

1 AN ACT relating to contractors.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO
4 READ AS FOLLOWS:

5 *As used in Sections 1 to 8 of this Act:*

6 *(1) "Contractor":*

7 *(a) Means a person in the business of contracting, or offering to contract, to*
8 *provide goods or services relating to real estate; and*

9 *(b) Includes any person that directly or indirectly solicits or offers a real estate*
10 *goods or services contract;*

11 *(2) "Contractor's license" or "license" means the license issued by the department to*
12 *a contractor;*

13 *(3) "Goods or services relating to real estate":*

14 *(a) Means goods, services, or goods and services relating to real estate;*

15 *(b) Includes but is not limited to any:*

16 *1. Repair or remediation of roofing, gutter, downspout, or siding;*

17 *2. Tree cutting and removal;*

18 *3. Mold remediation;*

19 *4. Debris removal;*

20 *5. Water restoration and waterproofing;*

21 *6. Smoke and fire restoration;*

22 *7. Contents packout; and*

23 *8. General contractor services; and*

24 *(c) Does not include:*

25 *1. Services to a residential building of more than four (4) units;*

26 *2. Services to a commercial building; or*

27 *3. Building a new home or housing development;*

1 (4) "Person" has the same meaning as in KRS 367.110;

2 (5) "Real estate":

3 (a) Means any parcel of real estate located in this state that is used for any
4 purpose; and

5 (b) Includes:

6 1. Residential real estate; and

7 2. Commercial real estate; and

8 (6) "Real estate goods or services contract" means a contract for the provision of
9 goods or services relating to real estate.

10 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO
11 READ AS FOLLOWS:

12 (1) A person who is not licensed as a contractor shall not represent himself or herself
13 to the public as a contractor or use any terms, titles, or abbreviations that express
14 or imply that the person is a contractor.

15 (2) A person shall not practice as a contractor, unless that person has met the
16 requirements of Sections 1 to 8 of this Act.

17 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO
18 READ AS FOLLOWS:

19 (1) The department shall administer and enforce Sections 1 to 8 of this Act and shall
20 evaluate the qualifications of applicants for licensure.

21 (2) The department may:

22 (a) Refuse to issue or renew a contractor's license;

23 (b) Suspend or revoke a contractor's license;

24 (c) Impose supervisory or probationary conditions upon a licensee;

25 (d) Impose administrative disciplinary fines;

26 (e) Issue written reprimands or admonishments; and

27 (f) Take any combination of the actions permitted in this subsection.

1 (3) The department may seek injunctive relief in the Franklin Circuit Court or the
2 Circuit Court of the county in which the violation occurred or the business of the
3 accused is located to stop any unlawful practice prohibited by Sections 1 to 8 of
4 this Act and administrative regulations promulgated thereunder. The department
5 may also seek injunctive relief if unlicensed persons inappropriately use the term
6 contractor.

7 (4) The department may enter into reciprocal agreements with other states having
8 licensure, certification, or registration qualifications and requirements of a
9 similar scope of practice to those of this state.

10 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO
11 READ AS FOLLOWS:

12 (1) The department shall promulgate administrative regulations in accordance with
13 KRS Chapter 13A necessary to carry out Sections 1 to 8 of this Act, including:

14 (a) Issuing and renewing contractor's licenses to applicants who meet the
15 requirements of Section 5 of this Act;

16 (b) Denying, suspending, or revoking a contractor's license;

17 (c) Maintaining a current register of license holders as a matter of public
18 record;

19 (d) Establishing procedures for receiving, investigating, and resolving
20 complaints against license holders;

21 (e) Conducting administrative hearings in accordance with KRS Chapter 13B
22 for disciplinary actions taken under paragraph (b) of this subsection and
23 Section 3 of this Act; and

24 (f) 1. Assessing fees for the issuance and renewal of licenses to cover
25 administrative and operating expenses of the department; and

26 2. Authorizing all disbursements necessary to administer Sections 1 to 8
27 of this Act.

1 (2) The department shall establish through administrative regulation the required fee
2 amounts to be paid by licensees and applicants for licensure under Sections 1 to 8
3 of this Act, including but not limited to:

4 (a) For an application for initial licensure as a contractor, a nonrefundable fee
5 not to exceed two hundred dollars (\$200);

6 (b) For the renewal of a contractor license, a fee not to exceed two hundred
7 dollars (\$200);

8 (c) For a duplicate or replacement license, a fee not to exceed twenty-five
9 dollars (\$25);

10 (d) For failure to renew a license for a contractor, a reinstatement fee not to
11 exceed one hundred dollars (\$100); and

12 (e) Other reasonable fees for administrative services.

