



Filed: 3/9/2005

09400HB3779ham001

LRB094 09447 RAS 43375 a

1 AMENDMENT TO HOUSE BILL 3779

2 AMENDMENT NO. _____. Amend House Bill 3779 by replacing
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the
5 Primary Home Remodeler Licensing Act.

6 Section 5. Definitions. As used in this Act:

7 "Board" means the Primary Home Remodeler Licensing Board.

8 "Department" means the Department of Financial and
9 Professional Regulation.

10 "Designated agent" means a person who is designated by a
11 primary home remodeling firm, corporation, partnership, or
12 association that will be responsible for overseeing the
13 performance of primary home remodeling services for that firm,
14 corporation, partnership, or association.

15 "Governmental unit" means a city, village, incorporated
16 town, county, or sanitary or water district.

17 "Person" means any natural person, firm, corporation,
18 partnership, or association.

19 "Primary home remodeler" means a person who remodels
20 primary places of residence for other persons.

21 "Secretary" means the Secretary of Financial and
22 Professional Regulation.

23 "Telecommunications carrier" means a telecommunications
24 carrier as defined in the Public Utilities Act.

1 Section 10. Licensure requirement. On or after January 1,
2 2006, no person may act as a primary home remodeler on a
3 project in this State without a license issued by the
4 Department under this Act.

5 Section 15. Exemptions.

6 (a) This Act does not prohibit a person licensed in this
7 State under any other Act from engaging in the practice for
8 which that person is licensed.

9 (b) This Act does not apply to a not-for-profit
10 organization that is exempt from taxation under 501(c)(3) of
11 the Internal Revenue Code.

12 Section 20. Primary home remodeling services by municipal
13 corporations or political subdivisions. No governmental unit
14 shall perform primary home remodeling services, unless such
15 services are performed by one or more licensed primary home
16 remodelers, provided that any such governmental unit may
17 contract for primary home remodeling services with any person
18 authorized to perform primary home remodeling services in this
19 State.

20 Section 25. Primary Home Remodeler Licensing Board.

21 (a) There is created a Primary Home Remodeler Licensing
22 Board, which shall exercise its duties provided in this Act
23 under the supervision of the Department. The Board shall
24 consist of 9 licensed primary home remodelers designated from
25 time to time by the Secretary. In making the appointments to
26 the Board, the Secretary shall consider the recommendations of
27 individuals, firms, or organizations involved in primary home
28 remodeling in this State.

29 (b) The Board shall aid the Secretary and the Department
30 by:

1 (1) Preparing subject matter for examinations as
2 provided in this Act.

3 (2) Suggesting rules to govern examinations and
4 hearings for suspension, revocation, or reinstatement of
5 licenses.

6 (3) Submitting recommendations to the Secretary from
7 time to time for the efficient administration of this Act.

8 (4) Grading all tests and examinations for licenses and
9 promptly reporting the results to the Secretary.

10 (5) Performing such other duties from time to time
11 prescribed by the Secretary.

12 (c) Each Board member shall be compensated the sum of \$50
13 for each day or part thereof on which he serves on business of
14 the Board and in addition thereto shall be reimbursed for per
15 diem expenses as authorized for State employees.

16 Section 30. Powers and duties of the Secretary. The
17 Secretary shall have all the following powers and duties:

18 (1) To prepare forms for application for examination
19 for a primary home remodeler license.

20 (2) To prepare and issue licenses as provided in this
21 Act.

22 (3) With the aid of the Board, to adopt rules for
23 examination of applicants for primary home remodeler
24 licenses.

25 (4) With the aid of the Board, to prepare and give
26 uniform and comprehensive examinations to applicants for a
27 license.

28 (5) To issue a primary home remodeler license and
29 license renewal to every applicant who has passed the
30 examination and who has paid the required license and
31 renewal fee.

32 (6) To adopt rules for hearings to deny, suspend,
33 revoke, and reinstate licenses as provided in this Act.

1 (7) To maintain a current record showing (A) the names
2 and addresses of licensees, (B) the dates of issuance of
3 licenses, (C) the date and substance of the charges set
4 forth in any hearing for denial, suspension, or revocation
5 of any license, (D) the date and substance of the final
6 order issued upon each such hearing, and (E) the date and
7 substance of all petitions for reinstatement of licenses
8 and final orders on such petitions.

