

# **Tennessee Contractor Licensing Law**

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## **Title 62, Professions, Business and Trades Chapter 6, General Contractors**

### **PART 1 General Provisions**

#### **62-6-101. Short title.**

This chapter shall be known and may be cited as the "Contractors Licensing Act of 1994."

#### **62-6-102. Chapter definitions.**

As used in this chapter, unless the context otherwise requires:

- (1) "Board" means the state board for licensing contractors created pursuant to § 62-6-104
- (2) "Commercial building contractors" are those contractors authorized to bid on and contract for every phase of the construction, direction, alteration, repair or demolition of any building or structure for use and occupancy by the general public;
- (3) "Contracting" means any person or entity that performs or causes to be performed any of the activities defined in subdivision (4)(A) or (7);
- (4) (A) (i) "Contractor" means any person or entity that undertakes to, attempts to or submits a price or bid or offers to construct, supervise, superintend, oversee, schedule, direct or in any manner assume charge of the construction, alteration, repair, improvement, movement, demolition, putting up, tearing down or furnishing labor to install material or equipment for any building, highway, road, railroad, sewer, grading, excavation, pipeline, public utility structure, project development, housing, housing development, improvement or any other construction undertaking for which the total cost is twenty-five thousand dollars (\$25,000) or more; provided, however, with respect to a licensed masonry contractor, such term means and includes the masonry portion of the construction project, the total cost of which exceeds one hundred thousand dollars (\$100,000), materials and labor;
  - (ii) "Contractor" includes, but is not limited to, a prime contractor, electrical contractor, electrical subcontractor, mechanical contractor, mechanical subcontractor, plumbing contractor and plumbing subcontractor, masonry contractor, and roofing subcontractor where the total cost of the roofing portion of the construction project is twenty-five thousand dollars (\$25,000) or more;
  - (iii) If the cost of a project exceeds twenty-five thousand dollars (\$25,000), "contractor" also includes a construction manager of any kind, including, but not limited to, a residential construction manager, construction consultant, architect or engineer who conducts or provides any activity or service described in this subdivision (4) other than normal architectural and engineering services;
- (B) As used in subdivision (4)(A)(iii), "normal architectural and engineering services" means:
  - (i) The preparation of bids, proposals, plans, specifications or other contract documents or the evaluation of contractors, subcontractors or suppliers;

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- (ii) The approval of shop drawings, submittals, substitutions, pay requests or other certifications required by contract documents;
- (iii) Conducting representative reviews for progress and quality of construction on behalf of the owner;
- (iv) Interpretations and clarifications of contract documents;
- (v) Preparation and approval of changes in construction; and
- (vi) Preparation of as-built drawings and operation and maintenance manuals

- (C) "Contractor" does not include an engineer licensed in accordance with chapter 2 of this title who is:
  - (i) Managing and supervising the removal, remediation or clean up of pollutants or wastes from the environment;
  - (ii) Serving as a corrective action contractor, as defined by the rules and regulations of the department of environment and conservation;
  - (iii) Conducting subsurface investigation or testing, or both, by drilling or boring to determine subsurface conditions;
  - (iv) Conducting geophysical or chemical testing of soil, rock, ground water or residues; or
  - (v) Installing of monitoring detection wells or piezometers for evaluating soil or ground water characteristics;

- (D) "Contractor" does not include:
  - (i) Any undertaking, as described in former subdivision (3)(D)(i) [repealed] for the department of transportation; or
  - (ii) Subcontractors other than electrical subcontractors, licensed masonry contractors, and roofing subcontractors where the total cost of the roofing portion of the construction project is twenty-five thousand dollars (\$25,000) or more, mechanical subcontractors and plumbing subcontractors defined as a contractor pursuant to subdivision (4)(A);

- (E) No contractor shall be authorized to perform contracting work as a licensed masonry contractor unless the contractor is licensed as a masonry contractor in accordance with this part.

(5) "Licensed masonry contractor" means a contractor who builds structures from individual units of brick, stone, or concrete and glass block laid in and bound together by mortar, where the total cost of the masonry portion of the construction project exceeds one hundred thousand dollars (\$100,000), materials and labor, and who is required to obtain a license as a licensed masonry contractor by the board;

(6) "Limited licensed electrician" means any person or entity that performs any electrical work that has a total cost of less than twenty-five thousand dollars (\$25,000) and that is required to be registered under § 68-102-150;

(7) "Prime contractor" is one who contracts directly with the owner; and

(8) "Residential contractor" means one whose services are limited to construction, remodelling, repair or improvement of one (1), two (2), three (3) or four (4) family unit residences not exceeding three (3) stories in height and accessory use structures in connection with the residences.

(9) "Roofing work" means the act of removing, installing, repairing or otherwise maintaining any covering to any at- or above-grade structure for the purpose of providing weather proof protection or ornamental enhancement to such structure.

#### **62-6-103. License requirement - Recovery of expenses by unlicensed contractor.**

(a) (1) Any person, firm or corporation engaged in contracting in this state shall be required to submit evidence of qualification to engage in contracting, and shall be licensed as provided in this part. It is unlawful for any person, firm, or corporation to engage in or offer to engage in contracting for any project in this state, unless, at the time of such engagement or offer to engage, the person, firm, or corporation has been duly licensed with a monetary

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limitation sufficient to allow the person, firm, or corporation to engage in or offer to engage in such contracting project under this chapter. The board for licensing contractors shall have the authority to grant or allow an exception, in an amount not to exceed ten percent (10%), to the monetary limitation of such license provided in this subdivision (a)(1). Any person, firm, or corporation engaged in contracting, including a person, firm, or corporation that engages in the construction of residences or dwellings constructed on private property for the purpose of resale, lease, rent, or any other similar purpose, shall be required to submit evidence of qualification to engage in contracting and shall be licensed. It is unlawful for any person, firm, or corporation to engage in, or offer to engage in, contracting as described in this subdivision (a)(1) unless the person, firm, or corporation has been duly licensed under this part.

(2) (A) Notwithstanding subdivision (a)(1), any person, firm or church that owns property and constructs on the property single residences, farm buildings or other buildings for individual use, and not for resale, lease, rent or other similar purpose, is exempt from the requirements of this part.

(B) Except in counties with a population of not less than seven hundred seventy-seven thousand one hundred thirteen (777,113), according to the 1980 federal census or any subsequent federal census, a person or firm specified in subdivision (a)(2)(A) shall not make more than one (1) application for a permit to construct a single residence or shall not construct more than one (1) single residence within a period of two (2) years. There shall be a rebuttable presumption that the person or firm intends to construct for the purpose of resale, lease, rent or any other similar purpose if more than one (1) application is made for a permit to construct a single residence or if more than one (1) single residence is constructed within a period of two (2) years. This subdivision (a)(2)(B) shall not be construed to alter the definition of "contractor" as defined in § 62-6-102.

(3) Notwithstanding subdivisions (a)(1) and (2), the license requirements and restrictions contained in this subsection (a) shall not apply to single residences constructed by:

(A) Nonprofit charitable or religious corporations, associations and organizations that are exempt from federal income taxation under § 501(c)(3) of the Internal Revenue Code of 1986, compiled in 26 U.S.C. § 501(c)(3); or

(B) Students enrolled in educational institutions who construct the residences under the direct supervision of faculty as part of the curriculum of the institution.

(4) The exemption provisions of subdivisions (a)(2) and (3) concerning licensure shall apply to limited licensed electricians.

(5) Notwithstanding subdivision (a)(1), any single residence homeowner is exempt from the limited licensed electrician requirements of this part for purposes of performing electrical work on the homeowner's own residence

(b) Any contractor required to be licensed under this part who is in violation of this part or the rules and regulations promulgated by the board shall not be permitted to recover any damages in any court other than actual documented expenses that can be shown by clear and convincing proof.

(c) Notwithstanding any law to the contrary, no lien otherwise authorized pursuant to title 66, chapter 11 shall be available to any person, firm, or corporation engaged in construction in violation of this chapter.

(d) No contractor shall be authorized to perform roofing work on a construction project where the roofing portion of the construction project is twenty-five thousand dollars (\$25,000) or more unless the contractor is licensed; provided:

(1) Any person who holds a license issued by the department as either a manufactured home installer or a manufactured home retailer, pursuant to title 68, chapter 126, shall not be required to be a licensed contractor in order to perform roofing work on a manufactured home as defined in § 68-126-202; provided, that such work is related to the construction of a manufactured home or performed in connection with a manufacturer's warranty covering a manufactured home, or the repair of such home; and

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(2) Any person who holds a license issued by the department as to the manufacture or installation of modular building units, pursuant to title 68, chapter 126, shall not be required to be a licensed contractor in order to perform roofing work on a modular building unit as defined in § 68-126-303; provided, that such work is related to the construction or installation of a modular building unit, or performed in connection with a manufacturer's warranty covering a modular building unit, or the repair of such unit.

**62-6-104. Board.**

(a) (1) There is created a state board for licensing contractors, called the "board" in this part, to be appointed by the governor. The board shall be composed of nine (9) members, all of whom shall be residents of this state and at least three (3) of whom shall be actively engaged as residential contractors and shall compose the residential review board to consider and handle all informal conferences pertaining to residential construction, at least two (2) of whom shall be actively engaged as commercial building contractors, at least one (1) of whom shall be actively engaged as a mechanical contractor, at least one (1) of whom shall be actively engaged as an electrical contractor, at least one (1) of whom shall be actively engaged as a highway, railroad or airport contractor, and at least one (1) of whom shall be a person who is not engaged as a contractor in any county of this state and has no commercial or professional association with the residential contracting profession or industry, either directly or indirectly. All board members who are required to be in the business of contracting shall have been actively engaged in the business for a period of no less than ten (10) years immediately preceding their appointment and shall be licensed in the classification in which the member is serving upon the board. There shall be no more than one (1) board member in any specific classification provided in this subdivision (a)(1) residing within any one (1) grand division of this state and no more than three (3) board members residing in any one (1) grand division. In making appointments to the board, the governor shall strive to ensure that at least one (1) person serving on the board is sixty (60) years of age or older and that at least one (1) person serving on the board is a member of a racial minority.

(2) The governor shall appoint the residential contractor members from lists of qualified persons submitted by interested home builder groups including, but not limited to, the Home Builders Association of Tennessee, Inc. Appointments made pursuant to this subdivision (a)(2) shall be made by the governor following the expiration of the respective terms of the members serving on the board as of July 1, 2014. The governor shall consult with interested home builder groups to determine qualified persons to fill positions on the board.

(b) Any member of the board who fails to attend at least two thirds (2/3) of the regularly scheduled meetings of the board shall automatically be removed from the board and a successor member shall be appointed by the governor in the way and manner provided by this part.

(c) All subsequent appointments of successor members shall be made by the governor at the expiration of the respective terms of the members in the way and manner provided by this part.

(d) (1) Notwithstanding the provisions of § 3-6-304 or any other law to the contrary, and in addition to all other requirements for membership on the board:

(A) Any person registered as a lobbyist pursuant to the registration requirements of title 3, chapter 6 who is subsequently appointed or otherwise named as a member of the board shall terminate all employment and business association as a lobbyist with any entity whose business endeavors or professional activities are regulated by the board, prior to serving as a member of the board. The provisions of this subdivision (1)(A) shall apply to all persons appointed or otherwise named to the board after July 1, 2010;

(B) No person who is a member of the board shall be permitted to register or otherwise serve as a lobbyist pursuant to title 3, chapter 6 for any entity whose business endeavors or professional activities are regulated by the board during such person's period of service as a member of the board. The provisions of this subdivision (1)(B) shall apply to all persons appointed or otherwise named to the board after July 1, 2010, and to all persons serving on the board on such date who are not registered as lobbyists; and

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(C) No person who serves as a member of the board shall be employed as a lobbyist by any entity whose business endeavors or professional activities are regulated by the board for one (1) year following the date such person's service on the board ends. The provisions of this subdivision (1)(C) shall apply to persons serving on the board as of July 1, 2010, and to persons appointed to the board subsequent to such date.

(2) A person who violates the provisions of this subsection shall be subject to the penalties prescribed in title 3, chapter 6.

(3) The bureau of ethics and campaign finance is authorized to promulgate rules and regulations to effectuate the purposes of this subsection. All such rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, and in accordance with the procedure for initiating and proposing rules by the ethics commission to the bureau of ethics and campaign finance as prescribed in § 4-55-103.

**62-6-105. Qualification of members - Terms - Vacancies - Removal.**

(a) (1) Each member of the board shall be at least twenty-five (25) years of age and of good moral character.

(2) (A) Each member shall be of recognized standing in the member's branch of the contracting business.

(B) Subdivision (a)(2)(A) does not apply to the member who is not engaged in the business of contracting.

(b) The terms of members shall be for a seven-year period and staggered so that the term of at least one (1) member shall expire each December 31.

(c) In event of death, resignation or failure of a member to serve the full term, a successor shall be appointed to the unexpired term. Each member shall hold over after the expiration of the member's term until the successor has been duly appointed and qualified. If vacancies shall occur in the board for any cause, the same shall be filled by appointment of the governor.

(d) The governor may remove any member of the board for official misconduct, incompetency or willful neglect of duty.

**62-6-106. Certificate of appointment - License requirement - Legal assistance.**

(a) Each member of the board shall receive a certificate of appointment from the governor and, before entering upon the discharge of the duties of office, shall file with the secretary of state the constitutional oath of office.

(b) (1) No one shall be eligible for appointment on the board who does not at the time hold an unexpired license to operate as a contractor under this part.

(2) Subdivision (b)(1) does not apply to appointment of a member who by law is not permitted to be engaged in the business of contracting in any county of this state.

(c) The board, or any committee of the board, shall be entitled to the services of the attorney general and reporter, or the legal department of Tennessee, in connection with the affairs of the board.

**62-6-107. Executive director.**

(a) The board shall appoint an executive director to provide all administrative functions for the board. The compensation of the executive director shall be fixed by the board and the director shall serve at the pleasure of the board.

(b) The board shall retain and establish the qualifications and compensation for investigators, inspectors, and other staff requiring professional qualifications. All members of the board's staff requiring professional qualifications shall serve at the pleasure of the board.

(c) Any expenditure by the board under this section shall be subject to approval by the commissioner of finance and administration, pursuant to the board's annual budget submitted to the commissioner of commerce and insurance and approved by the commissioner of finance and administration.

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## **62-6-108. Bylaws and rules - Seal**

- (a) The board has the power to make such bylaws, rules and regulations not inconsistent with the laws of Tennessee, as it deems best, subject to the final approval of the commissioner of commerce and insurance.
- (b) The board shall adopt a seal for its own use. The seal shall have on it the words "Board for Licensing Contractors, State of Tennessee." The executive director shall have care, charge and custody of the seal.

## **62-6-109. Board meetings - Officers.**

- (a) The board shall meet at least six (6) times each year for the purpose of transacting business.
- (b) At the first meeting of each calendar year the board shall elect officers, including a chair, vice chair and secretary.
- (c) Special meetings of the board shall be held at such times as the board may provide.
- (d) Five (5) members shall constitute a quorum at a board meeting.
- (e) Due notice of each meeting and the time and place thereof shall be given each member in such manner as the bylaws may provide.
- (f) The board shall meet in each grand division at least one (1) time each year.
- (g) The board may specify by rules and regulations specific board actions that may be taken by the executive director without a meeting of the board. The actions shall be limited to increases in the monetary limits and timely consideration of licensure applications or renewal applications for which there are no evident impediments to licensure and for which loss of substantial business is imminent if licensure is delayed. Notice of emergency actions shall be posted on the board's website and shall be scheduled as the first agenda item at the next scheduled meeting of the board in order that the board may review and, in its discretion, modify the actions of the executive director.

## **62-6-110. Register of applicants - Roster of licensees.**

- (a) The executive director shall keep a register of all applicants for license, showing of each, date of application, name, qualifications, place of business, place of residence and whether license was granted or refused.
- (b) The books and register of the board shall be *prima facie* evidence of all matters recorded therein.
- (c) A roster showing the name, business address, business telephone number and qualifying agent of each licensed contractor shall be prepared by the executive director of the board. Such roster may be printed by the board, the expense of which shall be part of the expenses of such board as provided in § 56-1-302.

## **62-6-111. License and examination - Transfer of license**

- (a) (1) (A) Anyone desiring to be licensed as a contractor for this state shall make written application to the board on forms prescribed by the board and shall furnish the board with an affidavit stating that the applicant is not currently performing any construction work and has not offered to engage in any construction work where the amount of the applicant's contract exceeds twenty-five thousand dollars (\$25,000) or, in the case of a limited licensed electrician, where the amount of the applicant's contract is less than twenty-five thousand dollars (\$25,000). The application shall be accompanied by an application fee as set by the board. The application shall also be accompanied by evidence of the applicant's current workers' compensation insurance coverage. Failure to provide evidence of insurance coverage shall make the applicant ineligible for licensure by the board until evidence of insurance coverage is provided. Any application for initial licensure or for renewal of licensure also shall be accompanied by an affidavit affirming that the applicant maintains general liability insurance and workers' compensation insurance and specifying the amount of the insurance as well as any other information the board may require.
- (B) (i) Anyone desiring to be licensed as a contractor for this state who resides in a state that does not practice reciprocity with licensees of the Tennessee board for licensing contractors shall make

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written application on forms prescribed by the board and shall attach an affidavit to the application stating that the applicant is not currently performing any construction work and has not offered to engage in any construction work in this state in which the amount of the applicant's contract exceeds two thousand five hundred dollars (\$2,500) or, in the case of a limited licensed electrician, in which the amount of the applicant's contract exceeds twenty-five thousand dollars (\$25,000). The application shall be accompanied by an application fee as set by the board. The application shall also be accompanied by evidence of the applicant's current workers' compensation insurance coverage. Failure to provide the evidence of insurance coverage shall make the applicant ineligible for licensure by the board until the evidence of insurance coverage is provided. Any application for initial licensure or for renewal of licensure also shall be accompanied by an affidavit affirming that the applicant maintains general liability insurance and workers' compensation insurance and specifying the amount of the insurance as well as any other information the board may require.

