, and liens.

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

70 (4) If the results of the applicant's examination are satisfactory to the appropriate
 71 division, ~~or he or she is exempted from the examination requirement under Code Section~~
 72 ~~43-41-8~~, and if he or she and any affiliated business organization has met the other
 73 qualifications and requirements set forth in this Code section, then the appropriate
 74 division shall issue to the applicant a license to engage in business as a residential or
 75 general contractor in this state, as provided in such license, in his or her own name as a
 76 sole proprietor or as a qualifying agent for the affiliated business organization and in the
 77 name of such business organization, pursuant to and in accordance with the requirements
 78 set forth in Code Section 43-41-9. A residential contracting license shall indicate for
 79 which of the two subcategories, residential-basic or residential-light commercial, the
 80 licensee is qualified."

81

SECTION 3.

82 Said chapter is further amended by revising Code Section 43-41-8, relating to eligibility for
 83 licensure without examination, reciprocity, and burden upon applicant, as follows:

84 "43-41-8.

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

92 ~~(1) Any person who holds a current and valid license to engage in the comparable~~
 93 ~~category of residential or general contracting issued to him or her by any governing~~
 94 ~~authority of any political subdivision of this state which requires passing an examination~~
 95 ~~which is substantially similar to the state examination for residential or general~~

96 ~~contractors, provided that such person is a Georgia resident and citizen, if an individual~~
97 ~~applying in his or her own behalf, or is seeking licensure as a qualifying agent for a~~
98 ~~business organization incorporated in Georgia or otherwise authorized and certified to~~
99 ~~transact business in Georgia with a regular office and place of business in Georgia~~
100 ~~currently and having had such office and place of business continuously for the five years~~
101 ~~immediately preceding such application; provided, further, that the examination results~~
102 ~~are made available to the appropriate division. Such application and request for~~
103 ~~exemption must be submitted within the time limits set forth in subsection (a) of Code~~
104 ~~Section 43-41-17;~~

105 ~~(2) Any person who has successfully and efficiently engaged in the comparable category~~
106 ~~of residential or general contracting in this state as provided in this Code section;~~
107 ~~provided, however, that such person shall be either a resident and citizen of the State of~~
108 ~~Georgia or, if applying as a qualifying agent for a business organization, such business~~
109 ~~organization shall be either incorporated in Georgia or is a business organization~~
110 ~~otherwise authorized and certified to transact business in Georgia with a regular office~~
111 ~~and place of business in Georgia currently and having had such office and place of~~
112 ~~business continuously for the five years immediately preceding such application;~~
113 ~~provided, further, that such application and request for exemption is submitted within the~~
114 ~~time limits set forth in subsection (a) of Code Section 43-41-17. To prove that he or she~~
115 ~~has successfully engaged in residential-basic or residential-light commercial projects, the~~
116 ~~person shall be required to give evidence of three successful projects located in Georgia~~
117 ~~which were successfully completed over the period of five years immediately prior to the~~
118 ~~time of application; evidence of ten successfully completed residential-basic or~~
119 ~~residential-light commercial projects located in Georgia over the period of ten years~~
120 ~~immediately prior to the time of application; or evidence that he or she has participated~~
121 ~~in or been engaged in residential-basic or residential-light commercial construction in a~~
122 ~~supervisory or management capacity for seven of the ten years immediately prior to the~~

123 ~~time of application. To prove that he or she has successfully engaged in commercial~~
124 ~~general contracting, the person submitting the application shall be required to give~~
125 ~~evidence of five successful general contracting projects located in Georgia which were~~
126 ~~successfully completed over the period of five years immediately prior to the time of~~
127 ~~application or evidence of ten successful general contracting projects located in Georgia~~
128 ~~which were successfully completed over the period of ten years immediately prior to the~~
129 ~~time of application, such projects having been performed either by such person acting as~~
130 ~~an individual or by a business organization in which such individual person was affiliated~~
131 ~~by employment or ownership and over which such person had general oversight and~~
132 ~~management responsibilities;~~

133 ~~(3)~~(1) Any person who holds a current and valid license to practice a comparable
134 category of residential or general contracting issued by another state or territory of the
135 United States, where either such state or territory has entered into a reciprocal agreement
136 with the board and divisions for the recognition of contractor licenses issued in that state
137 or territory, or such application is pursuant to and in accordance with the regulations and
138 requirements for reciprocity promulgated by the divisions in accordance with subsection
139 (b) of Code Section 43-41-5. Additionally, such application shall meet the following
140 requirements:

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

144 (B) The application requirements and application form submitted to the other state or
145 territory upon which such license was issued are available for review by the appropriate
146 division and the examination results are made available to the appropriate division; and

