

SENATE BILL 606

By Massey

AN ACT to amend Tennessee Code Annotated, Title 4 and Title 62, Chapter 6, relative to heating, ventilation, and air conditioning contractors.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 62, Chapter 6, is amended by adding the following language as a new part:

62-6-701.

This part shall be known and may be cited as the "Limited Licensed HVAC Contractors' Act."

62-6-702.

As used in this part:

(1) "Board" means the state board for licensing contractors created pursuant to § 62-6-104;

(2) "HVAC equipment and systems":

(A) Means equipment necessary for any system that heats, cools, conditions, ventilates, filters, humidifies, or dehumidifies environmental air for residential, industrial, or commercial use, including all related ventilation and ducting systems; and

(B) Does not include solid fuel-burning devices, gas piping other than that necessary to deliver fuel, or boilers;

(3) "HVAC work" means the design, fabrication, construction, installation, replacement, service, testing, or adjusting and balancing of HVAC equipment and systems inside or outside a residential or commercial building; and

(4) "Local jurisdiction" means an incorporated city or town, a county, or a metropolitan form of government.

62-6-703.

(a) A person who performs HVAC work that has a total cost of less than twenty-five thousand dollars (\$25,000) is subject to the jurisdiction of the board solely for the purposes of licensure and disciplinary proceedings.

(b) No person who performs HVAC work in this state, whether licensed pursuant to this part or not, shall use the appellation contractor or any other designation that gives or is designed to give the impression that the person is a contractor, unless the person holds a valid contractor's license issued by the board pursuant to § 62-6-111.

62-6-704.

(a) Except as provided in § 62-6-705, any person who engages in HVAC work in a local jurisdiction that does not require a license for HVAC work shall, prior to engaging in HVAC work in that respective local jurisdiction, be licensed as a limited licensed HVAC contractor pursuant to this part.

(b)

(1) It is a Class A misdemeanor for any person to engage in, or to offer to engage in, HVAC work in a local jurisdiction that does not require a license for HVAC work, unless the person is licensed as a limited licensed HVAC contractor pursuant to this part or exempt from licensure pursuant to § 62-6-705.

(2) It is a Class A misdemeanor for any person to engage in, or to offer to engage in, HVAC work in a local jurisdiction that does require a license by the local jurisdiction for HVAC work, unless the person is licensed pursuant to this part or licensed by the applicable local jurisdiction.

62-6-705.

The requirements of this part, including requirements for local licensure and licensure as a limited licensed HVAC contractor, do not apply to the following:

(1) A person who is employed by and under the supervision of a person with a license as a limited licensed HVAC contractor or any other entity approved by the board;

(2) A person performing HVAC work on residential property owned by the person if the residential property is not offered for rent or purchased for the purpose of resale within one (1) year of the purchase;

(3) A person who holds a license as either a manufactured home installer pursuant to § 68-126-404, or a manufactured home retailer pursuant to § 68-126-206, if the person holding either license is performing HVAC work on a manufactured home as defined in § 68-126-202 and 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) A person who holds a license as a manufactured home manufacturer pursuant to § 68-126-206 if the person is performing HVAC work on a manufactured home as defined in § 68-126-202, and 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) A person who holds a license to manufacture or install modular building units pursuant to § 68-126-305 if the person is performing HVAC work on a modular building unit as defined in § 68-126-303, and the HVAC 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) A dealer, as defined in § 68-135-101, including any authorized officer and employee of the dealer, who is performing HVAC work related to the

provision of liquefied petroleum gas to or within any residential or commercial building;

(7) An operator, as defined in 49 CFR 192.3, including any authorized officer and employee of the operator, who is performing HVAC work related to the provision of natural or commingled gas or its applications to or within any residential, industrial, or commercial building;

(8) A 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. 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, such person or firm 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 two-year period. There is 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 two-year period;

(9) 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 (26 U.S.C. § 501(c)(3)), that are constructing single residences;

(10) Students enrolled in educational institutions who construct single residences under the direct supervision of faculty as part of the curriculum of the institution; and

(11) A person who performs HVAC work that has a total cost of twenty-five thousand dollars (\$25,000) or more and has a valid contractor's license pursuant to part 1 of this chapter.

62-6-706.

(a)

(1) If a person is not licensed by a local jurisdiction prior to January 1, 2017, prior to making written application to the board for licensure as a limited licensed HVAC contractor, the person must have a minimum of one (1) year of HVAC experience satisfactory to the board. Upon obtaining the required experience, the person may make a written application to the board for licensure as a limited licensed HVAC contractor on forms prescribed by the board. The application must be accompanied by a nonrefundable application fee as set pursuant to § 62-6-710.

(2) If a person is licensed by a local jurisdiction prior to January 1, 2017, the person may make a written application to the board for licensure as a limited licensed HVAC contractor on forms prescribed by the board. The application must be accompanied by evidence to the board that the person was licensed by a local jurisdiction prior to January 1, 2017, and a nonrefundable application fee as set pursuant to § 62-6-710.