(ii) Notwithstanding any reciprocity for contractors which may otherwise exist between states, any person desiring to be perform contracting services in this state as a licensed masonry contractor whether residing in this state or another state shall not be authorized to perform any such services unless the person takes and passes the masonry examination required pursuant to subsection (a)(2) of this section.

(2) Anyone desiring to be licensed as a contractor in this state shall take a written examination to determine the applicant's qualifications. This examination may be given orally at the discretion of the board if a written examination is precluded by reason of disability. Each applicant shall pay an examination fee for each written or oral examination. If the results of the examination constitute a passing score, then the applicant shall make a written application to the board in accordance with subdivision (a)(1).

(3) If the results of the examination of any applicant are satisfactory to the board, then it shall issue to the applicant a certificate authorizing the applicant to operate as a contractor in this state. The board shall state the construction classifications in which the applicant is qualified to engage as a contractor and for each classification shall list the monetary limitations on the classification as determined by the board.

(4) Whenever any applicant is advised to appear before the board for an interview and fails to appear at the scheduled time and place without notifying the board at least three (3) days in advance, the applicant shall pay an additional fee as set by the board before being rescheduled for an interview. In the event of failure to appear for an interview on three (3) separate occasions, a new application and fee are required.

(b) (1) The board shall promulgate rules and regulations that establish uniform criteria to govern issuance by the board of the classifications and monetary limitations required by subdivision (a)(3). The board shall have discretionary authority in individual cases to modify the criteria for an applicant if the public safety and welfare clearly require modification and if the board furnishes the applicant with a written statement justifying modification.

(2) The criteria so established by the board shall include, but not be limited to, a letter of reference from a past client, employer of the applicant or codes administration official, as well as a financial statement of the applicant.

(3) If an applicant requests a monetary limitation of greater than three million dollars (\$3,000,000), the applicant's financial statement shall be audited and attested to by a licensed public accountant or certified public accountant.

(4) The financial statement of any applicant requesting a monetary limitation of three million dollars (\$3,000,000) or less shall be either reviewed or audited by a licensed public accountant or certified public accountant. The board may, in its discretion, require the financial statement of the applicant be audited and attested to by a licensed public accountant or certified public accountant.

(c) The issuance by the board of a certificate of license authorizing the licensee to engage in any major construction classification or classifications of contracting shall not authorize the licensee to engage in twenty-five

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thousand dollars (\$25,000) or more of any other major construction classification or specialty classification under the major construction classification unless the licensee is additionally licensed in the other major construction classification or specialty classification under the major construction classification.

(d) A contractor may bid on a contract requiring work in a classification or classifications other than the one in which the contractor is licensed if and only if the contractor has a commercial building contractor's license or if the contractor's license will permit the contractor to perform at least sixty percent (60%) of the bid amount or price of the work for the project being bid or priced; however, the contractor may not actually perform any work in excess of twenty-five thousand dollars (\$25,000) or, in the case of a limited licensed electrician, where the amount of work is less than twenty-five thousand dollars (\$25,000) in any classification unless the contractor has a license to perform work in that classification.

(e) (1) Whenever a partnership licensed as a contractor dissolves, no former member of the partnership shall further undertake contracting before filing a new application with the board and receiving a license.

(2) In the case of a merger, purchase by nonstockholders of the majority interest or reorganization pursuant to a bankruptcy proceeding of any licensee engaged in contracting, the licensee shall make written application to the board and obtain a new license before undertaking contracting.

(f) (1) Upon application of any individual who was formerly a partner in a dissolved partnership, the board shall transfer to the individual the license formerly held by the partnership upon a showing that:

(A) The individual was a partner in a dissolved partnership.

(B) The current financial statement of the individual meets the requirements promulgated by the board. If the financial statement fails to meet the requirements, the board may in its sole discretion modify the monetary limitation prior to transfer; and

(C) All liabilities of the partnership were satisfied prior to dissolution or will be satisfied by the individual.

(2) The board shall collect a fee as set by the board for transferring the license.

(g) (1) The board shall transfer, upon application and payment of a fee as set by the board, by any proprietorship or partnership that subsequently incorporates as a Tennessee corporation, the license formerly held by the proprietorship or partnership to the corporation upon a showing that:

(A) The officers or directors or management of the corporation were the owners or managers of the proprietorship or partnership;

(B) A copy of the corporation's charter has been filed with the board;

(C) The partnership or proprietorship is currently in good standing with the board;

(D) The current financial statement of the corporation meets the requirements promulgated by the board. If the financial statement fails to meet the requirements, the board may in its sole discretion modify the monetary limitation prior to transfer; and

(E) All liabilities of the proprietorship or partnership were satisfied prior to incorporation or will be satisfied by the corporation.

(2) The board shall develop an application for the transfer of licenses.

(h) Notwithstanding § 56-1-302(a)(7) to the contrary, all revenues generated from licensing fees, penalties, or interest shall be allocated solely to the board for licensing contractors to be utilized for:

(1) The administration and enforcement of this part; and

(2) The purposes set forth in the Go Build Tennessee Act, compiled in title 4, chapter 41.

(i) (1) Notwithstanding any law to the contrary, the board may issue a license to any person who establishes the person's competency in any classification by successfully passing a proficiency test or examination for

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measurement of industry expertise in such work that is administered by the board; and the license shall authorize the licensee to engage in contracting in this state or any of its political subdivisions.

(2) The licensee shall be eligible to contract for such work in any county or municipality upon:

- (A) Exhibiting evidence of a current certificate of license to the appropriate local officials;
- (B) Paying any local licensing fees in effect on May 8, 1992; and
- (C) Paying any inspection or permit fees customarily required by any county or municipality for such work. No county or municipality shall require the state licensee or its employees to pass any county or municipal test or examination; nor shall a county or municipality impose any additional requirements upon the state licensee or its employees, nor in any way discriminate against the state licensee or its employees on the basis of the licensee's nonresidency within the county or municipality.

(j) (1) Notwithstanding any law to the contrary, the board may issue a license as a limited licensed electrician to any individual without an examination as required by this part, except as provided in subdivision (j)(3), if the individual makes an application to the board in which the following information is provided:

- (A) On September 1, 2000, the applicant was registered in accordance with § 68-102-150; and
- (B) Evidence that all fees and taxes relative to the operation of the applicant's electrical work have been paid to the appropriate agencies when the application is filed under this subsection (j); or
- (C) A current license or certificate issued by any county or municipality of this state prior to September 1, 2000, that is evidence that the applicant had by examination by an official of the county or municipality demonstrated the qualifications required to perform the electrical contract work within its jurisdiction and was actively engaged in that business on September 1, 2000.

(2) An application for a license under subdivision (j)(1)(A), (j)(1)(B) or (j)(1)(C) shall be filed with the board by July 1, 2001. If a license issued to a limited licensed electrician pursuant to subdivision (j)(1)(A), (j)(1)(B) or (j)(1)(C) is not periodically renewed as provided by this part, then the limited licensed electrician shall be eligible for a license only after the satisfactory completion of the examination required by the board for initial applications.

(3) Any individual who is licensed as a limited licensed electrician under subdivisions (j)(1)(A) and (B) shall be required to have satisfactorily completed the examination of the board to engage in business as a limited licensed electrician in any county or municipality that is within subdivision (j)(1)(C).

(4) Any person who performs electrical work and who is subject to licensure as a limited licensed electrician shall apply to the board for a license. To receive a license, the applicant shall pay a fee as set by the board for the license and shall pass an examination prescribed by the board. The board may administer the examination or may contract for the administration of the examination.

(5) Notwithstanding any provision of this part to the contrary, a license as a limited licensed electrician shall not be required in any municipality or county that issues licenses to persons who perform electrical work in the municipality or county.

(6) Any limited licensed electrician requesting an electrical inspection must first have a license from the board for licensing contractors as required by § 62-6-103

(7) Any person with knowledge of faulty electrical work performed by a limited licensed electrician must report the electrician to the state board for licensing contractors, which may initiate proceedings against the electrician for the faulty work.

(8) The board for licensing contractors may revoke or suspend the license of a limited licensed electrician for faulty electrical work performed by the licensee.

(9) The Uniform Administrative Procedures Act, compiled in title 4, chapter 5, governs all matters and procedures respecting the hearing and judicial review of any contested case arising under this section.

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(10) The state fire marshal and board for licensing contractors shall formulate a system for inspectors to report to the board any problems they may encounter with the workmanship of a limited licensed electrician. The system shall include the use of inspectors who are employed by the board under § 62-6-107(b).

(11) Any person who holds a current, unexpired license as a limited licensed electrician issued by the board shall be deemed to have met the registration requirements of § 68-102-150.

(k) (1) A licensee may request the board to consider revision of the licensee's classification or classifications or monetary limitation or limitations, or both, at any of its regular meetings. The request shall be made by letter, which shall be accompanied by financial, equipment and experience statements relative to the classification request accurate as of no more than twelve (12) months prior to the date of the request. The request must be received in the office of the board by the last day of the month before the month in which it is to be considered.

(2) If an applicant requests a change in monetary limitation to an amount of three million dollars (\$3,000,000) or less, the applicant shall submit a financial statement that has been reviewed or audited by a licensed public accountant or certified public accountant. If an applicant requests a change in monetary limitation to an amount greater than three million dollars (\$3,000,000), the applicant shall submit a financial statement that has been audited and attested to by a licensed public accountant or certified public accountant.

(3) The board reserves the right to require examination pursuant to a request for change of classification. The board further reserves the right to consider a request for change of classification or limitation at any time, if consideration of the request at the regularly scheduled meeting would cause an undue hardship on the owner and be in the best interest of the public safety and welfare.

(4) Increases within the first year will not be allowed without special permission from the board

(I) Notwithstanding any other law, rule or regulation to the contrary, to qualify for the Tennessee mechanical plumbing (CMC-A) license examination, a person must have three (3) years' experience as a plumber prior to taking the examination or have an engineering degree in plumbing or in a mechanical field.

(m) The board shall deny any application for licensure as a contractor if the board determines that the name under which the applicant will be trading is identical with the name being used by an existing licensee, or is so nearly similar to the name being used by an existing licensee that it is likely to cause confusion on the part of the public at large. This subsection (m) shall not apply to any applicant who has acquired an exclusive right to use the name as a registered trademark pursuant to 15 U.S.C. § 1051.

**62-6-112. License classifications - Specialty classifications - Contractor's authority to bid and contract.**

(a) There shall be nine (9) major construction classifications in which a contractor may apply for a license, major classifications being:

- (1) Commercial building construction;
- (2) Industrial construction;
- (3) Heavy construction;
- (4) Highway, railroad and airport construction;
- (5) Municipal and utility construction;
- (6) Mechanical construction;
- (7) Electrical construction;
- (8) Environmental and special construction; and
- (9) Residential construction.

(b) The board shall promulgate by rules or regulations specialty classifications required under each major classification set out in subsection (a). Issuance of a license by the board to a contractor in any major classification

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automatically includes issuance of a license to the contractor in all specialty classifications included under the major classification.

(c) A contractor may obtain a license in any of the specialty classifications that the board by rule or regulation may promulgate under each major classification but such license in a specialty classification allows the contractor to bid, contract for or perform contracting work in that specialty classification only.

(d) A contractor may not be licensed in six (6) or more specialty classifications under any one (1) major classification without successfully passing the written and/or oral examination for such major classification.

(e) Notwithstanding any provision of this part to the contrary, the board may promulgate rules or regulations establishing subclassifications within the residential construction classification for which a limited license may be issued to an applicant who has successfully completed a seminar sponsored by the board in lieu of the written or oral examination, or both, and who has otherwise complied with the requirements of this part.

(f) (1) A commercial building contractor is authorized to bid on and contract for the construction, erection, alteration, repair or demolition of any building or structure for use and occupancy by the general public, including residential construction with more than four (4) units or greater than three (3) stories in height.

(2) A small commercial building contractor is authorized to bid on and contract for the construction, erection, alteration, repair or demolition of any building or structure for use and occupancy by the general public, the total cost of which does not exceed one million five hundred thousand dollars (\$1,500,000).

#### **62-6-113. Issuance of duplicate certificate.**

A duplicate license certificate to replace any certificate lost, destroyed or mutilated may be issued subject to the rules and regulations of the board.

#### **62-6-114. Certificate as evidence of rights.**

The issuance of a certificate of license shall be evidence that the person, firm or corporation named in the certificate is entitled to all the rights and privileges of a licensed contractor while the license remains unrevoked or unexpired.

#### **62-6-115. Corporations and partnerships.**

Corporations and partnerships may engage in the business of contracting; provided, that at least one (1) of the major stockholders or partners or full-time employee with a written power of attorney to bind the corporation or partnership has sufficient knowledge of the construction business in which such persons are licensed to perform. If the person who took the examination for the partnership or corporation leaves the firm for any reason, the partnership or corporation must designate an individual to take the examination within three (3) months.

#### **62-6-116. Expiration of license - Renewal.**

(a) A certificate of license expires on the last day of the twenty-fourth month following its issuance or renewal, and becomes invalid on such date unless renewed.

(b) Renewal notices shall be mailed ninety (90) days prior to the expiration date of the license. Such renewal must be received in the office of the board thirty (30) days prior to the expiration of such license.

(c) Renewal may be effected at any time during the thirty (30) days prior to the expiration of the license by filing with the board a financial statement, a report of any personal or corporate bankruptcies, and other such information as the board may require, and by the payment of a fee as set by the board, and by submitting evidence of the applicant's current workers' compensation insurance coverage. Failure to provide such evidence shall make the applicant ineligible for renewal until such evidence of insurance coverage is provided.

(d) A renewal application for a monetary limitation greater than one million five hundred thousand dollars (\$1,500,000) shall be accompanied by a reviewed or audited financial statement prepared by a licensed public accountant or a certified public accountant. If a renewal applicant requests a monetary limitation of one million five hundred thousand dollars (\$1,500,000) or less, the applicant shall submit a notarized statement that the information contained in the financial statement is true and correct.

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(e) It is the duty of the executive director to notify by mail every person licensed hereunder of the date of expiration of this certificate of license and the amount of fee required for its renewal for two (2) years. Such notice shall be mailed in accordance with this section.

(f) The fee to be paid for the renewal of a certificate of license after the expiration date shall be increased ten percent (10%) for each month or fraction of a month that payment for renewal is delayed. The maximum fee for a delayed renewal shall not exceed twice the normal fee.

(g) No contractor shall be qualified to receive a renewal license when such contractor has been in default in complying with the provisions of this chapter for a period of one (1) year, and in such event the contractor, in order to qualify under the law, shall make a new application as in the case of the issuance of the original license.

(h) The board shall promulgate rules and regulations which establish uniform criteria to govern the review and adjustment of the general construction classifications, specialty classifications, and monetary limitations of certificates of license which are subject to renewal by the board. Such criteria shall also establish a method for identifying those licensees applying for renewal who may require a greater degree of scrutiny by the board than usual.

**62-6-117. Certificate issued to person who enters or has entered military service.**

Any certificate of license issued by the state board for licensing contractors to any person now in any branch of the armed service of the United States, or who hereafter enlists or is called into service, remains in full force and effect until one (1) year after the person is discharged from service and is subject to renewal at that time by the payment of the annual fee set out in this chapter.

**62-6-118. Revocation or suspension of license - Reissuance - Civil penalty.**

(a) (1) Whenever any person, firm or corporation claims to have been damaged or injured by the gross negligence, incompetency, fraud, dishonest dealing and/or misconduct in the practice of contracting on the part of any person, firm or corporation licensed hereunder, files suit upon such claim in any of the courts of record in this state, and recovers judgment thereon, such court may, as a part of its decree or judgment in such case, revoke the certificate of license under which such contractor is operating at the time of the aforementioned wrongdoing.

(2) The board shall revoke the license of any contractor, home improvement contractor or home improvement services provider upon receiving notification from the court in accordance with § 39-14-153(d) of such person's conviction for a violation of § 39-14-153.

(3) It is the duty of the clerk of the court to notify the executive director of the board of such revocation.

(b) (1) The board may reissue a license to any person, firm or corporation whose license has been revoked; provided, that a majority of the members of the board vote in favor of reissuance for reasons the board may deem sufficient.

(2) Notwithstanding the provisions of subdivision (b)(1):

(i) If a person, firm or corporation's license was revoked based on a conviction for a violation of § 39-14-153, the board shall not reissue the license until the person, firm or corporation has served the entire term of the sentence imposed as a result of such violation; and

(ii) If a person, firm or corporation's license was revoked based on a second or subsequent conviction for a violation of § 39-14-153, the board shall not reissue the license.

(c) The executive director shall immediately notify the secretary of state and the clerk of each county, of any revocation of a license or the reissuance of a revoked license.

(d) The board has the power to revoke or suspend any license or renewal granted by it for any of the reasons stated in this section, or for a failure to observe the terms and conditions of any license or renewal granted under the provisions of this chapter or any bylaws, rules or regulations adopted or promulgated by it as provided in § 62-6-108, or for a violation of the terms of any license.