9 Section 35. Examination. The Department shall hold
10 examinations for applicants for primary home remodeler
11 licenses at least once every 3 months in some place in this
12 State.

13 Section 40. Application for examination.

14 (a) An applicant for a primary home remodeler license shall
15 file a written application for examination with the Department
16 on a form designated by the Department at least 30 days before
17 the date set by the Department for the examination. In the case
18 of a firm, corporation, partnership, or association, the
19 application must specify the name of a designated agent who
20 will take the examination on behalf of the firm, corporation,
21 partnership, or association.

22 (b) The application shall be accompanied by the required
23 fee and shall contain the following:

24 (1) The name, address, and telephone number of the
25 business and (i) the individual, if a sole proprietorship;
26 (ii) the partners, if a firm or partnership; or (iii)
27 officers, if a corporation or association.

28 (2) An original certificate of insurance documenting
29 that the remodeler carries general liability insurance
30 with a minimum of \$100,000 per occurrence, bodily injury
31 insurance with a minimum of \$300,000 per occurrence,
32 property damage insurance with a minimum of \$50,000, and

1 worker's compensation insurance with a minimum \$500,000.
2 No registration may be issued in the absence of this
3 certificate. Certificates must be in force at all times for
4 registration to remain valid.

5 (3) An indemnification bond in the amount of \$20,000 or
6 a letter of credit in the same amount for work performed in
7 accordance with this Act and the rules adopted under this
8 Act.

9 (4) In the case of a firm, corporation, partnership, or
10 association, the name of its designated agent.

11 (5) Any other information the Department may deem
12 necessary to determine the applicant's qualifications for
13 licensure.

14 (c) If the application for examination is approved, the
15 Department shall promptly notify the applicant in writing of
16 such approval and of the place and time of the examination. If
17 the application is disapproved, the Department shall promptly
18 notify the applicant in writing of such disapproval, stating
19 the reasons for disapproval.

20 (d) If an applicant neglects, fails, or refuses to take an
21 examination for license under this Act, the application is
22 denied. However, such applicant may submit a new application
23 for examination, accompanied by the required application fee.
24 Application fees for examination for a primary home remodeler
25 license are not refundable.

26 Section 45. Issuance of license. The Secretary shall issue
27 a primary home remodeler license to each applicant who
28 successfully passes the examination, or whose designated agent
29 successfully passes the examination, and has paid to the
30 Department the required license fee. Each primary home
31 remodeler license shall be issued in the name of the Department
32 with the seal thereof attached.

1 Section 50. Licensure by endorsement.

2 (a) Upon the payment of the required fee, an applicant who
3 is registered or licensed as a primary home remodeler in
4 another state may, without examination, be granted a license by
5 the Department, provided that the Board finds that the
6 requirements for the registration or licensing of primary home
7 remodelers in such other state were, at the date of the
8 registration or license, substantially equal to the
9 requirements then in force in this State, and provided that the
10 same privilege of licensure or registration is accorded by that
11 state to licensed primary home remodelers in the State of
12 Illinois.

13 (b) A primary home remodeler licensed or registered as a
14 primary home remodeler by another state whose license
15 requirements are substantially equal to the requirements for a
16 primary home remodeler license in Illinois, and that state does
17 not have a reciprocal agreement with the State of Illinois, may
18 apply for and be issued an license under this Act if the
19 applicant successfully passes the examination and pays the
20 required fees.

21 Section 55. Change in business information. A licensee must
22 notify the Department in advance of any changes in the business
23 structure, name, or location or of the termination of the
24 designated agent listed on the application. Failure to notify
25 the Department of this information is grounds for suspension or
26 revocation of the primary home remodeler license.

27 Section 60. Duration of license; continuing education;
28 license renewal, reinstatement, or restoration.

29 (a) All licenses issued under this Act shall expire on
30 April 30 next following date of issuance.

