

Amendment No. 1 to HB1731

**Hargrove
Signature of Sponsor**

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AMEND Senate Bill No. 2024

House Bill No. 1731*

By deleting all of the language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 62, is amended by adding Sections 2 through 17 of this act as a new chapter thereto.

SECTION 2. This act shall be known and may be cited as the "Locksmith Licensing Act of 2005".

SECTION 3. The purpose of this act is to provide uniform procedures and qualifications throughout Tennessee for licensing and regulation of locksmiths, to protect the public of Tennessee by prohibiting the unauthorized use of lock picking, safe opening, and car opening tools by making it illegal for persons convicted of certain crimes to obtain or possess such tools, and to protect the safety and security of persons and property by assuring that individuals or companies offering locksmithing services to the general public are competent in locksmithing services and are trained in applicable regulations and laws such as the Americans With Disabilities Act, building codes, and life safety codes.

SECTION 4. As used in this act, unless the context otherwise requires:

(1) "Car opening tool" means any tool that is designed by the manufacturer of the tool or intended by the user to be used to open any vehicle by means other than that intended by the manufacturer of the vehicle;

(2) "Change key" means a key planed and cut to operate a specific lock or a group of specific locks which all have the same combination of tumblers, pins, or wafers;

(3) "Code book or computer code software" means a compilation, in any form, of key codes;

(4) "Commissioner" means the commissioner of commerce and insurance;

(5) "Key machine" means any device that is designed to copy or reproduce keys or is designed to make original keys;

(6) "Lock" means any device whose primary function is to prevent or limit movement of one object in relation to another object and requires a tool, device, or special knowledge to activate or deactivate;

(7) "Lock picking tool" means any tool or combination of tools that is designed by the manufacturer of the tool or intended by the user to be used to open a lock by means other than that which is intended by the manufacturer of the lock to be the normal operation of the lock;

(8) "Locksmith" means any natural person who provides locksmithing services for any type of compensation;

(9) "Locksmithing services" means:

(A) Repairing, rebuilding, repining, recombining, servicing, adjusting, or installing any lock, safe, or vault; or

(B) Operating a lock, safe, or vault by means other than those intended by the manufacturer of such lock, safe, or vault;

(10) "Manipulation key" means any key other than a change key or master key that can be variably positioned or manipulated in a keyway to operate a lock. For purposes of this act, the term manipulation key shall also include wiggle keys;

(11) "Master key" means a key planed and cut to operate all locks in a series or group of locks, each lock having its own change key and each lock constructed as an act of the series or group for operation with the master key. For purposes of this act, submaster keys, grand master keys, great grand master keys, emergency keys, maid's master keys, over-riding keys, or any other similar keys shall be considered as master keys;

(12) "Registered locksmith apprentice" means any natural person, not a locksmith, who must be registered under this act and is hired by any sole proprietorship,

partnership, association, or corporation providing locksmithing services; or is associated with a licensed locksmith with or without compensation;

(13) "Safe opening tool" means any tool that is designed by the manufacturer of the tool or intended by the user to be used to open a safe, strongbox, safe deposit box, vault, or similar object by means other than that which is intended by the manufacturer of the safe, strongbox, safe deposit box, vault, or similar object for normal opening; and

(14) "Try-out key" means a manipulation key that may or may not be one, of a set of similar keys, used for a specific series, keyway, or brand of lock.

SECTION 5.

(a) No person, partnership, association, corporation, or local or state governmental employee shall engage in or hold themselves out as engaging in the business of locksmithing in this state without its appropriate employees first being registered or licensed in accordance with this act.

(b) Persons who are not licensed under this act shall not provide any locksmithing services in violation of this act or any rule adopted pursuant to this act.

(c) No locksmith may participate in a joint venture to provide equipment or services that require licensing under this act unless all parties to the joint venture are licensed in accordance with this act.

(d) No locksmith may subcontract the provision of equipment or services requiring a license under this act to any unlicensed person, firm, association, or corporation, except as provided in section 6.

(e) No locksmith shall employ any employee required to be registered with the commissioner unless the employee is properly registered with the commissioner in compliance with Sections 12 or 13.

(f) No locksmith shall retain as a registered employee any person known not to be of good moral character.

(g) No person who is not licensed under this act shall possess, use, sell, or offer to sell any code book, lock picking tool, manipulation key, try-out key, safe opening tool, or car opening tool.