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- (e) The board shall, in all cases before hearing any charges against a contractor, furnish a written copy of the charges against the accused, including notice of the time and place where the charges will be heard, and give reasonable opportunity for the accused to be present and offer any evidence the accused may wish. The accused shall have the waivable right to an attorney if so desired.
- (f) The affirmative vote of a majority of the board is necessary to revoke or suspend a license or renewal.
- (g) The board may refuse to issue or renew a license to any person, firm or corporation for lack of financial stability, lack of expertise, submission of false evidence with regard to application of license or renewal, conviction of a felony, and any other conduct which constitutes improper, fraudulent or dishonest dealing, or violation of the statute.

#### **62-6-119. Bid documents - Required disclosures by bidders.**

- (a) Any person or entity preparing plans, specifications or any other documentation for inclusion in an invitation to bid or comparable bid document including any electronic bidding documents, shall reference this chapter in such documentation and a specific statement informing the invited bidder that it is necessary for such bidder to provide evidence of compliance with the applicable provisions of this chapter before such bid may be considered.
- (b) The person or entity involved in the preparation of the invitation to bid or comparable bid documents, including any electronic bid documents, shall direct that the following information be written upon the bid envelope or provided within the electronic bid document:
  - (1) The name, license number, expiration date thereof, and license classification of the contractor applying to bid for the prime contract;
  - (2) The name, license number, expiration date thereof, and license classification of the contractor applying to bid for the masonry contract where the total cost of the materials and labor for the masonry portion of the construction project exceeds one hundred thousand dollars (\$100,000);
  - (3) The name, license number, expiration date thereof, and license classification of the contractor applying to bid for the electrical, plumbing, heating, ventilation, or air conditioning contracts except when such contractor's portion of the construction project is less than twenty-five thousand dollars (\$25,000);
  - (4) For each vertical closed loop geothermal heating and cooling project, the company name, department of environment and conservation license number, classification (G, L or G,L) and the expiration date, except when the geothermal portion of the construction project is in an amount less than twenty-five thousand dollars (\$25,000);
  - (5) Prime contractor bidders who are to perform the masonry portion of the construction project which exceeds one hundred thousand dollars (\$100,000), materials and labor, the electrical, plumbing, heating, ventilation or air conditioning or the geothermal heating and cooling must be so designated; and
  - (6) Only one (1) contractor in each of the classifications listed above shall be written on the bid envelope or provided within the electronic bid document.
- (c) Failure of any bidder to furnish the required information shall void such bid and such bid shall not be considered. Upon opening of the bid envelope or initial opening of an electronic bid, the names of all contractors listed shall be read aloud at the official bid opening and incorporated into the bid. Prior to awarding a contract, the awarding person or entity and its authorized representatives shall verify the accuracy, correctness and completeness of the required information, and any discrepancies found in the spelling of names of bidders, transposition of license numbers, or other similar typographical errors or omissions may be corrected within forty-eight (48) hours after the bid opening excluding weekends and state-recognized holidays.
- (d) No invitation to bid may require that any subcontractor be identified, listed or designated until the final bid submission by the prime contractor, or that any prime contractor accept the bid of any subcontractor until the final bid submission by the prime contractor. This subsection (d) shall apply only to design/bid/build procurements where cost is the primary criterion for the contract award.

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(e) Any person or entity, public and private, awarding a bid to a contractor who is not licensed in accordance with this chapter shall be subject to the penalty provided in § 62-6-120(b).

(f) Notwithstanding the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, relative to the amount of civil penalties that may be imposed, the board may impose a civil penalty not to exceed five thousand dollars (\$5,000) for willful violation of this section.

## **62-6-120. Penalties**

(a) (1) Any person, firm or corporation that engages or offers to engage in contracting without a license as required by § 62-6-103 or who violates the terms and conditions of any license or renewal granted by the board pursuant to this part commits a Class A misdemeanor. The penalties imposed by this subdivision (a)(1) shall not apply to a person who engages a contractor without a license for the purpose of constructing a residence for the use of that person.

(2) Any person, firm or corporation that engages or offers to engage in contracting without a license as required by § 62-6-103 is ineligible to receive the license until six (6) months after a determination by the board that a violation has occurred. Additionally, no such person, firm or corporation shall be awarded any contract for the project upon which it engaged in contracting without a license or permitted to participate in any rebidding of the project.

(b) Any person, firm or corporation that accepts a bid in excess of twenty-five thousand dollars (\$25,000) from a contractor who is not licensed, with appropriate classifications and sufficient monetary limitations, or in the case of a limited licensed electrician where the amount is less than twenty-five thousand dollars (\$25,000), in accordance with this part, commits a Class A misdemeanor.

(c) (1) No official of the state other than of the department of transportation shall issue a permit or contract work order to any applicant for a permit or work order to engage in contracting, unless the applicant holds a license as a contractor with appropriate classifications and sufficient monetary limitations, in accordance with this part.

(2) Any official violating this subsection (c) commits a Class A misdemeanor.

(d) Notwithstanding the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, relative to the amount of civil penalties that may be imposed, the board may impose a civil penalty not to exceed five thousand dollars (\$5,000) per offense against any person or firm that violates the terms and conditions of an existing license to engage in contracting or against any person or firm that engages in unlicensed contracting.

(e) (1) (A) The director of the board, acting on behalf of the board, is authorized to issue citations against persons:

- (i) Acting in the capacity of or engaging in the business of a contractor without a license in violation of § 62-6-103;
- (ii) Exceeding the monetary limitation on the person's contractor's license; or
- (iii) Acting in the capacity of or engaging in the business of a contractor in a classification in which the person is not licensed by the board, notwithstanding the person's licensure to perform such services in another classification.

(B) Each citation shall be in writing and shall describe with particularity the basis of the citation.

(C) Each citation shall contain an order to cease all violations of this part and an assessment of a civil penalty in an amount no less than fifty dollars (\$50.00) nor more than one thousand dollars (\$1,000).

(2) The board shall promulgate rules and regulations to specify those conditions necessary to the issuance of a citation and the range of penalties for violations of this part.

(3) The sanctions authorized pursuant to this subsection (e) shall be in addition to any other remedies, civil and criminal, available to any person harmed by a violation of this part.

(4) Service of a citation issued pursuant to this subsection (e) may be made by certified mail at the last known business address or residence address of the person cited.

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- (5) A citation issued pursuant to this subsection (e) shall be issued by the director within one (1) year after the act or omission that is the basis for the citation.
- (6) Any person served with a citation pursuant to this subsection (e) may appeal to the director by written notice postmarked within fifteen (15) working days after service of the citation with respect to violations alleged, scope of the order or amount of civil penalty assessed.
- (7) If a person cited timely notifies the director that the person intends to contest the citation, the director shall afford an opportunity for a contested case hearing pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3.
- (8) After all administrative appeals have been exhausted, the director may apply to the appropriate court for a judgment in an amount of the civil penalty, plus applicable court costs, and for an order to cease activities in violation of § 62-6-103. The motion for the order, which shall include a certified copy of the final order of the hearing officer or administrative judge, shall constitute a sufficient showing to warrant the issuance of the judgment and order.
- (9) (A) Notwithstanding any other law to the contrary, the director may waive part of the civil penalty if the person against whom the civil penalty is assessed satisfactorily completes all the requirements for, and is issued, a license as a general contractor.  
(B) Any outstanding injury to the public shall be settled satisfactorily before a license as a general contractor is issued.
- (f) Any individual or entity that fails to pay a civil penalty assessed by the board pursuant to the terms of a final order entered by the board after a contested case hearing against the individual or entity pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, may be referred to a collection agency.
- (g) Failure to pay any civil penalty assessed by the board shall subject the individual or entity to suspension or revocation of a license issued pursuant to this part.

### **62-6-121. Enforcement.**

The board shall inquire into the identity of any person, firm or corporation operating under the general classifications of this chapter and shall prosecute any person, firm or corporation violating the provisions of this chapter.

### **62-6-122. Injunctions.**

- (a) In order to secure the effective enforcement of this chapter, jurisdiction is conferred on the chancery court of this state to grant injunctive relief against:
  - (1) Any person, firm or corporation undertaking to engage in the contracting business in violation of the terms of this chapter; or
  - (2) Any person, firm, corporation, or official of the state of Tennessee or any political subdivision thereof, who accepts a bid in violation of § 62-6-120(b) or (c).
- (b) Such injunction suit shall be filed in the name of the state of Tennessee on relation of the board for licensing contractors, or any member thereof, without bond being required for prosecution of the suit or for the issuance of injunction.
- (c) Any expenses incurred, such as depositions, travel expenses or attorney fees, required for the prosecution of the suit, shall be paid in the same manner as other expenses incurred by the board.

### **62-6-123. Indemnify or hold harmless agreement invalid.**

A covenant promise, agreement or understanding in or in connection with or collateral to a contract or agreement relative to the construction, alteration, repair or maintenance of a building, structure, appurtenance and appliance, including moving, demolition and excavating connected therewith, purporting to indemnify or hold harmless the promisee against liability for damages arising out of bodily injury to persons or damage to property caused by or

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resulting from the sole negligence of the promisee, the promisee's agents or employees, or indemnitee, is against public policy and is void and unenforceable.

**62-6-124. Access to and use of financial statements.**

- (a) The financial statements submitted by contractors shall be treated as confidential and shall be used by the board only for the purposes of determining the qualifications of applicants for licenses and the monetary limitations.
- (b) The comptroller of the treasury or the comptroller's designated representative shall be accorded access to and may examine any financial statement solely for the purpose of a legitimate audit, § 10-7-508 to the contrary notwithstanding.

**62-6-125. Hearings and judicial review.**

The provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, govern all matters and procedures respecting the hearing and judicial review of any contested case, as defined therein, arising under this chapter.

**62-6-126. Retirement of license - Procedure - Fee - Reinstatement - Disciplinary actions - Renewal - Transferability.**

- (a) Any licensee may retire such licensee's license by submitting a form prescribed by the board accompanied by the current active license certificate, and a fee of twenty-five dollars (\$25.00). Upon receipt of an acceptable application to retire, the board shall issue a retired inactive license certificate to the contractor. The holder of a retired license shall not be entitled to practice as a contractor until the licensee is reinstated.
- (b) Any licensee who is not engaged in work or activities which require a contractor's license may apply for a retired license.
- (c) A retired license shall be valid for a period of one (1) year from the annual renewal date. If the inactive licensee wishes to remain inactive for any portion of a subsequent calendar year, the licensee shall pay an additional inactive fee of twenty-five dollars (\$25.00), on or before the annual renewal date of each such year.
- (d) The board shall not refund any of the renewal fee which a licensee may have paid prior to the receipt of the application to retire.
- (e) A retired license may be reinstated by submitting an application acceptable to the board, by paying the full renewal fee for an active license and by fulfilling all other requirements of this chapter. No examination shall be required to reinstate a retired license.
- (f) The retired status of a license shall not bar any disciplinary action by the board against a licensee for any of the causes provided in this chapter.
- (g) In no event may a retired license be renewed for more than seven (7) years dated from the time of initial application.
- (h) No retired license is transferable.

**62-6-127. Availability of liens.**

Notwithstanding any provision of title 66, chapter 11, or any other provision of the law to the contrary, the provisions of title 66, chapter 11, shall not be available on single family residential construction to any person, firm or corporation who performs residential construction, and who is required to be licensed as a contractor pursuant to the provisions of this chapter, and fails to have a valid license when acting as a contractor.

**62-6-128. Bid bonds.**

In addition to any applicable requirement of § 12-4-201, no contract for the services of a construction manager shall be awarded for any public work in this state by any city, county, or state authority, or any board of education unless there is posted at the time of the submittal of a proposal for services by a construction manager a bid bond equal to ten percent (10%) of the value of the services proposed and the value of the work to be managed, or may

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at the time of contracting provide payment and performance bonds in amounts equal to the combined monetary value of the services of the construction manager and the value of the work to be so managed.

**62-6-129. Limited licensed electricians not contractors.**

Nothing in this chapter shall be construed to provide that a limited licensed electrician is a contractor. It is the intent of this chapter to provide that a limited licensed electrician is subject to the jurisdiction of the board solely for the purposes of licensure and disciplinary proceedings. No limited licensed electrician shall be authorized to use the appellation "contractor" or any other designation that gives or is designed to give the impression that a limited licensed electrician is a contractor unless the limited licensed electrician also holds a valid contractor's license issued by the board.

**62-6-130. Bonds - Expiration of licenses - Fees.**

- (a) No person shall be required to post a bond, provide a financial statement or a letter of reference in order to obtain a license as a limited licensed electrician.
- (b) All limited licensed electrician licenses shall expire biennially on the month of their issuance.
- (c)
  - (1) The board shall prescribe fees for the issuance and renewal of licenses of limited licensed electricians. The fees, together with the fees prescribed for limited licensed plumbers pursuant to chapter 6, part 4 of this title, shall be in an amount that provides for the cost of administering the licensing and regulation of limited licensed electricians and limited licensed plumbers.
  - (2) The fees collected by the board as described in subdivision (c)(1) shall be combined with fees collected for the licensing of limited licensed plumbers, pursuant to chapter 6, part 4 of this title. These fees shall be used to defray expenses incurred in the administration of the licensing of limited licensed electricians, pursuant to this part, and limited licensed plumbers, pursuant to chapter 6, part 4 of this title.
  - (3) Fees for limited licensed electricians shall be adjusted as necessary to provide that the limited licensed electricians and plumbers fund is fiscally self-sufficient and that revenues from fees do not exceed necessary and required expenditures.
  - (4) On July 1, 2015, all funds held by the state treasurer for the administration of the licensing of limited licensed electricians shall be combined with funds held for the administration of the licensing of limited licensed plumbers, pursuant to chapter 6, part 4 of this title.
- (d) In no event shall the fee for an initial limited licensed electrician license exceed seventy-five dollars (\$75.00) per year nor shall the fee for a renewal of such license exceed fifty dollars (\$50.00) per year.

**62-6-131. Inspection of temporary electrical service.**

No person is required to register with the state fire marshal nor obtain a license from the board for licensing contractors to inspect temporary electrical service.

**62-6-132. Acts prohibited by residential contractor - Conflicts of interest.**

- (a) The following acts are prohibited by a residential contractor:
  - (1) Having a controlling ownership interest in the lender providing a mortgage loan for home improvement for the work being performed by the contractor; or
  - (2) Being a co-signer or acting as a guarantor for a mortgage loan for home improvement.
- (b) As used in this section, "mortgage loan for home improvement" shall have the same meaning as defined in § 45-13-123(c).

**62-6-133. Violations by residential contractors - Penalties.**

- (a) For each violation of § 62-6-132 by a residential contractor, the board is authorized to impose a civil penalty in an amount not to exceed twenty-five thousand dollars (\$25,000) after notice and an opportunity for a hearing. Such penalty shall be in addition to any other penalty authorized pursuant to this part.

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(b) In addition to the civil penalty authorized pursuant to subsection (a), a violation of § 62-6-132 shall be construed to constitute an unfair or deceptive act or practice affecting the conduct of trade or commerce under the Tennessee Consumer Protection Act, compiled in title 47, chapter 18, part 1, and as such the private right of action remedy under such act shall be available to any person who suffers an ascertainable loss of money or property, real, personal, or mixed, or any other article, commodity, or thing of value wherever situated as a result of such violation.

**62-6-134. Applicability to alarm systems contractors.**

The provisions of this chapter shall not apply to entities certified under chapter 32, part 3, of this title, when such entities are performing functions for which such entities are certified.

**62-6-135. Unlawful representation as a licensed contractor or acting as a contractor - Penalties - Liability.**

(a) It is unlawful for any person, firm or corporation to represent itself as a licensed contractor, or to act in the capacity of a "contractor" as defined in §§ 62-6-102(3)(A), 62-6-102(5) or 62-37-103(5), and related rules and regulations of the state of Tennessee, or any similar statutes, rules and regulations of another state, while not licensed, unless such person, firm or corporation has been duly licensed under § 62-6-103 or § 62-37-104.

(b) In addition to the penalties set out in §§ 62-6-120, 62-37-114 or 62-37-127, a violation of this section shall be construed to constitute an unfair or deceptive act or practice affecting the conduct of trade or commerce under the Tennessee Consumer Protection Act, compiled in title 47, chapter 18, part 1, and as such the private right of action remedy under such act shall be available to any person who suffers an ascertainable loss of money or property, real, personal, or mixed, or any other article, commodity, or thing of value wherever situated as a result of such violation.

(c) An individual who violates this section and would, but for the provisions of this section, have limited liability as owner of an entity having limited liability protection, including, but not limited to, a corporation, is personally liable for such individual's own representations, acts or omissions to the same extent as if that individual rendered such representations, acts or omissions as an individual.

**62-6-136. Registration with the department of codes administration or other appropriate department - Posting of permit bonds.**

(a) It shall be the duty of every person who makes contracts for the construction, erection, alteration, repair, removal or demolition of any building or structure or part thereof; or repair or replacement of any damage to a building or structure caused by insects or natural disasters; or to erect or construct any sign, billboard or similar structure, or to construct any public or private swimming pool; or to do or perform any work for which a permit is required, and every such person, making such contracts or subletting such contracts, or any part thereof, to register with the department of codes administration or other appropriate departments and to post a permit bond in the amount set forth in this section.

- (1) For the construction, erection, alteration, repair, removal or demolition of any building or structure or part of any building or structure;
- (2) For repair or replacement of any damage to a building or structure caused by insects or natural disasters;
- (3) To erect or construct any sign, billboard or similar structure or to construct any public or private swimming pool; or
- (4) To do or perform any work for which a permit is required.