31 (b) Upon the recommendation of the Board, the Department
32 may require by rule that each primary home remodeler or its

1 designated agents annually complete a minimum number of hours
2 of classroom instruction and provide evidence of attending the
3 classes before receiving a renewal license. A continuing
4 education requirement established by the Department shall not
5 exceed 15 hours per year. In support of these requirements, the
6 Department shall by rule establish curricula for continuing
7 education and requirements for instructors and may certify
8 instructors and training programs and schools for continuing
9 education.

10 (c) A primary home remodeler license may be renewed for a
11 period of one year upon payment of the required renewal fee and
12 submission of required evidence of successful completion of any
13 required continuing education courses. Application for renewal
14 shall be on forms provided by the Department.

15 (d) A licensee whose license has been expired for a period
16 of less than 5 years may apply to the Department for
17 reinstatement of his or her license. The Department shall issue
18 the license renewal provided the applicant pays to the
19 Department all lapsed renewal fees, plus the reinstatement fee.

20 (e) A licensee who has permitted his or her license to
21 expire for more than 5 years may apply, in writing, to the
22 Department for restoration of his or her license. The
23 Department shall restore his or her license provided he or she
24 pays to the Department the required restoration fee and shall
25 successfully pass the examination for a license. The
26 restoration fee includes the applicant's examination fee.
27 Failure by the applicant to successfully pass the examination
28 shall be sufficient grounds for the Department to withhold
29 issuance of the requested restoration of the applicant's
30 license. The applicant may retake the examination in accordance
31 with the provisions of this Act.

32 (f) The Department shall reinstate a license that expires
33 while a licensee is in the active military service of the
34 United States upon application to the Department by the former

1 licensee within 2 years after termination of such military
2 service, payment of the annual license fee, and submission of
3 evidence of such military service. The license shall be
4 reinstated without examination and without payment of the
5 lapsed renewal fee.

6 Section 65. Denial, suspension, or revocation of a license.
7 The Secretary, after notice and opportunity for hearing to the
8 applicant, license holder, or registrant, may deny, suspend, or
9 revoke a license or registration in any case in which he or she
10 finds that there has been a substantial failure to comply with
11 the provisions of this Act or the rules adopted pursuant to
12 this Act.

13 Notice shall be provided by certified mail or by personal
14 service setting forth the particular reasons for the proposed
15 action and fixing a date, not less than 20 days from the date
16 of the mailing or service, within which time the applicant or
17 license holder must request in writing a hearing. Failure to
18 serve upon the Department a request for hearing in writing
19 within the time provided in the notice shall constitute a
20 waiver of the person's right to an administrative hearing.

21 The hearing shall be conducted by the Secretary or by an
22 individual designated in writing by the Secretary as a hearing
23 officer to conduct the hearing. The Secretary or hearing
24 officer shall give written notice of the time and place of the
25 hearing, by certified mail or personal service, to the
26 applicant, license holder, or registrant at least 10 days prior
27 to the hearing. On the basis of the hearing, or upon default of
28 the applicant, license holder, or registrant, the Secretary
29 shall make a determination specifying his or her findings and
30 conclusions. A copy of the determination shall be sent by
31 certified mail or served personally upon the applicant, license
32 holder, or registrant. The decision of the Secretary shall be
33 final on issues of fact and final in all respects unless

1 judicial review is sought as provided in this Act.

2 The procedure governing hearings authorized by this
3 Section shall be in accordance with rules promulgated by the
4 Department. A full and complete record shall be kept of all
5 proceedings, including the notice of hearing, complaint, and
6 all other documents in the nature of pleadings, written motions
7 filed in the proceedings, and the report and orders of the
8 Secretary and hearing officer.

9 The Department at its expense shall provide a court
10 reporter to take testimony. Technical error in the proceedings
11 before the Department or hearing officer or their failure to
12 observe the technical rules of evidence shall not be grounds
13 for the reversal of any administrative decision unless it
14 appears to the court that such error or failure materially
15 affects the rights of any party and results in substantial
16 injustice to them.

17 The Department or hearing officer, or any parties in an
18 investigation or hearing before the Department, may cause the
19 depositions of witnesses within the State to be taken in the
20 manner prescribed by law for depositions in civil actions in
21 courts of this State, and compel the attendance of witnesses
22 and the production of books, papers, records, or memoranda.