(h) No person shall sell, offer to sell, or give to any person not licensed under this act any code book, lock picking tool, manipulation key, try-out key, safe opening tool, or car opening tool.

(i) No person who is not licensed under this act shall design, make, manufacture, or install any master key or any system of change keys and master keys.

(j) No locksmith shall open any vehicle or real property, whether or not a fee is charged, without first obtaining personal identification from the person requesting the service. Such personal identification may include, but is not limited to, personal knowledge, a driver license or other photo identification, address, telephone number, reference from any reliable source, or a description of specific or unusual items that may be found upon entry. Such information shall be recorded on a work order or invoice and shall be made available to a law enforcement officer with a properly executed court order at any reasonable time during normal business hours.

(k) Notwithstanding any provision of law to the contrary, no locksmith licensed under this act shall be prohibited from providing locksmithing services because of the manner of construction or operation of the lock or because of the location of the lock or application of the lock whether the lock is applied to any door, window, hatch, lid, gate, or other opening in or on any safe, vault, building, vehicle, aircraft, or boat. It is the intent of the general assembly that the provisions of this subsection shall be construed in their broadest possible sense. Provided, however, nothing in this section shall authorize a locksmith to provide services for any bank, savings and loan association, or trust company without the consent of such bank, savings and loan association, or trust company.

SECTION 6. (a) The following persons, firms, partnerships, associations, or corporations not offering any other locksmithing services are specifically excluded from the requirements of this act:

(1) An individual property owner personally installing locks on such owner's residence or other building not open to the public;

(2) Property owners, or their agent, maintaining a file of key cutting data for a master key system for their property;

(3) Persons, sole proprietorships, partnerships, associations, or corporations having and using key machines and key blanks for their own use;

(4) Retail stores or catalog sales not offering locksmithing services nor selling locksmithing tools, or retail stores which offer rekeying or key duplication services on the business premises of retail stores;

(5) Locksmith trade publications or equipment manufacturers or distributors not providing direct locksmithing services to the public;

(6) Contractors licensed under Title 62, Chapter 6, providing direct sales or installation of lock hardware but who derive less than twenty-five percent (25%) of their gross annual revenue from such business;

(7) Architects and engineers not providing direct sales, adjustment, or installation of locks;

(8) New car dealers cutting keys by code for the products of their affiliated new car manufacturer or manufacturers;

(9) Emergency service vehicles for the sole purpose of towing a motor vehicle or allowing the owner entry into a vehicle when such owner is locked out of the vehicle. Drivers of such emergency service vehicles shall:

(A) Maintain liability, bodily injury and property damage insurance;

and

(B) Have a criminal background check conducted annually to ensure that such drivers have not had a conviction for a felony for not less than the prior seven (7) years for:

(i) Any offense relative to alteration or removal of a motor vehicle's identification numbers, theft or injury to vehicles, unlawful possession of burglary tools, theft of property, robbery, arson, extortion, forgery, false imprisonment, or burglary;

(ii) Any offense of which an element is the infliction of bodily injury or death to a person or persons;

(iii) Reckless driving or driving under the influence, failure to stop after a motor vehicle accident involving personal injuries, unlawful possession, sale or use of any controlled substance, evasion of arrest; or

(iv) Any offense for which the offender must register as a sex offender.

(10) A bank, savings and loan association, trust company, or employee thereof, providing services in connection with safe deposit box, vault, or safekeeping activities of such financial institution.

(b) Nothing in this act shall prevent any previously licensed locksmith, the agent of an incapacitated locksmith, or the personal representative of the estate of a deceased locksmith from transferring locksmithing tools and supplies by sale or gift to anyone licensed under this act or to anyone exempted from the provisions of this act.

SECTION 7. In accordance with the provisions of the Uniform Procedures Act, compiled in Title 4, Chapter 5, the commissioner shall:

(1) Promulgate such rules as may be reasonably necessary to implement and administer the provisions of this act in an efficient and effective manner, including rules to require submission of reports and information by licensees and registrants under this

act and promulgate such rules and regulations as the commissioner shall deem necessary for internal management and control;

(2) Establish fees sufficient to pay the annual direct and indirect anticipated expenses of this act, including:

(A) A nonrefundable application fee to include the cost of an FBI/TBI background check for licensure;

(B) A nonrefundable fee for licensure;

(C) A biennial licensure renewal fee; and

(D) An identification card replacement fee;

provided, the anticipated revenues shall not cause more than twenty-five percent (25%) of the current budget to be carried over at the end of the fiscal year;

(3) Establish categories of licensing such as general locksmithing, safe and vault work, and automotive work that may have different initial qualification and continuing education requirements;

(4) The commissioner shall establish minimum qualifications, minimum education, experience, and training standards for applicants for licensure under this act. The commissioner may seek assistance from the locksmith organizations of Tennessee, including the Tennessee Organization of Locksmiths, Middle Tennessee Locksmith Association, and East Tennessee Locksmith Association.