(b) (1) For building permits under twenty-five thousand dollars (\$25,000), the bond amount shall be ten thousand dollars (\$10,000).

- (2) For all building permits of twenty-five thousand dollars (\$25,000) and larger, the bond amount shall be fifty thousand dollars (\$50,000).

- (3) For all gas/mechanical, plumbing and excavation permits the bond amount shall be forty thousand dollars (\$40,000).

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(c) The bond required by this section shall be a permit bond conditioned to conform to the requirements of this section, and to all applicable laws, ordinances, rules and regulations of the municipality or county relating to work that is performed by the principal pursuant to a permit issued under this bond, or for work performed by the principal for which a permit should have been obtained prior to commencement of such activity; and to indemnify the municipality or county and property owners against any and all loss suffered by them by reason of the failure of such contractor to comply with such laws, ordinances, rules and regulations. Such bond shall be continuous and may not be cancelled without at least a ten-day prior notice in writing, to the director of codes administration or other appropriate director. The liability of the surety shall continue to attach to work performed pursuant to any permit issued prior to the termination date of the bond, even if the noncomplying act occurs after the termination date of the bond. The liability of the surety for any and all claims, suits or actions under this bond shall not exceed the bond penalty. Regardless of the number of years this bond may remain in force, the liability of the surety shall not be cumulative, and the aggregate liability of the surety for any and all claims, suits or actions under this bond shall not exceed the face amount. The bond shall be issued by a United States treasury listed corporate surety, or a Tennessee domestic insurance company, on forms provided by the department of codes administration or other appropriate department.

(d) It shall be the duty of every person, firm, or corporation desiring to register with the department of codes administration, or other appropriate department under this section, to secure the required contractor's business license from the municipality or county.

(e) Contractors with multiple trades or contractors involved in the construction, repair, or alteration of more than one (1) structure in the municipality or county, may provide one (1) fifty thousand dollar (\$50,000) bond to meet the requirements of this section.

(f) The bond shall be referenced by a standard form legal agreement, approved by the city or county attorney.

(g) The provisions of this section shall have no effect unless approved by a two-thirds (2/3) vote of the governing body of any municipality or county.

(h) The provisions of this section shall not apply to nonprofit housing ministries that, through volunteer labor and donations of money and materials, build and rehabilitate houses with the help of the homeowner families.

(i) This section shall not be construed to extend the amount of time a contractor is liable under current law regarding construction, erection, alteration, repair, removal or demolition of any building or structure.

(j) Nothing in this section shall be construed to apply to nor alter or affect any municipality, county or metropolitan government that, on June 22, 2005, has similar or more stringent requirements than those required in this section relative to bonding requirements and insuring that a contractor secures the required business license from the municipality, county or metropolitan government.

### **62-6-137. Prelicensing general contractor education courses or workshops.**

(a) All prelicensing courses designed to assist an applicant in taking an examination as required by the board must be approved by the board before accepting applicants.

(b) A prelicensing general contractor education course or workshop shall be qualified for approval, if the board determines that it:

- (1) Constitutes an organized program of learning, including a symposium, which contributes directly to the professional competency of the licensee;
- (2) Is related to the practice of general contracting;
- (3) Is conducted by individuals considered experts in the subject matter of the program by reason of education, training or experience; and
- (4) Is accompanied by a paper, manual or written outline that substantially describes the subject matter of the program.

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- (c) The board or its representative shall be admitted to prelicensing general contractor education courses at no charge, in order to monitor the persons present, the content of the course, and supporting paperwork.
- (d) The person or firm conducting prelicensing general contractor education courses shall apply to the board for renewal of approval of the courses every three (3) years.
- (e) The board may charge a fee for reviewing and approving prelicensing general contractor education courses; provided, that the fee shall not be greater than that necessary to carry out the provisions of this section.
- (f) The director of the board, acting on behalf of the board, is authorized to issue citations against persons acting in the capacity of or engaging in the business of conducting prelicensing general contractor education courses without approval of the board as required by this section. Each citation shall be in writing and shall describe with particularity the basis of the citation. Each citation shall contain an order to cease all violations of this chapter and an assessment of a civil penalty in an amount not less than two hundred fifty dollars (\$250) nor more than one thousand dollars (\$1,000). The commission shall promulgate rules and regulations to specify those conditions necessary to the issuance of a citation, and the range of penalties for violations of this chapter.
- (g) The board is authorized to promulgate rules and regulations pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to effectuate the provisions of this section.

**§ 62-6-138. Posting of disciplinary action on board's web site — Advertising campaigns. —**

- (a) When the board disciplines a contractor, home improvement services provider as defined by § 39-14-153(a)(3) or home improvement contractor, the board shall post the following information on its web site:
  - (1) The name of the contractor, home improvement services provider or home improvement contractor, together with the specific license and license number held by such person, or if such contractor, home improvement contractor or home improvement services provider is not licensed, information stating such;
  - (2) The violation or type of violation; and
  - (3) The date and type of penalty imposed.
- (b) The posting made pursuant to subsection (a) shall be made within thirty (30) days of the board's action and shall be retained on the web site until there is a three (3) year period from the date of the contractor, home improvement contractor or home improvement services provider's last discipline in which the contractor, home improvement contractor or home improvement services provider has not been disciplined by the board.
- (c) In addition to posting such information on its web site, to the extent funds are available, the board shall conduct advertising campaigns to inform the public of the provisions of this act as well as educating the public as to the identity of home improvement services providers who have been convicted of violations of § 39-14-153 and the status of such provider's license.

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## **PART 2**

### **Contracting Without License [Transferred]**

## **PART 3**

### **Tennessee Home Inspector License Act of 2005 (Effective July 1, 2006)**

#### **62-6-301. Short title.**

This act shall be known and may be cited as the "Tennessee Home Inspector License Act of 2005."

#### **62-6-302. Part definitions.**

As used in this part, unless the context otherwise requires:

(1) "Client" means any person who hires or seeks to hire a home inspector to obtain a home inspection or home inspection report;

(2) "Commissioner" means the commissioner of commerce and insurance, or the commissioner's designee;

(3) (A) "Home inspection" means a visual analysis for the purpose of providing a professional opinion of the condition of a residential building, ancillary buildings, any reasonably accessible installed components, and the operation of the building's systems, including any controls normally operated by the owner of the building, for the following components:

- (i) Heating systems;
- (ii) Cooling systems;
- (iii) Electrical systems;
- (iv) Plumbing systems;
- (v) Structural components;
- (vi) Foundations;
- (vii) Roof coverings;
- (viii) Exterior and interior components; and
- (ix) Any other site aspects that affect the residential dwelling.

(B) "Home inspection" does not mean a compliance inspection for building codes or any other codes adopted by this state or a political subdivision of this state. "Home inspection" does not mean any work that is within the scope of practice of architecture, engineering, or landscape architecture or is performed by a person qualified to use the title "registered interior designer," all as defined in chapter 2 of this title. "Home inspection" also does not mean an inspection or assessment by a lender, either as a part of an evaluation of value, or for purposes of determining whether or not to extend credit; provided, that such inspection or assessment shall not be represented as a "home inspection report;"

(4) "Home inspection report" means a legibly written document prepared for compensation and issued after a home inspection. The report shall include the following:

(A) A report on any system or component inspected that, in the opinion of the inspector, is significantly deficient. A report under this subdivision (4) must include the reason why the system or component is significantly deficient;

(B) A list of any systems or components that were designated for inspection in the standards of practice adopted by the commissioner but that were not inspected;

(C) The reason a system or component listed under subdivision (4)(B) was not inspected;

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(D) A statement that the report does not address environmental hazards, including:

- (i) Lead-based paint;
- (ii) Radon;
- (iii) Asbestos;
- (iv) Cockroaches;
- (v) Rodents;
- (vi) Pesticides;
- (vii) Treated lumber;
- (viii) Fungus;
- (ix) Mercury;
- (x) Carbon monoxide; or
- (xi) Other similar environmental hazards;

(E) A statement that the report does not address wood destroying insects and organisms; and

(F) A statement that the report does not address subterranean systems or system components, operational or nonoperational, including:

- (i) Sewage disposal;
- (ii) Water supply; or
- (iii) Fuel storage or delivery;

(5) "Home inspector" means any person who is licensed under this part as a home inspector and who engages in the business of performing home inspections and writing home inspection reports; and

(6) "Residential building" means a structure that is intended to be or is in fact used as a residence consisting of from one (1) to four (4) family dwelling units.

**62-6-303. Powers and duties of commissioner - Advisory committee - Restraining or enjoining violations - Jurisdiction.**

(a) The commissioner has the power and the duty to:

- (1) Administer and enforce this part;
- (2) Issue and renew licenses to home inspectors pursuant to this part;
- (3) Suspend, revoke or fail to renew the license of a home inspector;
- (4) Establish standards for the initial and continuing education of home inspectors, including prescribing the form and content of examinations to determine the qualifications of persons applying for licensure;
- (5) Promulgate rules and regulations that are reasonably necessary to effectuate the purposes of this chapter. The rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5;
- (6) Adopt and publish a code of ethics and standards of practice for home inspectors; and
- (7) Charge and collect fees, including license application and renewal fees, to be utilized to fund activities that may be necessary to carry out this part.

(b) The commissioner may appoint a committee of licensed home inspectors with at least five (5) years experience in the field of home inspection to advise the commissioner with respect to any contemplated rulemaking under this section. The commissioner shall include at least one (1) member from each of the following:

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- (1) The American Society of Home Inspectors;
- (2) The Home Inspectors of Tennessee Association;
- (3) The National Association of Certified Home Inspectors;
- (4) The National Association of Home Inspectors; and
- (5) The American Home Inspection Association.

(c) The commissioner may seek relief at law or equity to restrain or enjoin any act or practice in violation of this part or of any rule promulgated under this part. Jurisdiction is conferred upon the chancery and circuit courts of this state to hear and determine such a suit. No bond shall be required for the prosecution of the suit or for the issuance of an injunction.

**62-6-304. License requirement.**

It is unlawful for any person, directly or indirectly, to engage in or conduct, or to advertise or claim to be engaging in or conducting the business, or acting in the capacity of a home inspector as defined in this chapter, within this state, without first obtaining a home inspector license as provided in this part.

**62-6-305. Application for licensure - Prerequisites and qualifications.**

(a) Any person who applies for licensure as a home inspector must submit an application on a form as prescribed by the commissioner. The application shall be accompanied by the fee specified in § 62-6-303. Applicants for licensure shall furnish evidence satisfactory to the commissioner that the applicant:

- (1) Is at least eighteen (18) years of age;
- (2) Has graduated from high school or earned a general education development certificate;
- (3) Has not been convicted of a crime that has a direct bearing on the applicant's ability to perform competently and fully as a licensee;
- (4) Is not the subject of a disciplinary or enforcement action by another state or a local jurisdiction in connection with the performance of home inspections or the licensing or certification of home inspectors;
- (5) Has successfully completed ninety (90) hours of a commissioner-approved training program or course of study involving the performance of home inspections and the preparation of home inspection reports;
- (6) Has passed a commissioner-approved competency examination administered by the state or an entity selected by the state; and
- (7) Has obtained a certificate of insurance in an amount required by the commissioner for general liability as well as errors and omissions to cover all activities contemplated under this part.

(b) During the first one hundred eighty (180) days after July 1, 2006, the commissioner shall issue a license to any applicant who meets the requirements of subsection (a), excluding subdivisions (a)(2), (a)(5), and (a)(6), if:

- (1) The applicant furnishes evidence satisfactory to the commissioner that the applicant has been principally engaged in the performance of home inspections in this state for three (3) or more years and has completed at least one hundred fifty (150) home inspections; and
- (2) A judgment has not been entered against the applicant by a court of competent jurisdiction, if the judgment was based upon the applicant's negligent performance as a home inspector.

**62-6-306. Issuance of license - Expiration - Roster of licensees - Notification of changes.**

If the commissioner determines that an applicant meets the requirements of this part and is qualified for a home inspector license, the commissioner shall issue a license to the applicant that shall expire two (2) years following the date of issuance, unless revoked or suspended prior to the expiration date. The expiration date of the license shall appear on the license and no other notice of its expiration need be given to its holder. The commissioner shall maintain a roster, which shall be made available to the public, showing the name and place of business of each

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home inspector currently licensed. A licensee shall notify the commissioner immediately of any change of name, name under which the licensee conducts business, or business address.

### **62-6-307. License Renewal – Inactive Status**

- (a) To renew a current, valid home inspector license, the holder of the license shall submit an application on a form prescribed by the commissioner. The application for renewal shall be accompanied by the fee specified in § 62-6-303. All documentation and fees that are prerequisite to the renewal of a license shall be delivered to the commissioner no earlier than one hundred twenty (120) days nor later than thirty (30) days prior to the expiration date of the license then held.
- (b) Applicants for license renewal shall furnish evidence satisfactory to the commissioner that the applicant has:
  - (1) Completed thirty-two (32) hours of commissioner-approved continuing education
  - (2) Not violated this part or any rules and regulations promulgated under this part; and
  - (3) Obtained a certificate of insurance in an amount required by the commissioner for general liability, as well as errors and omissions, to cover all activities contemplated under this part.
- (c) The commissioner may refuse to renew any license if the licensee has continued to perform home inspections in this state following the expiration of the license.
- (d) The license of any home inspector who fails timely to pay a renewal fee or to comply with any prerequisite or condition to licensure or renewal may be reinstated without examination within sixty (60) days after the expiration date of the license upon providing proof of compliance with the prerequisites or conditions, including payment of any penalty fee arising from failure to comply with any prerequisite or condition to renewal prior to the expiration date of the license, and payment of the renewal fee, plus an additional penalty fee of not more than twenty-five dollars (\$25.00) per month. Any person desiring reinstatement thereafter must reapply for licensure; provided, that the commissioner has the discretion to:
  - (1) Waive reexamination or additional education requirements for such an applicant; or
  - (2) Reinstate a license subject to the applicant's compliance with reasonable conditions that the commissioner may prescribe, including payment of a penalty fee, in addition to the penalty fee provided in this subsection (d), of not more than twenty-five dollars (\$25.00) per month or portion of a month, from the time the license expired.
- (e) When fees are remitted by mail to the commissioner, the date of payment shall be determined by the official postmark on the mail.
- (f) (1) A licensee may request that his license be placed in an inactive status by making application to the commissioner and paying the applicable fee. A licensee whose license is inactive may not directly or indirectly engage in or conduct, or advertise or claim to be engaging in or conducting the business, or acting in the capacity of a home inspector as defined in § 62-6-302, governing home inspectors in this state. No continuing education shall be required for renewal of an inactive license. Licensees holding an inactive license are not required to maintain general liability or errors and omissions insurance. Inactive licenses shall be renewed biannually.
  - (2) A license that is inactive may be reactivated upon application to the commissioner.
    - (A) The licensee shall submit an application for reinstatement on a form as prescribed by the commissioner, accompanied by:
      - (i) A fee as prescribed by the commissioner;
      - (ii) A certificate of insurance in an amount required by the commissioner for general liability and errors and omissions, to cover all activities contemplated under this part; and
      - (iii) Evidence satisfactory to the commissioner that the applicant has not violated this part or any rules or regulations promulgated pursuant to this part during the period the license was inactive.

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(B) If more than two (2) years have passed since the license was placed in an inactive status, the applicant shall, in addition to the requirements set forth in subdivision (f)(2)(A), also furnish evidence satisfactory to the commissioner that the applicant has completed thirty-two (32) hours of commissioner-approved continuing education during the twenty-four (24) months immediately preceding the date of application for reinstatement.

**62-6-308. Disciplinary powers of commissioner.**

(a) The commissioner may take disciplinary action against a licensee or applicant, deny an application for a license, assess a civil penalty of up to one thousand dollars (\$1,000) per violation, or may suspend, revoke, or refuse to issue or renew a license when a licensee performs or attempts to perform any of the following acts:

- (1) Accepting or offering commissions or allowances, directly or indirectly, from or to parties other than the client, unless fully disclosed to the client in writing;
- (2) Performing or offering to perform repair or maintenance work on a property the licensee has inspected in the preceding twelve (12) months;
- (3) Using a home inspection with the intention to obtain work in another field or profession;
- (4) Accepting compensation, financial or otherwise, from more than one (1) interested party for the same service without the consent of all interested parties;
- (5) Failing to disclose to the client any financial interest or any relationship that may affect the client's interest;
- (6) Disclosing information concerning the results of a home inspection without the approval of the client or the client's legal representative, except under a court order;
- (7) Knowingly making a false or misleading representation about:
  - (A) The condition of a residential dwelling for which the licensee has performed or has contracted to perform a home inspection; or
  - (B) The extent of the services the licensee has performed or will perform;
- (8) Committing a felony in the course of the practice of home inspection;
- (9) Violating any provisions of this part or rules promulgated by the commissioner under this part;
- (10) Making a false or misleading representation:
  - (A) In a license or renewal application form; or
  - (B) In information provided to the commissioner;
- (11) Failing to pay any fees or fines required by this part;
- (12) Failing to continuously maintain the insurance required by this part;
- (13) Communicating to the public false or misleading information about the type of license held by the licensee;
- (14) Engaging in a course of lewd or immoral conduct in connection with the delivery of services to clients; or
- (15) Failing to complete the continuing education requirements established by the commissioner.