23 The Department shall not be required to certify any record
24 to the court or file any answer in court or otherwise appear in
25 any court in a judicial review proceeding, unless there is
26 filed in the court with the complaint a receipt from the
27 Department acknowledging payment of the costs of furnishing and
28 certifying the record. Such cost shall be paid by the party
29 requesting a copy of the record. Failure on the part of the
30 person requesting a copy of the record to pay the cost shall be
31 grounds for dismissal of the action.

32 Section 70. Grounds for discipline.

33 (a) The Secretary may deny, revoke, or suspend a license

1 when findings show one or more of the following:

2 (1) That the licensee or registrant obtained or
3 conspired with others to obtain a license or registration
4 by inducing the issuance thereof in consideration of the
5 payment of money or delivery of any other thing of value or
6 by and through misrepresentation of facts.

7 (2) That the licensee willfully violated any law of
8 this State or any rule adopted thereunder regulating
9 primary home remodelers.

10 (3) That the licensee has been guilty of negligence or
11 incompetence in the performance of primary home remodeling
12 services.

13 (4) That the licensee has loaned or in any manner
14 transferred his or her license to another person.

15 (b) If a license is suspended or revoked, then the license
16 shall be surrendered to the Department but, if suspended, it
17 shall be returned to the licensee upon the termination of the
18 suspension period.

19 (c) The Department may refuse to issue or may suspend the
20 license of any person who fails to file a return, or to pay the
21 tax, penalty, or interest shown in a filed return, or to pay
22 any final assessment of tax, penalty, or interest as required
23 by any tax Act administered by the Illinois Department of
24 Revenue, until such time as the requirements of the tax Act are
25 satisfied.

26 Section 75. Subpoena power. The Secretary or hearing
27 officer shall have power to subpoena to any hearing authorized
28 by this Act any person in this State to give testimony and
29 evidence either orally or by deposition or both. The Secretary
30 or hearing officer may also issue subpoena duces tecum for
31 production of any books and records and other documents for
32 evidence at any authorized hearing under this Act. Witnesses
33 subpoenaed as provided herein shall be paid the same witness

1 fees and mileage as provided for witnesses who are subpoenaed
2 to give testimony in any civil case in a court of this State.
3 The Secretary or hearing officer is hereby empowered to
4 administer oaths or affirmations to witnesses at any hearing
5 authorized by this Act.

6 Section 80. Attendance of any witness and production of
7 books, papers or documents. Any circuit court upon the
8 application of the Secretary or any party of record to a
9 hearing authorized by this Act may order the attendance of any
10 witness and the production of any books, papers, or documents
11 in this State at any hearing authorized by this Act for the
12 purpose of giving testimony or evidence. Any court thereof as
13 provided in this Section may compel obedience to such order for
14 appearance or production of records by proceedings for
15 contempt.

16 Section 85. Order or certified copy; prima facie proof. An
17 order of suspension, revocation, or reinstatement of a license,
18 or of dismissal of a complaint or petition, or a certified copy
19 of such an order, over the seal of the Department and
20 purporting to be signed by the Secretary, shall be prima facie
21 proof that:

22 (1) the signature is the genuine signature of the
23 Secretary; and

24 (2) the Secretary is duly appointed and qualified.

25 Section 90. Administrative Review Law. All final
26 administrative decisions of the Secretary hereunder shall be
27 subject to judicial review pursuant to the provisions of the
28 Administrative Review Law, and all amendments and
29 modifications thereof, and the rules adopted pursuant thereto.
30 The term "administrative decision" is defined as in Section
31 3-101 of the Code of Civil Procedure.

1 Section 95. Illinois Administrative Procedure Act. The
2 provisions of the Illinois Administrative Procedure Act are
3 hereby expressly adopted and shall apply to all administrative
4 rules and procedures of the Department under this Act, except
5 that Section 5-35 of the Illinois Administrative Procedure Act
6 relating to procedures for rulemaking does not apply to the
7 adoption of any rule required by federal law in connection with
8 which the Department is precluded by law from exercising any
9 discretion.