13 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO
14 READ AS FOLLOWS:

15 An applicant for a contractor's license shall:

16 (1) Be at least eighteen (18) years of age;

17 (2) Be a citizen of the United States or a resident alien who is authorized to work in
18 the United States;

19 (3) Have paid to the department the application fee and the appropriate examination
20 fee, which shall not exceed the actual cost of the examination;

21 (4) Have achieved a passing score, as set by the department, on all portions of the
22 examination required by the department;

23 (5) Have met the training and experience requirements established in administrative
24 regulations promulgated by the department; and

25 (6) Have submitted proof that he or she has complied with workers' compensation
26 and unemployment insurance laws and administrative regulations and has
27 obtained a general liability insurance policy of not less than five hundred

1 thousand dollars (\$500,000).

2 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO
3 READ AS FOLLOWS:

4 (1) The department shall select and approve examinations to be used in determining
5 the competency of persons to be licensed under Sections 1 to 8 of this Act.
6 Examinations selected and approved for licensing shall be nationally recognized
7 examinations that have been determined through proper validation techniques to
8 measure successfully an individual's competency to perform the licensed practice.

9 (2) The department shall offer the examinations on a regularly scheduled basis in
10 localities around the state.

11 (3) The department may contract with an outside entity or testing service for the
12 administration of examinations required for licensure.

13 ➔SECTION 7. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO
14 READ AS FOLLOWS:

15 (1) The contractors fund is hereby created as a trust and agency account to be
16 administered by the department. All moneys collected by the department under
17 Sections 1 to 8 of this Act shall be deposited into the fund.

18 (2) Moneys deposited into the contractors fund shall be used for the department's
19 expenses related to the regulation and enforcement of Sections 1 to 8 of this Act.

20 (3) Notwithstanding KRS 45.229, fund amounts not expended at the close of a fiscal
21 year shall not lapse but shall be carried forward into the next fiscal year.

22 ➔SECTION 8. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO
23 READ AS FOLLOWS:

24 (1) The department may, following a hearing pursuant to KRS Chapter 13B, impose
25 sanctions specified in Section 3 of this Act upon proof that the licensee has:

26 (a) Misrepresented or concealed a material fact in obtaining a license or in the
27 reinstatement thereof;

- 1 **(b) Been incompetent or negligent in the practice of performing contracting**
2 **work;**
3 **(c) Failed to comply with an order issued by the department or an assurance of**
4 **voluntary compliance; or**
5 **(d) Violated any provision of Sections 1 to 8 of this Act or administrative**
6 **regulations promulgated thereunder.**
7 **(2) One (1) year from the date of a revocation, any former licensee whose license has**
8 **been revoked may petition the department for reinstatement. The department**
9 **shall investigate the petition and may reinstate the license upon a finding that the**
10 **applicant has complied with any terms prescribed by the department and is again**
11 **able to competently engage in the practice of performing contracting work.**
12 **(3) At any time during the investigative or hearing processes, the department may**
13 **enter into an agreed order or accept an assurance of voluntary compliance with**
14 **the license holder which effectively deals with the complaint.**
15 **(4) The department may reconsider, modify, or reverse its probations, suspensions, or**
16 **other disciplinary actions.**

17 ➔Section 9. KRS 367.620 is amended to read as follows:

18 As used in KRS 367.620 to 367.628:

19 (1) "Contractor":

- 20 (a) Means a person in the business of contracting, or offering to contract, to
21 provide goods or services relating to real estate; and
22 (b) Includes any person that directly or indirectly solicits or offers a real estate
23 goods or services contract;

24 (2) "Goods or services relating to real estate":

25 (a) Means goods, services, or goods and services relating to real estate;

26 **(b) Includes but is not limited to any:**

27 **1. Repair or remediation of roofing, gutter, downspout, or siding;**

- 1 2. Tree cutting and removal;
- 2 3. Mold remediation;
- 3 4. Debris removal;
- 4 5. Water restoration and waterproofing;
- 5 6. Smoke and fire restoration;
- 6 7. Contents packout; and
- 7 8. General contractor services; and

8 ~~(c)(b)~~ Does not include:

- 9 1. Services to a residential building of more than four (4) units;
- 10 2. Services to a commercial building; or
- 11 3. Building a new home or housing development ~~[Includes any:~~

12 ~~1. Repair, replacement, construction, reconstruction, or improvement of~~

13 ~~real estate; and~~

14 ~~2. Tree or debris removal];~~

15 (3) "Insured" means a person that is entitled, or may be entitled, to receive benefits or

16 payments under a property, casualty, or property and casualty insurance policy;