(b) The commissioner is authorized to issue citations against persons engaging in or conducting the business, or acting in the capacity of a home inspector as defined in this part without a license in violation of § 62-6-304. The commissioner shall promulgate rules and regulations to specify those conditions necessary to the issuance of a citation, and the range of penalties for violations of this part.

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Each citation shall:

- (1) Be in writing and shall describe with particularity the basis for the citation; and
- (2) Contain an order to cease all violations of this part and an assessment of a civil penalty in an amount not less than fifty dollars (\$50.00) nor more than one thousand dollars (\$1,000) per violation.
- (c) The sanctions authorized pursuant to this part shall be in addition to any other remedies, civil and criminal, available to any person harmed by a violation of this part.
- (d) The provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, govern all matters and procedures respecting the hearing and judicial review of any contested case, as defined in the Uniform Administrative Procedures Act, arising under this part.

## **PART 4**

### **Limited Licensed Plumbers (Effective January 1, 2006)**

#### **62-6-401. Short title.**

The title of this part is and may be cited as the "Limited Licensed Plumbers' Act of 2004."

#### **62-6-402. Part definitions.**

As used in this part, unless the context otherwise requires,

- (1) "Board" means the state board for licensing contractors pursuant to § 62-6-104;
- (2) "Fixtures" include, but are not limited to, toilets, sinks, tubs, whirlpool tubs, hot tubs, and any faucets or water supply lines used in conjunction with the fixtures;
- (3) "General maintenance work" means installing home appliances and making minor repairs to home appliances and kitchen and bathroom fixtures where the labor cost related to the installation or minor repairs does not exceed five hundred dollars (\$500);
- (4) "Home appliances" means any appliance using water or connected to a water line, including, but not limited to, water heaters, dishwashers, garbage disposals, washers, icemakers and other similar appliances; provided, that the energy source is not changed, from electric to gas or from gas to electric;
- (5) "Limited licensed plumber" means any person who performs any plumbing work that has a total cost of less than twenty-five thousand dollars (\$25,000) and who is required to be registered under the provisions of this part; and
- (6) "Plumbing work" means the construction, alteration, repair, improvement, movement, demolition, putting up, tearing down, or furnishing of labor to install material or equipment within any residential or commercial building of all piping, fixtures, and appliances for the supply of gas, water, liquids or disposal of waste water or sewage; provided, that there is no intent to require licensure under this part for plumbing work performed outside a residential or commercial building, including, but not limited to, utility connections or irrigation systems.

#### **62-6-403. Construction.**

Nothing in this part shall be construed to provide that a limited licensed plumber is a contractor. It is the intent of this part to provide that a limited licensed plumber is subject to the jurisdiction of the board solely for the purposes of licensure and disciplinary proceedings. No limited licensed plumber shall be authorized to use the appellation "contractor" or any other designation that gives or is designed to give the impression that a limited licensed plumber is a contractor unless the limited licensed plumber also holds a valid contractor's license issued by the board.

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## **62-6-404. Licensure.**

(a) Except as provided in subsection (b):

- (1) Any person engaged in plumbing work in this state shall be required to submit evidence of qualification to engage in plumbing, and shall be licensed as provided in this part;
- (2) It is unlawful for any person to engage in or offer to engage in plumbing work in this state unless such person has been duly licensed under the provisions of this part, or licensed in a municipality or county that issues licenses to persons to perform plumbing work only in such municipality or county; and
- (3) Any person engaged in plumbing work, including a person that engages in plumbing work on residential construction on private property for the purpose of resale, lease, rent or any other similar purpose, shall be required to submit evidence of qualification to engage in plumbing work, and shall be licensed.

(b) (1) A person who does not have a license is authorized to engage in plumbing work only if employed by a licensed plumber, a licensed plumbing contractor or any other entity approved by the board.

- (2) Any single residence homeowner is exempt from the limited licensed plumbing requirements of this part for purposes of performing plumbing work on such homeowner's own residence.
- (3) Any person who holds a license issued by the commissioner of commerce and insurance as either a manufactured home installer or a manufactured home retailer, pursuant to § 68-126-404, does not have to obtain a separate license as a limited licensed plumber in order to perform plumbing work on a manufactured home as defined in § 68-126-202; provided, that the work is related to the set-up, as defined by § 68-126-402, of a manufactured home or performed in connection with a manufacturer's warranty covering a manufactured home.
- (4) Any person who holds a license issued by the commissioner of commerce and insurance as a manufactured home manufacturer, pursuant to § 68-126-206, does not have to obtain a separate license as a limited licensed plumber in order to perform plumbing work on a manufactured home as defined in § 68-126-202; provided, that the work is related to the construction of a manufactured home or performed in connection with a manufacturer's warranty covering a manufactured home.
- (5) Any person who holds a license issued by the commissioner of commerce and insurance to manufacture or install modular building units, pursuant to § 68-126-305, does not have to obtain a separate license as a limited licensed plumber to perform plumbing work on a modular building unit as defined in § 68-126-303; provided, that the work is related to the construction or installation of a modular building unit, or performed in connection with a manufacturer's warranty covering a modular building unit.
- (6) No person is required to obtain a license issued pursuant to this part to do general maintenance work within a residence.
- (7) A dealer, as defined by and licensed pursuant to title 68, chapter 135, part 1, and its authorized officers and employees do not have to obtain a license as a limited license plumber to perform plumbing work related to the provision of liquefied petroleum gas to or within any residential or commercial building.
- (8) An operator, as defined by 49 CFR 192.3, and its authorized officers and employees do not have to obtain a license as a limited license plumber to perform plumbing work related to the provision of natural or commingled gas or its applications to or within any residential, industrial or commercial building.

## **62-6-405. Rules and regulations - Forms.**

(a) The board may promulgate such rules and regulations in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, which it deems necessary to effectuate the provisions of this part.

(b) The board may also prescribe forms required for the administration of this part.

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**62-6-406. Application to work as a limited licensed plumber - Examination - Exemptions - Municipal and county licenses - Plumbing inspection.**

(a) (1) If a person was not engaged in plumbing work prior to January 1, 2006, after that date, once a person obtains a minimum of one (1) year of plumbing experience satisfactory to the board as required in this part, such person desiring to engage in plumbing work as a limited licensed plumber in this state shall make written application to the board on such forms as are prescribed by the board. The application shall be accompanied by a nonrefundable application fee.

(2) If the application is satisfactory to the board, then the applicant is entitled to take an examination to determine the applicant's qualifications. The board shall charge each applicant an examination fee as set by the board for each examination. The applicant is entitled to an examination to determine the applicant's qualifications. The examination may be written or oral, or both.

(3) If the results of the examination of an applicant are satisfactory to the board, then the board may issue to the applicant a license authorizing the applicant to perform plumbing services as provided in this part and charge a fee for such license.

(4) In addition, if a person was not engaged in plumbing work prior to January 1, 2006, after that date, the board may also issue a license without an examination to a person who has been issued a license by a municipality or county if such person has obtained the minimum of one (1) year of plumbing experience in such municipality or county provided the test required by such municipality or county is satisfactory to the board. In such case, the examination fee shall be waived by the board. The license issued to such person shall indicate that such person is not automatically permitted to work in any municipality or county which issues its own license to engage in plumbing work in such municipality or county.

(5) Except as provided in subsection (h), if a person was not engaged in plumbing work prior to January 1, 2006, after that date, if the license for a limited licensed plumber was issued to a person pursuant to subdivision (a)(2) or (a)(4), once such person submits credible evidence to the board that such person has a minimum of two (2) years of plumbing experience satisfactory to the board, the board shall issue a license to such person, if the application is satisfactory to the board, which permits the person to perform plumbing services in any municipality, metropolitan government or county in Tennessee, as provided by the provisions of § 62-6-111(i); provided, however, that for purposes of this subdivision (a)(5), such licensee shall pay any local licensing fees in effect on the date the license issued pursuant to this subdivision (a)(5) is applied for.

(b) The board may issue a license as a limited licensed plumber to any person without an examination as required by this part, if the person makes an application to the board prior to August 1, 2006, and provides evidence to the board that the person had obtained the minimum one (1) year of plumbing experience prior to January 1, 2006, satisfactory to the board. The license issued to such person shall indicate that such person is not automatically permitted to work in any municipality or county which issues its own license to engage in plumbing work in such municipality or county.

(c) (1) Except as provided in subsection (b), applications for a license after January 1, 2006, shall provide proof of experience as required by the board, and such plumbing experience shall not be less than one (1) year of plumbing experience satisfactory to the board.

(2) The board shall promulgate rules and regulations that establish uniform criteria to govern the issuance of licenses by the board. The board shall have discretionary authority in individual cases to modify criteria for an applicant, if the public safety and welfare clearly require modification, and if the board furnishes the applicant with a written statement justifying the modification; provided, that the minimum one (1) year of plumbing experience satisfactory to the board shall not be waived or modified.

(d) The exemption provisions on licensure of subdivisions (a)(2) and (a)(3) of § 62-6-103 shall apply to limited licensed plumbers.

(e) (1) Notwithstanding any provision of this part to the contrary, a license as a limited licensed plumber shall not be required for a person to engage in plumbing work in any municipality or county that issues licenses to

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persons to perform plumbing work only in that municipality or county; provided, that such plumbing work may be used toward accumulating the minimum one (1) year of experience required to obtain licensure as a limited licensed plumber.

(2) A current copy of a license or certification issued to a person who was engaged in plumbing work prior to January 1, 2006, by any county or municipality of this state prior to August 1, 2006, is evidence that that applicant had, by examination by an official of such county or municipality, demonstrated the qualifications required to perform plumbing work within its jurisdiction and was actively engaged in such business on January 1, 2006.

(f) Any limited licensed plumber required by this part to be licensed, who requests a plumbing inspection, must first have a license as a limited licensed plumber issued by the board or a license issued by a municipality or county. If a municipality or county provides plumbing inspection services, then such plumbing inspection shall be provided by such municipality or county.

(g) (1) The board shall formulate a system for inspectors when the plumbing inspection services are not provided by a municipality or county to report any problems they may encounter with the workmanship or conduct of a limited licensed plumber. The system shall include the use of inspectors who are employed by the board under § 62-6-107(b).

(2) Inspectors working under the direction of the contractor's licensing board shall inspect limited license plumber's work no later than the time of the rough electrical inspection and such work shall be found to be either satisfactory or unsatisfactory and requiring remedial work.

(3) The board shall formulate an appropriate system and fee structure to be charged for inspections performed by inspectors working under the direction of the contractor's licensing board to effectuate the inspection provisions of this part within five (5) years after January 1, 2006.

(h) Notwithstanding subsections (a)-(g), nothing in this part shall prohibit a city or county from adopting and enforcing stricter testing or experience requirements, or both, for a person to engage in plumbing work within the jurisdiction of such city or county; provided, however, that once an individual passes the license issued by the board to perform plumbing services statewide and such individual meets such stricter requirements, then such individual may perform plumbing services in any municipality, metropolitan government or county in this state.

**62-6-407. Hearing and judicial review of contested cases.**

The provisions of the Uniform Administrative Procedures Act, compiled in title 4, part 5, govern all matters and procedures respecting the hearing and judicial review of any contested case, as defined therein, arising under this part.

**62-6-408. Fees.**

(a) (1) The board shall prescribe fees for the application, examination, issuance, and renewal of licenses of limited licensed plumbers. The fees, together with the fees prescribed for limited licensed electricians pursuant to chapter 6, part 1 of this title, shall be in an amount that provides for the cost of administering the licensing and regulation of limited licensed plumbers and limited licensed electricians.

(2) The fees collected by the board as described in subdivision (a)(1) shall be combined with fees collected for the licensing of limited licensed electricians, pursuant to chapter 6, part 1 of this title. These fees shall be used to defray expenses incurred in the administration of the licensing of limited licensed plumbers, pursuant to this part, and limited licensed electricians, pursuant to chapter 6, part 1 of this title.

(3) Fees for limited licensed plumbers shall be adjusted as necessary to provide that the limited licensed electricians and plumbers fund is fiscally self-sufficient and that revenues from fees do not exceed necessary and required expenditures.

(4) On July 1, 2015, all funds held by the state treasurer for the administration of the licensing of limited licensed plumbers shall be combined with all funds held for the administration of the licensing of limited licensed electricians, pursuant to chapter 6, part 1 of this title.

(b) In no event shall the fee for an initial license exceed seventy-five dollars (\$75.00) or fifty dollars (\$50.00) for subsequent renewal of such license.

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**62-6-409. Violations - Refusal to issue or renew license - Revocation or suspension of license - Civil penalty.**

(a) The board may refuse to issue or renew a license and revoke or suspend the license of a limited licensed plumber for faulty plumbing workmanship as determined by the board or for gross negligence, incompetency, fraud, dishonest dealing or misconduct in performing plumbing work.

(b) The board may refuse to issue or renew a license and revoke or suspend a license of any person for lack of expertise, submission of false evidence with regard to any application for license or renewal, conviction of a felony, or any other conduct which constitutes improper, fraudulent or dishonest dealing, or any other violation of this part.

(c) In addition to or in lieu of any other lawful disciplinary action, the board may assess a civil penalty against any limited licensed plumber or any person required to be licensed as a limited licensed plumber for each separate violation of this part.

**62-6-410. Duplicate license.**

A duplicate license to replace any license lost, destroyed or mutilated may be issued subject to the rules and regulations of the board.

**62-6-411. Expiration - Renewal - Fee for delayed renewal.**

(a) A license expires on the last day of the twenty-fourth month following its issuance or renewal, and becomes invalid on such date unless renewed.

(b) Renewal notices shall be mailed ninety (90) days prior to the expiration date of the license. Such renewal must be received by the board thirty (30) days prior to the expiration of such license and shall be accompanied by a renewal fee.

(c) It is the duty of the board to notify by mail every person licensed under this part of the date of expiration of the license and the amount of fee required for its renewal. Such notice shall be mailed in accordance with this part.

(d) The fee to be paid for the renewal of a license after the expiration date shall be increased ten percent (10%) for each month or fraction of a month that payment for renewal is delayed. The maximum fee for a delayed renewal shall not exceed twice the normal fee.

(e) No limited licensed plumber shall be qualified to receive a renewal license when the limited licensed plumber has failed to comply with the provisions of this part for a period of ninety (90) days; and in that event, the limited licensed plumber, in order to qualify under the law, shall make a new application as in the case of the issuance of the original license.

**62-6-412. Violations.**

Any person who engages or offers to engage in plumbing work without a license as required by this part, or who violates the provisions of this part or any rule or regulation duly promulgated under this part, commits a Class A misdemeanor.

**62-6-413. Inquiry into identity.**

The board shall inquire into the identity of any person operating under this part and shall prosecute any person violating the provisions of this part.

**62-6-414. Injunctions - Incurred expenses.**

(a) In order to secure the effective enforcement of this part, jurisdiction is conferred on the chancery court of this state to grant injunctive relief against any person or legal entity undertaking to perform plumbing work in violation of this part.

(b) Any expenses incurred, such as depositions, travel expenses or attorney fees, required for the prosecution of the suit, shall be paid in the same manner as other expenses incurred by the board.

**62-6-415. Bonds.**

No person shall be required to post a bond or provide a financial statement in order to obtain a license as a limited licensed plumber.

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## **62-6-416. Applicability.**

The provisions of this part do not apply to any county having a population according to the 2000 federal census or any subsequent federal census of:

not less than	nor more than
7,600	7,700
7,900	7,970
11,300	11,368
11,700	11,800
12,369	12,450
16,500	16,575
17,900	18,000
22,200	22,300
25,450	25,550
29,400	29,450
31,100	31,200
32,300	32,500
34,800	34,900
39,900	40,000
43,100	43,200

## **PART 5**

### **Home Improvement Contractors**

#### **62-6-501. Part definitions.**

As used in this part, unless the context otherwise requires:

- (1) "Actual loss" means amounts paid or payable for the cost of restoration, repair, replacement, or completion of work performed in a poor or unworkmanlike manner or that is otherwise inadequate or incomplete;
- (2) "Board" means the state board for licensing contractors;
- (3) "Claimant" means an owner who:
  - (A) (i) Resides in a residence or dwelling unit with respect to which a claim is made; or
  - (ii) Owns not more than four (4) residences or dwelling units; and
  - (B) Makes a claim against the bond;
- (4) (A) "Home improvement" means the repair, replacement, remodeling, alteration, conversion, modernization, improvement, or addition to any land or building, or that portion of the land or building, that is used or designed to be used as a residence or dwelling unit for one (1), two (2), three (3), or four (4) dwelling units, and includes the construction, replacement, or improvement of driveways, swimming pools, porches, garages, landscaping, fences, fall-out shelters, roofing, painting and other improvements to structures or upon land which is adjacent to a dwelling house for one (1), two (2), three (3), or four (4) dwelling units. Without regard to the extent of affixation, "home improvement" includes the installation of central heating or air conditioning systems, storm windows, or awnings;
- (B) "Home improvement" does not include:
  - (i) The construction of a new home building or work done by a contractor in compliance with a guarantee of completion of a new building project;

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- (ii) Any home improvement for which the contract price is three thousand dollars (\$3,000) or less;
- (iii) The sale of goods or materials by a seller who neither arranges to perform nor performs directly or indirectly any work or labor in connection with the installation of or application of the goods or materials, including the incidental installation of the goods or materials; provided, that the installation does not involve alterations to the structure of the building or its plumbing or wiring;
- (iv) Any replacement, installation, or connection of appliances to existing exposed plumbing lines that requires alteration of the existing lines;
- (v) The replacement, installation, and connection of dishwashers, disposals, and refrigerators with icemakers to existing exposed household plumbing lines, or dryers; or
- (vi) The replacement, installation, and connection of dryers; or
- (vii) Interior design services that are services in connection with the design, utilization, furnishing, or fabrication of elements in interior spaces of buildings and related structures and includes, without being limited to, any or all of the following:
  - (a) Identifying, researching or creatively solving problems pertaining to the function and quality of interior space;
  - (b) Performing services to include consultations, programming, design analysis, drawings, specifications, and installations in connection with space utilization, the specification of fixtures and their location, furnishings, reflected ceiling plans, and the fabrication of nonstructural elements of interior spaces of buildings, excluding those services specified by law to require other licensed professionals, such as the design of mechanical, plumbing, electrical and load-bearing structural systems; and
  - (c) Preparing drawings and documents relative to the design of interior spaces;

(5) "Home improvement contract" means an agreement between a contractor and an owner for the performance of home improvement, and includes all labor, services and materials to be furnished and performed under the agreement;

(6) "Home improvement contractor" means any person, other than a bona fide employee of the owner, who undertakes or offers to undertake or agrees to perform any home improvement for the owner, whether or not the person is licensed or subject to the licensing requirements of this chapter;

(7) "Licensee" means a person licensed to engage in the home improvement business under the provisions of this part;

(8) "Owner" means any homeowner, tenant, or any other person who orders, contracts for or purchases the home improvement services of a contractor, or the person entitled to the performance of the work of a contractor pursuant to a home improvement contract;

(9) "Person" includes an individual, partnership, corporation, trust, association, owner, contractor, salesperson or any other legal entity; and

(10) "Subcontractor" means any person other than a materialman or laborer who enters into a contract with a contractor for the performance of any part of the contractor's contract, or who enters into a contract with any subcontractor for the performance of any part of the subcontractor's contract, and who does not perform work other than as a subcontractor.