(b)

(1) If a person makes an application pursuant to subdivision (a)(1), and the application is satisfactory to the board, the applicant must take an examination designed by the board to determine the applicant's qualifications in written form, oral form, or a combination of both. The board shall charge the applicant an examination fee as set by the board pursuant to § 62-6-710. If the

results of the examination are satisfactory to the board, the board may issue to the applicant a license as a limited licensed HVAC contractor.

(2) If a person makes an application pursuant to subdivision (a)(2), and the application is satisfactory to the board, the board may issue to the applicant a license as a limited licensed HVAC contractor.

(c) The board shall promulgate rules that establish uniform criteria to govern the issuance of licenses as limited licensed HVAC contractors. The board may, in individual cases, modify the uniform 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.

(d) Notwithstanding subsection (c), the board shall not waive or modify the minimum one (1) year of HVAC experience described in subdivision (a)(1), nor require a person to post a bond or provide a financial statement in order to obtain a license as a limited licensed HVAC contractor.

62-6-707.

(a) Any person who requests an HVAC inspection shall first have a valid license as a limited licensed HVAC contractor issued by the board or a license issued by a local jurisdiction.

(b)

(1) If a local jurisdiction provides HVAC inspection services, the HVAC inspection must be provided by the respective local jurisdiction.

(2) If a local jurisdiction does not provide HVAC inspection services:

(A) The board must establish a system for inspectors to report any problems that the inspectors encounter with the workmanship or conduct of the person requesting the inspection;

(B) Inspectors working under the direction of the board must inspect the work, if required by the local authority having jurisdiction, prior to the issuance of a certificate of occupancy and the work shall be found to be either satisfactory or unsatisfactory and requiring remedial work; and

(C) The board must establish an appropriate system and fee structure to be charged for inspections performed by inspectors working under the direction of the board to effectuate this section.

62-6-708.

No local jurisdiction shall require testing, experience, or other requirements for a person, who is licensed as a limited licensed HVAC contractor, to engage in HVAC work within the jurisdiction of the respective local jurisdiction.

62-6-709.

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 part.

62-6-710.

(a) The board shall prescribe fees for the application, examination, issuance, and renewal of licenses of limited licensed HVAC contractors. The fees must be in an amount that provides for the cost of administering this part. The board shall adjust the fees as necessary to provide that the administration of this part is fiscally self-sufficient and that revenues from the fees do not exceed necessary and required expenditures.

(b) Notwithstanding subsection (a), in no event shall the fee for issuance of an initial license as a limited licensed HVAC contractor exceed seventy-five dollars (\$75.00), nor shall the fee for a renewal of such license exceed fifty dollars (\$50.00).

62-6-711.

(a) The board may refuse to issue or renew a license, and revoke or suspend the license, of a person required to be licensed as a limited licensed HVAC contractor for faulty HVAC workmanship as determined by the board or for gross negligence, incompetency, fraud, dishonest dealing, or misconduct in performing HVAC 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 that the board finds to reflect unfavorably on the fitness of the person to have a license; any other conduct that constitutes improper, fraudulent, or dishonest dealing; or any 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 person required to be licensed pursuant to this part for each separate violation of this part.

62-6-712.

Pursuant to rules promulgated by the board, the board may issue a duplicate license as a limited licensed HVAC contractor to replace any license lost, destroyed, or mutilated.

62-6-713.

(a) A license as a limited licensed HVAC contractor expires on the last day of the twenty-fourth month following the license's issuance or renewal and becomes invalid on that date unless renewed in accordance with this section.

(b) The board shall notify by mail each person licensed under this part of the date of expiration of the license and the applicable renewal fee. Renewal notices must be mailed ninety (90) days prior to the expiration date of the license.

(c) The renewal application and fee must be received by the board thirty (30) days prior to the expiration of the license and must be accompanied by a renewal fee as set pursuant to § 62-6-710.

(d) No person shall receive a renewal license if the person fails to comply with this section. In that event, the person must make a new application for licensure as a limited licensed HVAC contractor and pay a nonrefundable application fee and an issuance fee, as set pursuant to § 62-6-710, but does not have to take the examination described in § 62-6-706.

62-6-714.

Any person who violates this part, or any rule promulgated pursuant to this part, commits a Class A misdemeanor.

62-6-715.

(a) The board shall inquire into the identity of any person engaging in HVAC work in this state and shall prosecute any person violating this part.

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

(c) Any expenses incurred, such as depositions, travel expenses, or attorneys' fees, for the prosecution of the suit must be paid in the same manner as other expenses incurred by the board.

62-6-716.

The board shall promulgate rules in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to effectuate this part.

SECTION 2. For purposes of promulgating rules, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect

January 1, 2018, the public welfare requiring it. However, the board may accept applications for licensure prior to that date.