147 (C) The applicant shall demonstrate that he or she meets the qualifications,
148 requirements, and criteria set forth in subsections (a), (b), (c), and (d) of Code Section
149 43-41-6; and

150 ~~(D) The applicant is otherwise in compliance with all requirements of this state for~~
151 ~~transaction of such business within this state; provided, however, that such application~~
152 ~~and request for exemption shall be submitted in accordance with subsection (a) of Code~~
153 ~~Section 43-41-17; and~~

154 ~~(4)(2) Any person who holds a current and valid license issued under this chapter to~~
155 ~~engage in the comparable category of residential or general contracting which license was~~
156 ~~issued to him or her in their capacity either as an individual licensee or as a qualifying~~
157 ~~agent for a business organization.~~

158 (b) Any applicant for issuance of a residential contractor or general contractor license
159 under this title who shall seek exemption from the examination requirement under this
160 Code section, on any basis set forth above, shall have the burden of establishing to the
161 satisfaction and within the discretion of the appropriate division that the requirements for
162 such exemption have been satisfied. The decision of such division as to the satisfaction of
163 the requirements for such exemption from taking the examination shall, in the absence of
164 fraud, be conclusive.

165 ~~(c) Any business organization that had an applicant submit a complete and satisfactory~~
166 ~~application pursuant to this Code section, but was not issued a license due to the death of~~
167 ~~the qualifying agent applicant prior to the issuance of the license, shall remain eligible for~~
168 ~~consideration under this Code section with the submission of a new qualifying agent~~
169 ~~applicant for such business entity."~~

170 **SECTION 4.**

171 Said chapter is further amended by revising subsections (a) and (b) of Code Section
172 43-41-17, relating to effective date of licensing and sanctioning provisions, unenforceable
173 contracts, compliance with county or municipal requirements, exemption for Department of
174 Transportation contractors, and other exceptions, as follows:

175 "(a) The licensing requirements imposed by this chapter and the sanctions and
176 consequences relating thereto shall not become effective and enforceable until July 1, 2008.
177 On and after such date, no person, whether an individual or a business organization, shall
178 have the right to engage in the business of residential contracting or general contracting
179 without a current, valid residential contractor license or general contractor license,
180 respectively, issued by the division under this chapter or, in the case of a business
181 organization, unless such business organization shall have a qualifying agent as provided
182 in this chapter holding such a current, valid residential contractor or general contractor
183 license on behalf of such organization issued to such qualifying agent as provided in this
184 chapter. ~~Notwithstanding the foregoing, persons seeking licensure under this chapter and
185 exemption from examination under paragraphs (1) and (2) of subsection (a) of Code
186 Section 43-41-8 shall submit their applications, including all necessary proof of the basis
187 of exemption from examination for such license, starting January 1, 2006. The period for
188 submission of such applications and requests for exemption from the examination
189 requirements shall extend thereafter for a period of 18 months. Furthermore,
190 notwithstanding the foregoing, any person seeking licensure under this chapter and
191 exemption from examination under paragraph (3) of subsection (a) of Code Section
192 43-41-8 may submit his or her application, including all necessary proof of the basis of
193 such exemption starting January 1, 2007, and continuing thereafter.~~

194 (b) As a matter of public policy, any contract entered into on or after July 1, 2008, for the
195 performance of work for which a residential contractor or general contractor license is
196 required by this chapter and ~~not otherwise exempted under this chapter~~ and which is
197 between an owner and a contractor who does not have a valid and current license required
198 for such work in accordance with this chapter shall be unenforceable in law or in equity by
199 the unlicensed contractor. For purposes of this subsection, a contractor shall be considered
200 unlicensed only if the contractor was unlicensed on the effective date of the original
201 contract for the work, if stated therein, or, if not stated, the date the last party to the contract

202 executed such contract, if stated therein. If the contract does not establish such a date, the
203 contractor shall be considered unlicensed only if the contractor was unlicensed on the first
204 date upon which the contractor provided labor, services, or materials under the contract.
205 Notwithstanding any other provision of law to the contrary, if a contract is rendered
206 unenforceable under this subsection, no lien or bond claim shall exist in favor of the
207 unlicensed contractor for any labor, services, or materials provided under the contract or
208 any amendment thereto. This subsection shall not affect the rights of parties other than the
209 unlicensed contractor to enforce contract, lien, or bond remedies. This subsection shall not
210 affect the obligations of a surety that has provided a bond on behalf of an unlicensed
211 contractor. It shall not be a defense to any claim on a bond or indemnity agreement that
212 the principal or indemnitor is unlicensed for purposes of this subsection."

213

SECTION 5.

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