## **62-6-502. Prohibited activities.**

(a) No person may engage in or transact any home improvement business, or represent to the public as doing home improvement business, or offer to transact any home improvement business in this state, except in compliance with the applicable provisions of this part. No person, whether subject to licensing by any law or otherwise, may engage in this state in any trade practice or other act that is prohibited by this part. Every person

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who willfully participates in a prohibited act or violation with knowledge of the same is subject to the criminal penalty for the prohibited act or violation. The provisions of this part may not be waived by agreement.

(b) (1) No person shall maintain, own, operate or transact a home improvement business unless a License is first obtained as prescribed in this part.

(2) An applicant for a home improvement contractor's license shall establish that the applicant is the real owner and possesses title to, or is entitled to, the possession of the establishment, and will conduct, operate, engage in and transact a home improvement business.

### **62-6-503. Local licensing prohibited - License number required for permitting - Treble damages.**

(a) No county or municipality of this state may require that any person obtain an additional authorization or license to transact a home improvement business in that county or city. Nothing contained in this subsection (a) prohibits counties, municipalities or metropolitan governments from requiring licenses for persons performing plumbing work, electrical work or gas and mechanical work.

(b) A license issued pursuant to this part may not be construed to authorize the licensee to perform any particular type of work or kind of business that is reserved to qualified licensees under separate provisions of state or local law.

(c) Nothing in this part may be construed to limit or restrict the power of a municipality or county to regulate the quality, performance, or character of work of home improvement contractors, including a system of permits and inspections that are designed to secure compliance with and aid in the enforcement of applicable state and local building laws, or to enforce other laws necessary for the protection of the public health and safety. Nothing in this part limits the power of a municipality or county to adopt any system of permits requiring submission to and approval by the municipality or county of plans and specifications for an installation prior to the commencement of construction of the installation or of inspection of work done; provided, that nothing in this section may be construed as authorizing a municipality or county to enact ordinances or regulations relating to the qualifications necessary to engage in the home improvement business. Nothing contained in this section prohibits counties, municipalities or metropolitan governments from requiring licenses for persons performing plumbing work, electrical work or gas and mechanical work.

(d) Except for a permit for any home improvement work to be performed by the owner of property, a municipality or county may not issue a permit for any home improvement work unless the permit lists each contractor's home improvement license number.

(e) Any person subject to this part who engages in construction or the home improvement business without a license shall, in any tort action arising out of the construction or home improvement business, be subject to the awarding of treble damages.

### **62-6-504. Licensing fees.**

(a) No license may be issued or become effective until the applicant pays all required fees as set by the board for licensing contractors. The biennial license fee shall not exceed two hundred fifty dollars (\$250).

(b) The fee for issuing a duplicate license for one lost, destroyed or mutilated shall be set by the board.

(c) The fee for copies of documents on file in the commissioner's office is two dollars (\$2.00) per page.

### **62-6-505. Exemption from licensing requirements.**

(a) No home improvement contractor's license may be required of any person when acting in the particular capacity or particular type of transaction set forth in this section:

(1) An individual who performs labor or services for a home improvement contractor or subcontractor for wages or salary;

(2) A plumber, electrician, architect or any other person who is required by state or local law to attain standards of competency or experience as a prerequisite to engaging in a craft or profession, and who is

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acting exclusively within the scope of the craft or profession for which the person is currently licensed pursuant to such other law. The installation of central heating or air conditioning systems by such a person shall be deemed within the scope of the person's craft or profession;

- (3) Any retail clerk, clerical employee, salesperson or other employee of a licensed home improvement contractor;
- (4) Any residential or commercial contractor who holds a valid license issued pursuant to this chapter and is engaged in contracting within the terms and conditions of the license; or
- (5) An interior designer performing services as set forth in § 62-6-501(4)(B)(vii).

- (b) A homeowner may secure a permit without a state license to do any improvements on such homeowner's own properties. However, in so doing, the homeowner shall have no claim to the fund.

#### **62-6-506. Application procedure for licensing - Temporary licenses - Expiration.**

- (a) An application for an original license required by this part shall be in writing on a form prescribed by the board. The board may seek from an applicant information pertinent to the applicant's character, experience, financial stability, and other information deemed necessary in order to evaluate the applicant's qualifications to be licensed pursuant to this part.
- (b) The applicant shall file with the board information that includes, but is not limited to:
  - (1) A complete statement of the general nature of the applicant's home improvement contracting business or the applicant's duties;
  - (2) If the applicant is:
    - (i) An individual, the applicant's name and address;
    - (ii) A partnership, the names and addresses of all partners;
    - (iii) A joint venture, the names and addresses of the parties to it; or
    - (iv) A corporation, the names and addresses of all officers;
  - (3) A record of the previous experience of the applicant in the field of home improvements or other construction work, including dates and addresses where the applicant has resided and done business;
  - (4) Whether the applicant has ever been licensed in Tennessee or any other state, or has had a professional or a vocational license refused, suspended or revoked;
  - (5) Evidence of worker's compensation coverage pursuant to title 50, chapter 6, and evidence of general liability insurance, including the amount of the coverage, or submission to the board of a copy of the applicant's insurance policies or certificates of insurance issued by the carrier or self-insurer to the applicant indicating the date and duration of the coverage. Evidence of insurance coverage pursuant to this subdivision (b)(5) also shall be required to be submitted for renewal of licensure;
  - (6) Whether, in the five (5) years prior to the date of application, the applicant had any judgment rendered against the applicant in actions arising out of the field of home improvements or other construction work;
  - (7) Whether the applicant presently has outstanding judgments against the applicant in actions arising out of the field of home improvements or other construction work; and
  - (8) Whether the applicant is involved in pending litigation arising out of the field of home improvements or other construction work.
- (c) The board shall prescribe and furnish appropriate forms in connection with the issuance, renewal or termination of licenses.
- (d) Temporary licenses may be issued in accordance with rules or regulations adopted by the board, to any applicant for a license who files an application in proper form and pays all required fees. A temporary license

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shall automatically expire at the time the board either refuses to issue or grants a license, and shall be subject to termination at any time prior to action by the board.

(e) Unless revoked or suspended by the board, a license shall expire the last day of the twenty-fourth month from issuance and may be renewed upon payment of all required fees and upon completion of a statement indicating all material changes from the original application for a license.

(f) Every licensee, within thirty (30) days after change of control in ownership, management, or a change of address or trade name, shall notify the board of the change.

(g) The board, at any time, may require:

(1) Reasonable information of an applicant or licensee; and

(2) The production of books and accounts and financial statements.

(h) An applicant for a home improvement contractor's license shall file with the board a surety bond or an irrevocable letter of credit in the amount of ten thousand dollars (\$10,000) for the benefit of any person who is damaged because of the breach of the home improvement contract. Any person so damaged may sue directly on the bond without assignment thereof. The bond may not be construed to require any surety to be responsible for the completion of a home improvement contract entered into by the principal on the bond. The liability of the surety under any bond may not exceed in the aggregate the amount of the bond. If the bond ceases to be in effect, the home improvement contractor's license shall become invalid.

#### **62-6-507. Expiration of licenses - assignment and transfer - renewal - issuance of duplicate licenses**

(a) All licenses, except temporary licenses, shall expire the last day of the twenty-fourth month from the date of issuance.

(b) No license shall be assignable or transferable except as provided in this subsection (b). A license to conduct a home improvement business issued to an individual may be assigned or transferred for the remainder of the license period to a partnership or stockholder of a corporation owning not less than twenty-five percent (25%) of the outstanding stock at the time of assignment or transfer. A license issued to a partnership may be assigned or transferred for the remainder of the license period to any one (1) member of the partnership; provided, that the member obtains the consent of all of the other members of the partnership. The application for transfer or assignment shall be accompanied by proof satisfactory to the board that there has been compliance with the requirements of this subsection (b). No assignment or transfer shall become effective unless and until the endorsement of the transfer or assignment has been made on the face of the license by the commissioner and the license, so endorsed, has been returned to the assignee or transferee. All endorsements shall be made without payment of any fee.

(c) Any license, except a temporary license, that has not been suspended or revoked, may, upon the payment of the renewal fee prescribed by this part, be renewed for an additional period of twenty-four (24) months from its expiration, upon the filing of an application for renewal, on a form to be prescribed by the board. The form shall include a statement to be completed by the applicant indicating all material changes from the original application for a license. A penalty fee of ten dollars (\$10.00) per month, not to exceed thirty dollars (\$30.00), shall be assessed on any renewal application postmarked after the date of expiration. No renewal application shall be accepted more than ninety (90) days after the expiration of the license.

(d) A duplicate license may be issued for one lost, destroyed or mutilated upon application for a duplicate on a form prescribed by the board and the payment of the fee prescribed by this part. Each duplicate license shall have the word "duplicate" stamped across the face of the license and shall bear the same number as the one it replaces.

#### **62-6-508. Requirements of home improvement contracts.**

(a) Every home improvement contract shall:

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- (1) Be in legible writing and contain the complete agreement between the owner and the home improvement contractor;
- (2) State the full names and addresses of all parties, the license number of the home improvement contractor, the date when executed by the parties and contain a description of the work to be done and the goods to be used;
- (3) Be completed in full without any blank spaces to be filled in after the contract is signed by the owner and clearly describe any other documents that are to be incorporated, and shall contain the following notice directly above the space provided for the signature of the owner:

NOTICE TO OWNER: Do not sign this contract if blank. You are entitled to a copy of the contract at the time you sign.
- (4) Contain the approximate dates when the work will begin and be substantially completed;
- (5) Contain the agreed upon consideration for the work;
- (6) Contain a notice that all home improvement contractors must be licensed by the board and that any inquiries about a contractor should be transmitted to the board's office;
- (7) Contain all other matters upon which the parties lawfully agree; and
- (8) Not contain any power of attorney to confess judgment.

- (b) No sales person, agent or employee of the home improvement contractor shall be authorized to make any changes in the agreement on behalf of the owner.
- (c) Contracts that fail to comply with the requirements of this section shall not be invalid solely because of noncompliance.

#### **62-6-509. Grounds for loss of license.**

- (a) The board may refuse to issue or renew, or suspend or revoke a license under this part, if it finds that the applicant or licensee:
  - (1) Has made a material omission or misrepresentation of fact on an application for a license;
  - (2) Has failed to furnish information to the board concerning an application for a license as required by this part;
  - (3) Lacks competence to engage in the home improvement business, as evidenced by work performed in a poor and unworkmanlike manner, or when the work involved is inadequate or incomplete;
  - (4) Has been convicted of a felony, is untrustworthy or not of good character;
  - (5) Has consistently failed to perform contracts, has manipulated assets or accounts, or has engaged in fraud or bad faith; or
  - (6) Has violated this part or is performing or attempting to perform any act prohibited by this part.
- (b) In addition to or in lieu of any lawful action taken under subsection (a), the board may assess a civil penalty of not more than one thousand dollars (\$1,000) for each violation of any provision of this part. In determining whether to impose a civil penalty, the board shall consider the seriousness of the violation, the deleterious effect of the violation, any good faith on the part of the violator, and the violator's history of previous violations.
- (c) Notwithstanding the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, relative to the amount of civil penalties that may be imposed, the commission may impose a civil penalty not to exceed one thousand dollars (\$1,000) against any person who engages in unlicensed home improvement contracting.

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## **62-6-510. Prohibited acts**

The following acts are prohibited:

- (1) Abandonment or willful failure to perform, without justification, any home improvement contract or project engaged in or undertaken by a contractor, or willful deviation from or disregard of plans or specifications in any material respect without the consent of the owners;
- (2) Making any substantial misrepresentation in the procurement of a home improvement contract, or making any false promise of character likely to influence, persuade or induce;
- (3) Any fraud in the execution of, or in the material alteration of, any contract, mortgage, promissory note or other document incident to a home improvement transaction;
- (4) Preparing or accepting any mortgage, promissory note, or other evidence of indebtedness upon the obligations of a home improvement transaction with knowledge that it recites a greater monetary obligation than the agreed consideration for the home improvement work;
- (5) Willful or deliberate disregard and violation of the building, sanitary and health laws of this state or of any political subdivision of this state, or of the safety, labor, or workers' compensation insurance laws of this state;
- (6) Misrepresentation of a material fact by an applicant in obtaining or attempting to obtain a license;
- (7) Failure to notify the board of any change of control in ownership, management or business name or location;
- (8) Conducting a home improvement business in any name other than the one in which the contractor is licensed;
- (9) Advertising in any manner that a licensee is licensed pursuant to this part, unless the advertisement includes an accurate reference to the appropriate current license number consisting of and limited to a form as prescribed by the board;
- (10) Failure to comply with any order, demand or requirement lawfully made by the board pursuant to and within the authority of this part;
- (11) The demand for or the receipt of any payments prior to the signing of a home improvement contract;
- (12) Receipt at or before the time of execution of a contract of a deposit of more than one third (1/3) of the contract price, unless:
  - (A) The home improvement contract allows for the home improvement contractor to furnish a performance and payment bond, lien and completion bond, or bond equivalent covering full performance and completion of the home improvement contract and the bond is furnished by the home improvement contractor; provided, that the amount of the bond or bond equivalent is not less than one percent (1%) of the net sales of the home improvement contractor's home improvement business with respect to the home improvement labor to be determined on an annual basis at January 1 of each year; or
  - (B) After being fully advised by the contractor in writing of the right to withhold final payment up to one hundred percent (100%) of payment before completion of the project, the owner elects to make final payment to the home improvement contractor for the project before completion for the owner's convenience or the parties agree on a schedule of payments to be made before, during and after completion of the project;
- (13) Failure to obtain the necessary permits as required by any local jurisdiction;
- (14) Making false or deceptive representations in any advertisement or solicitation for services or products that the services or products have sponsorship, approval, affiliation or connection with a bank, savings and loan association, savings bank or subsidiary or affiliate thereof;
- (15) Using the name or logo of any bank, savings and loan association, savings bank or subsidiary or affiliate thereof, without the express written consent of the person whose name is used; and

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(16) (A) (i) Having a controlling ownership interest in the lender providing a mortgage loan for home improvement for the work being performed by the home improvement contractor;

(ii) Accepting anything of value for the referral of a borrower to the lender; or

(iii) Being a cosigner or acting as a guarantor for a mortgage loan for home improvement.

(B) As used in subdivision (16)(A), "mortgage loan for home improvement" shall have the same meaning as defined in § 45-13-123(c).

#### **62-6-511. False documentation**

Any person who accepts or receives a completion certificate or other evidence that performance of a home improvement contract is complete or satisfactorily concluded, with knowledge that the document is false and that the performance is not completed, or who utters, offers, or uses the document in connection with the making or accepting of any assignment or negotiation of the right to receive any payment from the owner, under or in connection with a home improvement contract, or for the purpose of obtaining or granting any credit or loan on the security of the right to receive any payment, as aforementioned, knowing or having good reason to know the document to be false, commits a Class A misdemeanor.

#### **62-6-512. Criminal penalty**

Any person who owns, operates, conducts a home improvement business or procures a home improvement contract without a license pursuant to this part, or who violates any of the provisions of this part, or having had a home improvement contractor's license suspended or revoked continues to engage in the business, commits a Class A misdemeanor. Each violation is deemed a separate offense.

#### **62-6-513. Powers and duties of board**

In addition to the powers and duties elsewhere prescribed in this part, the board may:

- (1) Examine the qualifications and fitness of applicants for licenses under this part;
- (2) Keep records of all licenses issued, suspended or revoked. These records shall be open to the public for inspection during regular business hours;
- (3) Promulgate rules and regulations with respect to license applications, investigation and examination of applicants and their qualifications, and any other matters incidental or appropriate to the board's powers and duties as prescribed by this part and for the proper administration and enforcement of this part, and to amend or repeal any of the rules and regulations;
- (4) Receive complaints from the public regarding home improvement contractors, and maintain records of the complaints.