17 (4) "Person" has the same meaning as in KRS 367.110;

18 (5) "Real estate":

19 (a) Means any parcel of real estate located in this state that is used for any

20 purpose; and

21 (b) Includes:

22 1. Residential real estate; and

23 2. Commercial real estate; and

24 (6) "Real estate goods or services contract" means a contract for the provision of goods

25 or services relating to real estate ~~[, where the goods or services are expected to be~~

26 ~~paid from property, casualty, or property and casualty insurance proceeds].~~

27 ➔Section 10. KRS 367.622 is amended to read as follows:

1 (1) A person who enters into a real estate goods or services contract with a contractor
2 may cancel the contract prior to midnight of the fifth business day after the person
3 has:

4 (a) Entered into a contract with the contractor; or

5 (b) Received written notice from the insurer that all or part of the claim is not a
6 covered loss under the insurance policy.

7 (2) Cancellation shall be deemed to have occurred when the person does any of the
8 following:

9 (a) Personally delivers written notice of cancellation to the contractor;

10 (b) Deposits written notice of cancellation in the United States mail, postage
11 prepaid, and addressed to the contractor at the address stated in the contract;
12 or

13 (c) Transmits notice of cancellation to the contractor by facsimile or email.

14 (3) Notice of cancellation need not take a particular form and is sufficient if it indicates
15 by any form of written or recorded expression the intention of the person not to be
16 bound by the contract.

17 ➔Section 11. KRS 367.624 is amended to read as follows:

18 Prior to entering into a real estate goods or services contract with any person, a contractor
19 shall furnish the person with:

20 (1) The complete agreement between the person and the contractor, with a clear
21 description of any other documents which are or shall be incorporated into the
22 agreement;

23 (2) The contractor's full legal name, business names, principal address, and
24 registration number;

25 (3) The mailing address of the contractor through which written communication may
26 be received;

27 (4)~~(2)~~ The telephone number of the contractor and, if applicable, the contractor's

1 facsimile number and email address;

2 (5) The name of the contractor's insurer, the type of insurance coverage as required
3 by Section 5 of this Act, and the insurance policy limits obtained by the
4 contractor;

5 (6) An itemized description of the work to be done, any emergency services to be
6 completed, and the materials to be used in the performance of the real estate
7 goods or services contract;

8 (7) The total itemized amount agreed to be paid for the work to be performed under
9 the real estate goods or services contract;

10 (8) A description of who will be performing the work, including but not limited to a
11 subcontractor, independent contractor, day laborer, and any other person who
12 would be a contractor under subsection (1) of Section 9 of this Act;

13 (9) An approximation of the costs expected to be borne by the person;

14 (10) A provision allowing payment to be made by cash, check, or credit card, at the
15 person's discretion;

16 (11) The signatures of all persons party to the contract;

17 (12) An itemized statement identifying any aspect of the real estate goods or services
18 contract that is not expected to be covered under an insurance policy;

19 (13)(3) A statement in at least ten (10) point boldface type in immediate proximity to
20 the space reserved for the signature of the person that states:

21 "You may cancel this contract at any time before midnight on the fifth business
22 day after entering into this contract with your contractor. You may also cancel

23 this contract at any time before midnight on the fifth business day after you have
24 received written notification from the insurer that all or any part of the contracted
25 goods, services, or goods and services is not a covered loss under the property,
26 casualty, or property and casualty insurance policy. This right to cancel is in
27 addition to any other rights of cancellation you may have under state or federal law

1 or regulation. See the attached Notice of Cancellation form for an explanation of
2 this right."; and

3 ~~(14)~~~~(4)~~ A fully completed form in duplicate, under the conspicuous caption "NOTICE
4 OF CANCELLATION," and attached to but easily detachable from the contract, in
5 at least ten (10) point boldface type that shall read as follows:

6 "NOTICE OF CANCELLATION

7

8 (enter date of transaction)

9 **You may cancel this contract without penalty or monetary obligation before**

10 **midnight of the fifth business day after entering into this contract with your**

11 **contractor. You may also**~~[If you are notified by the insurer that all or any part of~~

12 ~~the contracted goods, services, or goods and services is not a covered loss under the~~

13 ~~property, casualty, or property and casualty insurance policy, you may]~~ cancel this

14 contract without penalty or monetary obligation before midnight of the fifth

15 business day after you have received ~~the~~ notice **from the insurer that all or any**

16 **part of the contracted goods, services, or goods and services is not a covered loss**

17 **under the property, casualty, or property and casualty insurance policy.** To cancel

18 this transaction, you may use any of the following methods: mail or otherwise

19 deliver a signed and dated copy of this cancellation notice, or any other written

20 notice of cancellation which you sign and date, to (enter physical address of

21 contractor), or email a notice of cancellation to (enter email address of contractor),

22 or transmit a notice of cancellation to (enter facsimile number of contractor), not

23 later than midnight of the fifth day after you receive notice from the insurer. **If you**

24 **cancel, any payments made by you under the contract will be returned to you**

25 **within ten (10) business days following receipt by the contractor of your**

26 **cancellation notice, and any security interest arising out of the transaction will be**

27 **cancelled. You shall retain a copy of the notice of cancellation that is transmitted**

1 to the contractor.