10 Section 100. Criminal penalties; injunction.

11 (1) Except as otherwise provided in subsection (c) of
12 Section 125 of this Act, any person violating any provision of
13 this Act or its rules shall be guilty of a Class B misdemeanor
14 with a fine of \$500 for the first offense; and a second or
15 subsequent violation of this Act or its rules shall be guilty
16 of a Class A misdemeanor with a fine of \$1,000. Each day of
17 violation constitutes a separate offense. The State's Attorney
18 of the county in which the violation occurred or the Attorney
19 General shall bring such actions in the name of the People of
20 the State of Illinois.

21 (2) If it is established that the defendant contrary to
22 this Act has been or is performing primary home remodeling
23 services without having been issued a license or under a
24 suspended, revoked, or nonrenewed license, then the court may
25 enter a judgment perpetually enjoining the defendant from
26 further performing primary home remodeling services contrary
27 to this Act. In case of violation of any injunction entered
28 under this Section, the court may summarily try and punish the
29 offender for contempt of court. Such injunction proceedings
30 shall be in addition to, and not in lieu of, all penalties and
31 other remedies provided in this Act.

1 Section 105. Unlicensed and unregistered practice;
2 violation; civil penalty.

3 (a) A person who practices, offers to practice, attempts to
4 practice, or holds himself or herself out to practice as a
5 primary home remodeler without being licensed under this Act
6 shall, in addition to any other penalty provided by law, pay a
7 civil penalty to the Department in an amount not to exceed
8 \$5,000 for each offense as determined by the Department. The
9 civil penalty shall be assessed by the Department after a
10 hearing is held in accordance with the provisions of this Act
11 regarding the provision of a hearing for the discipline of a
12 licensee.

13 (b) The Department has the authority and power to
14 investigate any person who practices, offers to practice,
15 attempts to practice, or holds himself or herself out to
16 practice as a primary home remodeler without being licensed
17 under this Act.

18 (c) The civil penalty shall be paid within 60 days after
19 the effective date of the order imposing the civil penalty. The
20 order shall constitute a judgment and may be filed and
21 execution had on the judgment in the same manner as a judgment
22 from a court of record.

23 Section 110. Fees; deposit of moneys.

24 (a) The Department shall, by rule, establish a schedule of
25 fees for examination, registration, and licensure sufficient
26 to offset the costs of administration and enforcement of this
27 Act.

28 (b) All fees and fines collected pursuant to this Act shall
29 be deposited into the General Professions Dedicated Fund for
30 use by the Department in administering and enforcing this Act.

31 Section 115. Inspections. The Department is authorized and
32 directed to make inspections necessary to determine compliance

1 with this Act and its rules.

2 Subject to constitutional limitations, the Department, by
3 its representatives, after proper identification, is
4 authorized and shall have the power to enter at reasonable
5 times, upon private and public property for the purpose of
6 inspecting and investigating conditions relating to the
7 enforcement of this Act and its rules.

8 Section 120. Advertising.

9 (a) Persons who advertise primary home remodeling services
10 must display a license issued under this Act at their place of
11 business. The number of the license so displayed must also be
12 included on all their vehicles.

13 (b) No person who provides primary home remodeling services
14 may advertise those services, unless that person includes in
15 the advertisement the license number that is required to be
16 displayed under subsection (a) of this Section. Nothing
17 contained in this subsection (b) requires the publisher of
18 advertising for primary home remodeling services to
19 investigate or verify the accuracy of the license number
20 provided by the advertiser.

21 (c) Any person who advertises primary home remodeling
22 services (i) who fails to display the license number required
23 by subsection (a) of this Section in all manners required by
24 that subsection, (ii) who fails to provide a publisher with the
25 correct number under subsection (b) of this Section, or (iii)
26 who provides a publisher with a false license number, or any
27 person who allows his or her license number to be displayed or
28 used in order to allow any other person to circumvent any
29 provisions of this Section is guilty of a Class A misdemeanor
30 with a fine of \$1,000. Each day that a person fails to display
31 the required license under subsection (a) of this Section and
32 each day that an advertisement runs or each day that a person
33 allows his or her license to be displayed or used in violation

1 of this Section constitutes a separate offense.