#### **62-6-514. Issuance of injunctions**

If the board concludes that any continuing conduct by any person alleged to be in violation of this part may result in substantial or irreparable harm to any citizen of this state, the board may seek a permanent or temporary injunction with respect to the conduct from the circuit or chancery court of any county in which the alleged violation is occurring, or in which the violator has its principal place of business.

#### **62-6-515. Administrative procedures**

The Uniform Administrative Procedures Act, compiled in title 4, chapter 5, governs all matters and procedures respecting the hearing and judicial review of any contested case, as defined in that act, arising pursuant to this part.

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## **62-6-516. Exemptions**

- (a) This part does not apply to the official transactions of an authorized representative of the United States, or an instrumentality of the United States, any state or territory of the United States, any municipality or county of a state or territory, or any instrumentality of a state or a political subdivision of an instrumentality of a state.
- (b) If home improvement contractors in a county are exempted from licensure under this chapter on July 1, 2007, due to a county exclusion, the legislative body of the county may, by a two-thirds (2/3) majority vote, elect to make this part applicable in the county. Any county electing to come within this part shall so notify the board.

## **62-6-517. Citations - service - appeal - settlement of injuries prior to license**

- (a) The executive director of the board, acting on behalf of the board, is authorized to issue citations against persons acting in the capacity of or engaging in the business of home improvement without a license in violation of this part. Each citation shall be in writing and shall describe with particularity the basis of the citation. Each citation shall contain an order to cease all violations of this part and an assessment of a civil penalty in an amount not less than fifty dollars (\$50.00) nor more than one thousand dollars (\$1,000).
- (b) The board shall promulgate rules and regulations to specify those conditions necessary to the issuance of a citation, and the range of penalties for violations of this part.
- (c) The sanctions authorized by this part are in addition to any other remedies, civil and criminal, available to any person harmed by a violation of this part.
- (d) Service of a citation issued pursuant to this section may be made by certified mail at the last known business address or residence address of the person cited.
- (e) A citation issued pursuant to this section shall be issued by the executive director within one (1) year after the act or omission that is the basis for the citation.
- (f) Any person served with a citation pursuant to this section may appeal to the executive director by written notice postmarked within fifteen (15) working days after service of the citation with respect to violations alleged, scope of the order, or amount of civil penalty assessed. If a person cited timely notifies the executive director that the person intends to contest the citation, the executive director shall afford an opportunity for a contested case hearing pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3. After all administrative appeals have been exhausted, the executive director may apply to the appropriate court for a judgment in an amount of the civil penalty, plus applicable court costs and for an order to cease activities in violation of this part. The motion for the order, which shall include a certified copy of the final order of the hearing officer or administrative judge, shall constitute a sufficient showing to warrant the issuance of the judgment and order. Notwithstanding any law to the contrary, the executive director may waive part of the civil penalty if the person against whom the civil penalty is assessed satisfactorily completes all the requirements for, and is issued, a license as a home improvement contractor.
- (g) Any outstanding injury to the public shall be settled satisfactorily before a license as a home improvement contractor is issued.
- (h) Section 62-6-509(c) and this section do not apply to the construction, repair or replacement of detached permanent structures designed for the storage of tools, farm implements, lawn care machinery, bulk products and other such items.

## **62-6-518. Civil penalty**

- (a) After notice and an opportunity for a hearing, the board is authorized to impose a civil penalty in an amount not to exceed twenty-five thousand dollars (\$25,000) per violation for a violation of § 62-6-510 (3), (4) or (14). The penalty shall be in addition to any other penalty authorized pursuant to this part.
- (b) In addition to the civil penalty authorized pursuant to subsection (a), a violation of § 62-6-510(3), (4) or (14) shall be construed to constitute an unfair or deceptive act or practice affecting the conduct of trade or commerce under the Tennessee Consumer Protection Act, compiled in title 47, chapter 18, and as such the private right

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of action remedy under that act shall be available to any person who suffers an ascertainable loss of money or property, real, personal, or mixed, or any other article, commodity, or thing of value wherever situated as a result of a violation.

#### **62-6-519. Transfer of staff**

The existing staff of the home improvement commission shall be transferred to the state board for licensing contractors.

#### **62-6-520. Establishment of subcommittee on home improvement contractors**

(a) There is established a subcommittee whose focus shall be related to issues concerning home improvement contractors. The subcommittee shall act as an advisory committee concerning home improvement contractors and report all findings and recommendations concerning licensure and disciplinary actions relative to home improvement contractors to the board; provided, that all final decisions concerning those actions shall be decided by the board.

(b) All current members of the home improvement commission appointed pursuant to §62-37-116 on or before July 1, 2007, shall serve as the initial subcommittee and the members shall serve until the term of the most recent appointee expires. The terms of every other member of the commission shall be extended to coincide with the expiration of the term of the most recent appointee. At the expiration of the terms, the subcommittee as constituted pursuant to this subsection (b) shall cease to exist, and the board shall appoint a new subcommittee of board members to focus on issues relating to home improvement contractors.

(c) The members of the subcommittee shall receive the same amount of compensation and reimbursement as received by board members for each day actually spent in the performance of their official duties.

(d) All issues concerning home improvement contractors shall be heard by the subcommittee, which shall, pursuant to subsection (a), report its findings and recommendations to the board for final disposition and action by the board concerning those findings and recommendations.

#### **62-6-521. Additional subcommittees**

(a) In addition to the appointment of a subcommittee established pursuant to § 62-6-520, the board shall appoint two (2) additional subcommittees in accordance with the following:

(1) A subcommittee of board members whose focus shall be related to issues concerning home builders; and

(2) A subcommittee of board members whose focus shall be related to general contractor issues dealing with commercial construction, including electrical, mechanical, plumbing and heating, ventilation and air conditioning.

(b) Each subcommittee shall act as an advisory committee concerning their respective areas pursuant to subsection (a) and shall report its findings and recommendations concerning licensure and disciplinary actions and other substantive issues to the board; provided, that all final decisions concerning those actions shall be decided by the board.

(c) The members of the subcommittee shall receive the same amount of compensation and reimbursement as they would receive for performing their duties as board members for each day actually spent in the performance of their official duties.

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## OTHER RELATED STATUTES

### **39-14-153. False information or concealment of information in applying for or receiving dwelling accommodations in housing project.**

(a) It is an offense for a person who is applying for or the recipient of dwelling accommodations in any housing project operated by a housing authority as defined in § 13-20-102 to obtain or attempt to obtain the dwelling accommodations by means of a statement, representation or impersonation the person knows to be false, or by knowingly concealing any material fact if the false statement, representation, impersonation or concealment results in:

- (1) The person meeting the housing authority's income qualification standards established pursuant to § 13-20-113; or
- (2) The person's lease or rental payment being less than the person would otherwise be required to pay under the housing authority's income qualification standards established pursuant to § 13-20-113.

(b) It is a violation of this section if a person obtains or attempts to obtain dwelling accommodations specified in subsection (a) by means of a statement, representation or impersonation made by another, or by another concealing any material fact, if the person knows the statement, representation or impersonation to be false or the person knows that a material fact has been concealed.

(c) A violation of this section is a Class A misdemeanor punishable by fine only. The amount of the fine imposed shall be graded as provided in § 39-14-105. In grading the offense, the value of the benefit the defendant derived from the prohibited conduct shall be used to determine the grade of fine.

### **47-18-103. Part definitions.**

As used in this part, unless the context otherwise requires:

- (1) "Bait and switch" or "switch" means advertising items to lure consumers, then inducing the consumers to buy different and more expensive items by failing to make available the goods or services advertised, or by disparaging the less expensive product. Provision of accurate factual information shall not be considered disparagement;
- (2) "Consumer" means any natural person who seeks or acquires by purchase, rent, lease, assignment, award by chance, or other disposition, any goods, services, or property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value wherever situated or any person who purchases or to whom is offered for sale a franchise or distributorship agreement or any similar type of business opportunity;
- (3) "Contract for home improvement services" means a contractual agreement, written or oral, between a person performing home improvement services and a residential owner, and includes all labor, services and materials to be furnished and performed under such agreement;
- (4) "Covered file-sharing program" means a computer program, application, or software that enables the computer on which such program, application, or software is installed to designate files as available for searching by and copying to one (1) or more other computers, to transmit such designated files directly to one (1) or more other computers, and to request the transmission of such designated files directly from one (1) or more other computers. "Covered file-sharing program" does not mean a program, application, or software designed primarily to operate as a server that is accessible over the Internet using the Internet domain name system, to transmit or receive email messages, instant messaging, real-time audio or video communications, or real-time voice communications, or to provide network or computer security, network management, hosting and backup services, maintenance, diagnostics, technical support or repair, or to detect or prevent fraudulent activities;
- (5) "Division" means the division of consumer affairs in the department of commerce and insurance;

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(6) "Documentary material" means the original or copy of any book, record, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situated;

(7) "Goods" means any tangible chattels leased, bought, or otherwise obtained for use by an individual primarily for personal, family, or household purposes or a franchise, distributorship agreement, or similar business opportunity;

(8) "Home improvement services" means the repair, replacement, remodeling, alteration, conversion, modernization, improvement, or addition to any residential property, and includes but is not limited to, the repair, replacement, remodeling, alteration, conversion, modernization, improvement, or addition to driveways, swimming pools, porches, garages, landscaping, fences, fall-out shelters, and roofing;

(9) "Home improvement services provider" means any person or entity, whether or not licensed pursuant to title 62, chapter 6, who undertakes to, attempts to, or submits a price or bid or offers to construct, supervise, superintend, oversee, schedule, direct, or in any manner assume charge of the home improvement service for a fee. "Home improvement services provider" specifically includes but is not limited to a "residential contractor" as defined in § 62-6-102 when performing home improvement services and a "home improvement contractor" as defined in § 62-6-501;

(10) "Knowingly" or "knowing" means actual awareness of the falsity or deception, but actual awareness may be inferred where objective manifestations indicate that a reasonable person would have known or would have had reason to know of the falsity or deception;

(11) "Local telephone directory" means a telephone directory that is distributed by a telephone company or directory publisher, or provided as a service to subscribers located in the local exchanges contained in the directory. "Local telephone directory" includes:

- (A) A classified advertising directory, commonly referred to as the yellow pages;
- (B) A directory of individual telephone listings, commonly referred to as the white pages, whether identified as "business listings" or combined in listings of residences and businesses in a directory that does not have separate residence and business listings;
- (C) A directory that includes listings of more than one (1) telephone company; or
- (D) A directory assistance database or similar service, commonly used by dialing "411" and speaking with a live person or through an automated system;

(12) "Local telephone number" means a telephone number that has the three (3) number prefix used by the provider of telephone service for telephones physically located within the area covered by the local telephone directory in which the number is listed. "Local telephone number" does not include long distance numbers or 800, 888, or 900 exchange numbers listed in a local telephone directory;

(13) "Person" means a natural person, individual, governmental agency, partnership, corporation, trust, estate, incorporated or unincorporated association, and any other legal or commercial entity however organized;

(14) "Physical address" means the mailing address, including a zip code, which details the actual location of a person or entity, but does not include a post office box;

(15) "Possession" means actual care, custody, control, or management of residential property, but shall not include occupancy of residential property through a lease or rental agreement;

(16) "Residential owner" means a person who has possession of residential real property, including any person authorized by such residential owner to act on the residential owner's behalf;

(17) "Residential property" means the building structure where a person abides, lodges, resides or establishes a living accommodation or where a residential owner intends to abide, lodge, reside or establish a living accommodation following the completion of home improvement services made pursuant to a contract for home improvement services and includes the land on or adjacent to such building structure;

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(18) "Services" means any work, labor, or services including services furnished in connection with the sale or repair of goods or real property or improvements thereto; and

(19) "Trade," "commerce," or "consumer transaction" means the advertising, offering for sale, lease or rental, or distribution of any goods, services, or property, tangible or intangible, real, personal, or mixed, and other articles, commodities, or things of value wherever situated.

**47-18-104. Unfair or deceptive acts prohibited.**

(a) Unfair or deceptive acts or practices affecting the conduct of any trade or commerce constitute unlawful acts or practices and are Class B misdemeanors.

(b) The following unfair or deceptive acts or practices affecting the conduct of any trade or commerce are declared to be unlawful and in violation of this part:

- (1) Falsely passing off goods or services as those of another;
- (2) Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services. This subdivision (b)(2) does not prohibit the private labeling of goods and services;
- (3) Causing likelihood of confusion or misunderstanding as to affiliation, connection or association with, or certification by, another. This subdivision (b)(3) does not prohibit the private labeling of goods or services;
- (4) Using deceptive representations or designations of geographic origin in connection with goods or services;
- (5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship approval, status, affiliation or connection that such person does not have;
- (6) Representing that goods are original or new if they are deteriorated, altered to the point of decreasing the value, reconditioned, reclaimed, used or secondhand;
- (7) Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another;
- (8) Disparaging the goods, services or business of another by false or misleading representations of fact;
- (9) Advertising goods or services with intent not to sell them as advertised;
- (10) Advertising goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity;
- (11) Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;
- (12) Representing that a consumer transaction confers or involves rights, remedies or obligations that it does not have or involve or which are prohibited by law;
- (13) Representing that a service, replacement or repair is needed when it is not;
- (14) Causing confusion or misunderstanding with respect to the authority of a salesperson, representative or agent to negotiate the final terms of a consumer transaction;
- (15) Failing to disclose that a charge for the servicing of any goods in whole or in part is based on a predetermined rate or charge, or guarantee or warranty, instead of the value of the services actually performed;
- (16) Disconnecting, turning back, or resetting the odometer of any motor vehicle so as to reduce the number of miles indicated on the odometer gauge, except as provided for in § 39-14-132(b);
- (17) Advertising of any sale by falsely representing that a person is going out of business;

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(18) Using or employing a chain referral sales plan in connection with the sale or offer to sell of goods, merchandise, or anything of value, which uses the sales technique, plan, arrangement or agreement in which the buyer or prospective buyer is offered the opportunity to purchase goods or services and, in connection with the purchase, receives the seller's promise or representation that the buyer shall have the right to receive compensation or consideration in any form for furnishing to the seller the names of other prospective buyers if the receipt of compensation or consideration is contingent upon the occurrence of an event subsequent to the time the buyer purchases the merchandise or goods;

(19) Representing that a guarantee or warranty confers or involves rights or remedies which it does not have or involve; provided, that nothing in this subdivision (b)(19) shall be construed to alter the implied warranty of merchantability as defined in § 47-2-314;

(20) Selling or offering to sell, either directly or associated with the sale of goods or services, a right of participation in a pyramid distributorship. As used in this subdivision (b)(20), a "pyramid distributorship" means any sales plan or operation for the sale or distribution of goods, services or other property wherein a person for a consideration acquires the opportunity to receive a pecuniary benefit, which is not primarily contingent on the volume or quantity of goods, services or other property sold or delivered to consumers, and is based upon the inducement of additional persons, by such person or others, regardless of number, to participate in the same plan or operation;

(21) Using statements or illustrations in any advertisement which create a false impression of the grade, quality, quantity, make, value, age, size, color, usability or origin of the goods or services offered, or which may otherwise misrepresent the goods or services in such a manner that later, on disclosure of the true facts, there is a likelihood that the buyer may be switched from the advertised goods or services to other goods or services;

(22) Using any advertisement containing an offer to sell goods or services when the offer is not a bona fide effort to sell the advertised goods or services. An offer is not bona fide, even though the true facts are subsequently made known to the buyer, if the first contact or interview is secured by deception;

(23) Representing in any advertisement a false impression that the offer of goods has been occasioned by a financial or natural catastrophe when such is not true, or misrepresenting the former price, savings, quality or ownership of any goods sold;

(24) Assessing a penalty for the prepayment or early payment of a fee or charge for services by a utility or company which has been issued a franchise license by a municipal governing body to provide services. Nothing in this subdivision (b)(24) shall be construed to prohibit a discount from being offered for early payment of the applicable fee or charge for services. This subdivision (b)(24) does not apply to a utility or company whose billing statement reflects charges both for service previously rendered and in advance of services provided;

(25) Discriminating against any disabled individual, as defined by §§ 47-18-802(b) and 55-21-102(3), in violation of the Tennessee Equal Consumer Credit Act of 1974, compiled in part 8 of this chapter. This subdivision (b)(25) does not apply to any creditor or credit card issuer regulated by the department of financial institutions. The division shall refer any complaint against such a creditor or credit card issuer involving the Equal Consumer Credit Act to such department for investigation and disposition;

(26) Violating the provisions of § 65-5-106;

(27) Engaging in any other act or practice which is deceptive to the consumer or to any other person; provided, however, that enforcement of this subdivision (b)(27) is vested exclusively in the office of the attorney general and reporter and the director of the division;

(28) (A) (i) Failing of a motor vehicle repair facility to return to a customer any parts which were removed from the motor vehicle and replaced during the process of repair if the customer, at the time repair work was authorized, requested return of such parts; provided, that any part retained by the motor

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vehicle repair facility as part of a trade-in agreement or core charge agreement for a reconditioned part need not be returned to the customer unless the customer agrees to pay the facility the additional core charge or other trade-in fee; and provided further, that any part required to be returned to a manufacturer or distributor under a warranty agreement or any part required by any federal or state statute or rule or regulation to be disposed of by the facility need not be returned to the customer; or

(ii) Failing of a motor vehicle repair facility to permit inspection of any parts retained by the repair facility if the customer, at the time repair work was authorized, expressed the customer's desire to inspect such parts; provided, that if, after inspection, the customer requests return of such parts, the restrictions set forth in subdivision (b)(28)(A)(i) shall apply;

- (B) (i) Failing of a motor vehicle repair facility to post in a prominent location notice of the provisions of this subdivision (b)(28); or
- (ii) Failing of a motor vehicle repair facility to print on the repair contract notice of the provisions of this subdivision (b)(28);
- (C) The motor vehicle repair facility need not retain any parts not returned to the customer after the motor vehicle has been returned to the customer;

(29) Advertising that a business is "going out of business" more than ninety (90) days before such business ceases to operate;

(30) Failing to comply with §§ 6-55-401 -- 6-55-413, where a municipality has adopted the regulations of liquidation sales pursuant to § 6-55-413;

(31) Offering lottery winnings in exchange for making a purchase or incurring a monetary obligation pursuant to § 47-18-120;

(32) (A) The act of misrepresenting the geographic location of a person through a business name or listing in a local telephone directory or on the Internet is an unfair or deceptive act or practice affecting the conduct of trade or commerce, if:

- (i) The name misrepresents the person's geographic location; or
- (ii) The listing fails to clearly and conspicuously identify the locality and state of the person's business;
- (iii) Calls to the listed telephone number are routinely forwarded or otherwise transferred to a person's business location that is outside the calling area covered by the local telephone directory, or that is outside the local calling area for the telephone number that is listed on the Internet;
- (iv) The person's business location is located in a county that is not contiguous to a county in the calling area covered by the local telephone directory, or is located in a county that is not contiguous to a county in the local calling area for the telephone number that is listed on the Internet; and
- (v) The person does not have a business location or branch, or an affiliate or subsidiary of the person does not have a business location or branch, in the calling area or county contiguous to the local calling area.