2 I HEREBY CANCEL THIS TRANSACTION.

3

4 (Date)

5

6 (Buyer's Signature)"

7 ➔Section 12. KRS 367.628 is amended to read as follows:

8 (1) (a) Except as provided in paragraphs (b) and (c) of this subsection, a contractor,
9 or person representing a contractor, shall not represent, negotiate, or advertise
10 to represent or negotiate on behalf of any insured on any insurance claim in
11 connection with the provision of goods or services relating to real estate.

12 (b) Nothing in this subsection shall be construed to prohibit a contractor, or
13 person representing a contractor, from:

14 1. Providing an estimate for the provision of goods or services relating to
15 real estate; or

16 2. Conferring with an insurance company's representative about damage to
17 real estate after a claim has been submitted by an insured.

18 (c) This subsection shall not apply to a public adjuster licensed under Subtitle 9
19 of KRS Chapter 304.

20 (2) Where goods or services relating to real estate are expected to be paid from
21 property, casualty, or property and casualty insurance proceeds, a contractor or
22 person representing a contractor shall not:

23 (a) Cause damage to any part of the real estate in order to increase the scope of
24 goods or services provided~~[-]~~ or encourage a person to cause damage to any
25 part of the real estate in order to secure a contract for goods or services;

26 (b) Offer to pay or rebate all or any portion of an insurance deductible or claims
27 proceeds as an inducement to the sale of goods or services by a contractor;

- 1 (c) Grant an allowance or discount against the fee to be charged by a contractor;
- 2 (d) Pay or offer to pay the insured, or his or her representative, for whom services
- 3 have been or will be performed, for any reason, any form of compensation in
- 4 excess of one hundred dollars (\$100), including but not limited to a:
- 5 1. Bonus;
- 6 2. Coupon;
- 7 3. Credit;
- 8 4. Gift;
- 9 5. Prize;
- 10 6. Referral fee; or
- 11 7. Any other item having a monetary value;~~[-or]~~
- 12 (e) File or claim a mechanic's lien pursuant to KRS 376.010 against an insured by
- 13 reason of the insured's failure or refusal to pay any excess charge over and
- 14 above the amount paid or expected to be paid by an insurer under a property,
- 15 casualty, or property and casualty insurance policy;
- 16 **(f) Require a deposit of more than fifty percent 50% of the contract price;**
- 17 **(g) Mandate that a particular form of payment be made in order to start**
- 18 **services;**
- 19 **(h) Induce the sale of any goods or services by offering or providing any**
- 20 **upgraded work, material, or product;**
- 21 **(i) Operate without a contractor's license issued by the department in**
- 22 **accordance with Sections 1 to 8 of this Act;**
- 23 **(j) Abandon or fail to perform, without justification, any ongoing contract or**
- 24 **project or deviate from or disregard plans or specifications in any material**
- 25 **respect without consent of the consumer;**
- 26 **(k) Fail to credit the consumer for any payment the consumer has made to the**
- 27 **contractor in connection with the contract;**

1 (l) Make any material misrepresentation in the procurement of a contract or
2 make any false promise likely to influence, persuade, or induce the
3 procurement of a contract;

4 (m) Violate the building code of the state or municipality;

5 (n) Fail to notify the department within thirty (30) business days of any change
6 of trade name or address, or conducting a business in any name other than
7 the one in which the contractor is registered;

8 (o) Fail to pay for materials or services rendered in connection with his or her
9 operating as a contractor where he or she has received sufficient funds as
10 payment for the particular construction work, project, or operation for
11 which the services or materials were rendered or purchased;

12 (p) Perform the reporting, adjusting, or negotiation of a claim on behalf of the
13 consumer or receive compensation for the referral to any entity that reports,
14 adjusts, or negotiates a claim on behalf of a consumer; or

15 (q) Fail to possess any insurance required as defined by Section 5 of this Act or
16 any other law.

17 ➔Section 13. This Act applies to contracts entered on or after the effective date of
18 this Act.