2 In addition to, and not in lieu of, the penalties and
3 remedies provided for in this Section and other provisions of
4 this Act, any person licensed under this Act who violates any
5 provision of this Section shall be subject to suspension or
6 revocation of his or her license under the provisions of this
7 Act.

8 (c) In addition to, and not in lieu of, the penalties and
9 remedies provided for in this Section and other provisions of
10 this Act, and after notice and an opportunity for hearing, the
11 Department may issue an Order Of Correction to the
12 telecommunications carrier furnishing service to any telephone
13 number contained in a printed advertisement for primary home
14 remodeling services that is found to be in violation of the
15 provisions of this subsection (c). The Order of Correction
16 shall be limited to the telephone number contained in the
17 unlawful advertisement. The Order of Correction shall notify
18 the telecommunications carrier to disconnect the telephone
19 service furnished to any telephone number contained in the
20 unlawful advertisement and that subsequent calls to that number
21 shall not be referred by the telecommunications carrier to any
22 new telephone number obtained by or any existing number
23 registered to the person.

24 If, upon investigation, the Department has probable cause
25 to believe that a person has placed an advertisement with a
26 telecommunications carrier that contains a false license
27 number or is placed or circulated by a person who is not
28 properly licensed under this Act, the Department shall provide
29 notice to the person of the Department's intent to issue an
30 Order of Correction to the telecommunications carrier to
31 disconnect the telephone service furnished to any telephone
32 number contained in the unlawful advertisement, and that
33 subsequent calls to that number shall not be referred by the
34 telecommunications carrier to any new telephone number

1 obtained by or any existing number registered to the person.

2 Notice shall be provided by certified mail or by personal
3 service setting forth the particular reasons for the proposed
4 action and fixing a date, not less than 20 days from the date
5 of the mailing or service, within which time the person may
6 request a hearing in writing. Failure to serve upon the
7 Department a written request for hearing within the time
8 provided in the notice shall constitute a waiver of the
9 person's right to an administrative hearing. The hearing,
10 findings, and conclusions shall be in accordance with the
11 provisions of this Act and the Department's Rules of Practice
12 and Procedure in Administrative Hearings (77 Ill. Admin. Code
13 100), which are incorporated by reference herein.

14 Upon a finding that the person has violated the provisions
15 of this subsection (c), the Department shall issue the Order of
16 Correction to the telecommunications carrier. If the
17 telecommunications carrier fails to comply with the Order of
18 Correction within 20 days after the order is final, the
19 Department shall inform the Illinois Commerce Commission of the
20 failure to comply and the Illinois Commerce Commission shall
21 require the telecommunications carrier furnishing services to
22 that person to disconnect the telephone service furnished to
23 the telephone number contained in the unlawful advertisement
24 and direct that subsequent calls to that number shall not be
25 referred by the telecommunications carrier to any new telephone
26 number obtained by or any existing number registered to the
27 person.

28 A person may have his or her telephone services restored,
29 after an Order of Correction has been issued, upon a showing,
30 to the satisfaction of the Department, that he or she is in
31 compliance with the provisions of this Act.

32 (d) The Department may require by rule additional
33 information concerning licensed primary home remodelers
34 maintained in the register. The Department shall have the right

1 to examine the payroll records of such persons to determine
2 compliance with this provision. The Department's right to
3 examine payroll records is limited solely to those records and
4 does not extend to any other business records.

5 Section 125. Home rule. The regulation and licensing of
6 primary home remodelers are exclusive powers and functions of
7 the State. A home rule unit may not regulate or license primary
8 home remodelers. This Section is a denial and limitation of
9 home rule powers and functions under subsection (h) of Article
10 VII of the Illinois Constitution.

11 Section 900. The Regulatory Sunset Act is amended by adding
12 Section 4.26 as follows:

13 (5 ILCS 80/4.26 new)

14 Sec. 4.26. Act repealed on January 1, 2016. The following
15 Act is repealed on January 1, 2016:

16 The Primary Home Remodeler Licensing Act.

17 Section 999. Effective date. This Act takes effect upon
18 becoming law."