(B) This subdivision (b)(32) shall not apply:

- (i) To a telecommunications service provider, an Internet service provider, or to the publisher or distributor of a local telephone directory unless the act is on behalf of the Internet or telecommunications service provider or on behalf of the publisher or distributor of the local telephone directory; or
- (ii) To the act of listing a number for a call center. For purposes of this subdivision (b)(32)(B) (ii), "call center" means a location that utilizes telecommunication services for activities related

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to an existing customer relationship, including, but not limited to, customer services, reactivating dormant accounts or receiving reservations.

- (C) Notwithstanding any other law to the contrary, and without limiting the scope of § 47-18-104, a violation of this subdivision (b)(32) shall be punishable by a nonremedial civil penalty of a minimum of one thousand dollars (\$1,000) to a maximum of five thousand dollars (\$5,000) per violation. Civil penalties assessed under this subdivision (b)(32) are separate and apart from the remedial civil penalties authorized in § 47-18-108(b)(3).
- (D) This subdivision (b)(32) applies only to information supplied to a telephone directory published after July 1, 2008, information that is published on the Internet after July 1, 2008, or to information supplied for entry into a directory assistance database after July 1, 2008;

(33) Advertising that a person is an electrician for hire when such person has not been licensed by a local jurisdiction to perform electrical work within such jurisdiction or by the state as a limited licensed electrician or contractor, as appropriate or, if no such licenses are then available, such person is not registered with the state;

(34) Unreasonably raising prices or unreasonably restricting supplies of essential goods, commodities or services in direct response to a crime, act of terrorism, war, or natural disaster, regardless of whether such crime, act of terrorism, war, or natural disaster occurred in the state of Tennessee;

(35) Representing that a person is a licensed contractor when such person has not been licensed as required by § 62-6-103 or § 62-37-104; or, acting in the capacity of a "contractor" as defined in §§ 62-6-102(4)(A), 62-6-102(7) or 62-37-103(5), and related rules and regulations of the state of Tennessee, or any similar statutes, rules and regulations of another state, while not licensed;

(36) (A) Using any advertisement for a workshop, seminar, conference, or other meeting that contains a reference to a living trust or a revocable living trust, or that otherwise offers advice or counsel on estate taxation unless such advertisement also includes the information required in this subdivision (b)(36);

- (B) An advertisement as provided in this subdivision (b)(36) shall, at a minimum, include the following:
  - (i) The maximum exclusion for federal estate tax purposes and the maximum exemption for state inheritance tax purposes for the year in which the advertisement appears;
  - (ii) Includes a statement that certain property, including real property, insurance proceeds, deposit accounts, stocks and retirement fund, may be taxable or not taxable, depending on how legal title is held or beneficiary designation is made, or both;
  - (iii) Includes a statement that certain property may be transferred through several different means including, but not limited to, joint ownership of property with rights of survivorship, joint deposit accounts, beneficiary designations or elections permitted under retirement plans, insurance policies, trusts, or wills; and
  - (iv) A statement that before creating any transfer through a living trust, revocable living trust, or otherwise, the individual should seek advice from an attorney, accountant or other tax professional to determine the true tax impact and ensure that assets are properly transferred into any trust;
- (C) The disclosure required in this subdivision (b)(36) shall be printed in not less than 10-point type;
- (D) The provisions of this subdivision (b)(36) shall not apply to an advertisement by any attorney, law firm, bank, savings institution, trust company, or registered securities broker-dealer which is directed to clients or customers of such person with whom such person has had a client or customer relationship within the prior two (2) years. The provisions of this subdivision (b)(36) shall also not apply to any continuing education seminars or conferences conducted for the benefit of bankers, attorneys, accountants, or other professional financial advisors;

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(37) Refusing to accept the return of clothing or accessories sold at retail directly to a purchaser, who seeks to return the same for any reason for refund or credit; provided, that:

- (A) The purchaser presents the clothing or accessories within the retailer's prescribed period for return of merchandise;
- (B) The purchaser presents satisfactory proof of purchase;
- (C) The merchandise is, in no way, damaged and exhibits no sign of wear or cleaning;
- (D) All tags and stickers affixed or attached to the merchandise at the time of sale remain affixed or attached at the time of return; and
- (E) The sale of the merchandise was not marked, advertised or otherwise characterized as "final", "no return", "no refunds", or in any manner reasonably indicating that the merchandise would not be accepted for return;

(38) (A) Requiring the purchaser to present that purchaser's driver license as a prerequisite for accepting the return of clothing or accessories for refund or credit, notwithstanding compliance with the conditions set forth in subdivision (b)(37), unless such a requirement is for the purpose of preventing fraud and abuse;

- (B) Notwithstanding any provision of subdivision (b)(37) or (b)(38)(A) to the contrary, return denials are permitted for the purpose of preventing fraud and abuse;

(39) [Deleted by 2009 amendment.]

(40) Representing that a person, or such person's agent, authorized designee or delegate for hire, has conducted a foreclosure on real property, when such person knew or should have known that a foreclosure was not actually conducted on the real property;

(41) (A) Selling or offering to sell a secondhand mattress in this state or importing secondhand mattresses into this state for the purpose of resale in violation of § 68-15-203(b), or offering a comfort exchange policy to a mattress buyer pursuant to the sale of the mattress in violation of title 68, chapter 15, part 2;

- (B) Subdivision (b)(41)(A) shall apply to a mattress manufacturer, wholesaler or retailer. Subdivision (b)(41)(A) shall not apply to an institution or organization that has received a determination of exemption from the internal revenue service under 26 U.S.C. § 501(c)(3), and as described in § 67-6-348. The exemption provided in this subdivision (b)(41)(B) shall be limited to institutions or organizations that are not organized or operated for profit, and no part of the net earnings of which inures to the benefit of any private shareholder or individual;

(42) (A) Knowingly advertising or marketing for sale a newly constructed residence as having more bedrooms than are permitted by the newly constructed residence's subsurface sewage disposal system permit, as defined in § 68-221-402, unless prior to the execution of any sales agreement the permitted number of bedrooms is disclosed in writing to the buyer. The real estate licensee representing the owner may rely upon information furnished by the owner;

- (B) If a newly constructed residence is marketed for sale as having more bedrooms than are permitted by the subsurface sewage disposal system permit and no disclosure of the actual number of bedrooms permitted occurs prior to the execution of a sales agreement, then the buyer shall have the right to rescind the sales agreement and may recover treble damages as provided in § 47-18-109;
- (C) A subsurface sewage disposal system permit issued in the name of the owner of a newly constructed residence shall serve as constructive notice to that owner of the newly constructed residence for the purpose of establishing knowledge as to the number of bedrooms of the newly constructed residence for the purpose of finding a violation of this subdivision (b)(42). A real estate licensee representing the owner must have actual knowledge transmitted from the owner to the real estate licensee to be in violation of this subdivision (b)(42);

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(43) Offering, through the mail or by other means, a check that contains an obligation to advertise with a person upon the endorsement of the check. The obligation is effective upon the check being signed and deposited into the consumer's bank account;

(44) The act or practice of directly or indirectly:

- (A) Making representations that a person will pay or reimburse for a motor vehicle traffic citation for any person who purchases a device or mechanism, passive or active, that can detect or interfere with a radar, laser or other device used to measure the speed of motor vehicles;
- (B) Advertising, promoting, selling or offering for sale any radar jamming device that includes any active or passive device, instrument, mechanism, or equipment that interferes with, disrupts, or scrambles the radar or laser that is used by law enforcement agencies and officers to measure the speed of motor vehicles; or
- (C) Advertising, promoting, selling or offering for sale any good or service that is illegal or unlawful to sell in the state;

(45) Violating § 47-18-5402;

(46) (A) Installing, offering to install, or making available for installation, reinstallation or update a covered file-sharing program onto a computer without being an authorized user of that computer or without first providing clear and conspicuous notice to the authorized user of the computer that the files on that computer will be made available to the public, obtaining consent of the authorized user to installation of the program, and requiring affirmative steps by the authorized user to activate any feature on the program that will make files on that computer available to the public; or

- (B) Preventing reasonable efforts to disable or remove, or to block the installation or execution of, a covered file-sharing program on a computer;

(47) A) The act or practice of directly or indirectly advertising, promoting, selling, or offering for sale international driver's licenses. It is a per se violation of this subdivision (b)(47) to:

- (i) Misrepresent that any international driver's license sold or offered for sale confers a privilege to operate a motor vehicle on the streets and highways in this state; or
- (ii) Represent that any international driver's license sold or offered for sale is of a particular standard, quality or grade;

(B) For purposes of this subdivision (b)(47), unless the context otherwise requires:

- (i) "International driver's license" means a document that purports to confer a privilege to operate a motor vehicle on the streets and highways in this state and is not issued by a governmental entity. Such document may be an imitation of an international driving permit; and
- (ii) "International driving permit" means the document issued by a duly authorized automobile association to a holder of a valid driver license which grants such holder the privilege to operate a motor vehicle in countries or international bodies that are signatory parties to article 24 of the 1949 United Nations Convention on Road Traffic, pursuant to 3 U.S.T. § 3008;

(C) Notwithstanding any other law to the contrary, and without limiting the scope of this section, a violation of this subdivision (b)(47) shall be punishable by a non-remedial civil penalty of a minimum of one thousand dollars (\$1,000) to a maximum of three thousand dollars (\$3,000) per violation. Civil penalties assessed under this subdivision (b)(47) are separate and apart from the remedial civil penalties authorized in § 47-18-108(b)(3); and

(48) A home improvement services provider entering into a contract for home improvement services without providing to the residential owner in written form:

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- (A) That it is a criminal offense for the person entering into the contract for home improvement services with a residential owner to do any of the prohibited acts set out in § 39-14-154(b), by writing out the text of each prohibited act, and provide the penalty and available relief for such; or
- (B) The true and correct name, physical address and telephone number of the home improvement services provider.

(c) The following are among the acts or practices which will be considered in determining if an offer to sell goods or services is not bona fide:

- (1) Refusal to reasonably show, demonstrate or sell the goods or services offered in accordance with the terms of the offer;
- (2) Disparagement by acts or words of the advertised goods or services or disparagement with respect to the guarantee, credit terms, availability of service, repairs or parts, or in any other respect, in connection with the advertised goods or services;
- (3) Failure to make available at all outlets listed in the advertisement a sufficient quantity of the advertised goods or services to meet reasonably expectable public demand, unless the advertisement clearly and conspicuously discloses that the availability of a particular good is limited and/or the goods or services are available only at designated outlets, or unless the advertisement discloses that a particular good is to be closed out or offered for a limited time. In the event of an inadequate inventory, issuing of "rain checks" for goods or offering comparable or better goods at the sale price may be considered a good faith effort to make the advertised goods available, unless there is a pattern of inadequate inventory or unless the inadequate inventory was intentional. If rain checks are offered, the goods must be delivered within a reasonable time;
- (4) Refusal to take orders or give rain checks for the advertised goods or services, when the advertisement does not disclose their limited quantity or availability to be delivered within a reasonable period of time;
- (5) Showing or demonstrating goods or services which are defective, unusable or impractical for the purpose represented or implied in the advertisement when such defective, unusable or impractical nature is not fairly and adequately disclosed in the advertisement; and
- (6) Use of a sales plan or method of compensating or penalizing salespersons designed to prevent or discourage them from selling the advertised goods or services. This does not prohibit compensating salespersons by use of a commission.

(d) The fact that a seller occasionally sells the advertised goods or services at the advertised price does not constitute a defense when the seller's overall purpose is to engage in bait and switch tactics.

(e) Nothing in § 47-18-103(1) or subdivisions (b)(21)-(23) and subsections (c) and (d) shall prevent a seller from advertising goods and services with the hope that consumers will buy goods or services in addition to those advertised.

#### **49-2-203. Duties and powers.**

*(Excerpt related to construction of or additions to school buildings)*

(C) (i) For construction of school buildings or additions to existing buildings, the LEA may follow prescribed procedures of its respective local governing body, so long as that body, through its charter, private act or ordinance has established a procurement procedure that provides for advertisement and competitive bidding. If the LEA chooses not to follow the local governing body's procedure, the board shall contract, following open bids, for the construction of school buildings or additions to existing buildings, the expenditure for which is in excess of ten thousand dollars (\$10,000). Public notice shall be given at least ten (10) days in advance of accepting bids for the construction, and the board shall award the contract to the lowest and best bidder. Whether following local governing body procedures or those set forth in this subdivision (a)(3)(C)(i), in the event no bid is within the budgetary limits set by the board for the construction, the board may negotiate with the lowest and best bidder to bring the cost of the construction within the funds available, with the approval of the commissioner of education;

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(ii) Construction management services that are provided for a fee and that involve preconstruction and construction administration and management services are deemed to be professional services and may be performed by a qualified person licensed under title 62, chapter 6. Construction management services are to be procured for each project through a written request for proposals process through advertisement made pursuant to subdivision (a)(3)(A). A board may include, in a single written request for proposal process, new school construction or renovation projects at up to three (3) sites, if construction at all sites will occur at substantially the same time. The written request for proposals process will invite prospective proposers to participate and will indicate the service requirements and the factors used for evaluating the proposals. The factors shall include the construction manager's qualifications and experience on similar projects, qualifications of personnel to be assigned to the project, fees and costs or any additional factors deemed relevant by the procuring entity for procurement of the service. Cost is not to be the sole criterion for evaluation. The contract for such services shall be awarded to the best qualified and responsive proposer. A construction manager is prohibited from undertaking actual construction work on a project over which the construction manager coordinates or oversees the planning, bid or construction phases of the project, except in instances where bids have been solicited twice and no bids have been submitted. If the construction manager can document that a good faith effort was made in each bid solicitation to obtain bids and no bids were received, then the construction manager may perform the construction work at a price agreed upon by the construction manager, the architect and the owner of the project. A school system, at its own discretion, may perform work on the project with its own employees, and may include the coordination and oversight of this work as part of the services of the construction manager. Sealed bids for actual construction work shall be opened at the bid opening and the names of the contractors and their bid amounts shall be announced;

(iii) Construction management agent or advisor services for the construction of school buildings or additions to existing buildings in accordance with subdivision (a)(3)(C)(ii) may be performed by:

- (a) A general contractor licensed in Tennessee pursuant to title 62, chapter 6; provided, that none of such services performed by a general contractor involve any of the services exempt from the requirements of title 62, chapter 6 as "normal architectural and engineering services" under § 62-6-102(4)(B) or (C), unless, with regard to the performance of any services defined as normal architectural and engineering services, the general contractor is also licensed as an architect or engineer under title 62, chapter 2; or
- (b) An architect or an engineer licensed pursuant to title 62, chapter 2; provided, that none of such services performed by an architect or engineer involve any of the services required to be performed by a contractor within the definition of "contractor" under § 62-6-102, unless with regard to the performance of any services included within the definition of contractor, the architect or engineer is also licensed as a contractor under title 62, chapter 6.

(iv) Construction work that is under the coordination and oversight of a construction manager shall be procured through competitive bids as provided in this subsection (a);

(D) No board of education shall be precluded from purchasing materials and employing labor for the construction of school buildings or additions to school buildings;

(E) Subdivisions (a)(3)(A), (B) and (D) apply to local boards of education of all counties, municipalities and special school districts; provided, however, that subdivisions (a)(3)(A) and (B) shall not apply to purchases by or for a county's or metropolitan government's board of education in counties with a population of not less than two hundred thousand (200,000), according to any federal census, so long as the county, through county or metropolitan government charter, private act, or ordinance, establishes a procedure regarding purchasing that provides for advertisement and competitive bidding and sets a dollar amount for each purchase requiring advertisement and competitive bidding; and provided, further, that purchases of less than the dollar amount requiring advertisement and competitive bidding shall, wherever possible, be based upon at least three (3) competitive bids. Subdivision (a)(3)(C) applies to county and municipal boards of education;