(5) Investigate and approve applicants to be licensed or registered under this act including a background check conducted by the commissioner and investigation by the Tennessee Bureau of Investigation (TBI) and the Federal Bureau of Investigation (FBI);

(6) Prepare a written and practical examination. In preparing such examination the commissioner may appoint a testing advisory board. Members of the testing advisory board shall serve without compensation. The testing advisory board shall include two (2) licensed locksmiths from each grand division of the state who are each members of a Tennessee professional locksmith association or organization and one (1)

licensed locksmith appointed from such organizations from any of the grand divisions, as well as other members whom the commissioner may select;

(7) Promulgate rules to establish the minimum necessary standards for continuing education for each licensing category;

(8) Establish rules for the registration of students enrolled in locksmithing training programs or courses in this state, whether the training is by a program of classroom instruction, correspondence courses, or apprenticeship;

(9) Conduct investigations regarding alleged violations and make evaluations as may be necessary to determine if licensees and registrants under this act are complying with the provisions of this act;

(10) Investigate allegations regarding possible violations of this act by unregistered persons and seek enforcement under section 10;

(11) Investigate allegations regarding improper, inadequate, and ineffective lock installations or repair and seek enforcement under section 10;

(12) Issue subpoenas to compel the attendance of witnesses and the production of pertinent books, accounts, records, and documents;

(13) Deny, suspend or revoke any license, licensure, or renewal issued or to be issued under this act to any applicant, registrant, or licensee who fails to satisfy the requirements of this act or for any of the reasons stated in section 9 of this act, or failure to observe the terms and conditions of any license, licensure, or renewal, or for failure to follow the rules established by the commissioner;

(14) Seek such civil remedies at law or equity to restrain or enjoin any unauthorized practice or other violation of this act; and

(15) Maintain a registry of locksmithing businesses, whether a sole proprietorship, partnership, association, corporation, or any other entity offering locksmithing services to the public in the state showing who is employed by such businesses as locksmiths and registered employees and showing any changes in ownership or status of the business.

SECTION 8.

(a) The commissioner shall keep a register of all applications for licensure or for a licensee, showing on each the date of application, name, qualifications, place of business, place of residence, and whether a license was granted or refused.

(b) The books and register of the commissioner shall be prima facie evidence of all matters recorded therein.

SECTION 9. No license shall be issued under this act unless the applicant files with the commissioner evidence of liability insurance providing for the following minimum coverage:

(1) One hundred thousand dollars (\$100,000) because of bodily injury or death of one (1) person as a result of the negligent act or acts of the principal insured or the principal insured's agents, operating in the scope and course of such agent's employment;

(2) Subject to such limit for one (1) person, three hundred thousand dollars (\$300,000) because of bodily injury or death of two (2) or more persons as the result of the negligent act or acts of the principal insured or the principal insured's agent operating in the course and scope of such agent's employment; and

(3) One hundred thousand dollars (\$100,000) because of injury to or destruction of property as the result of the negligent act or acts of the principal insured or the principal insured's agent operating in the course and scope of such agent's employment.

SECTION 10.

(a) The provisions of the Uniform Administrative Procedures Act, compiled in Chapter 4, Title 5, shall govern all matters and procedures regarding the hearing and judicial review of any contested case arising under this act.

(b) Any person may present charges in writing to the commissioner against any licensee or registrant or other person, firm, or business offering locksmithing services in violation of this act.

(c) The commissioner may, after notice and an opportunity for hearing, suspend, refuse to renew, or revoke a license or licensure issued under this act if it is determined that the licensee or registrant has:

(1) Made any false statement or given any false information in connection with any application for licensure or a license or for the renewal or reinstatement of licensure or a license;

(2) Violated any provision of this act;

(3) Violated any rule promulgated by the commissioner pursuant to the authority contained in this act;

(4) Been convicted of any crime that may be ground for denial of licensing as a locksmith or licensure as a registered employee;

(5) Failed to comply with an order of the commissioner;

(6) Impersonated, or permitted or aided and abetted any other person, to impersonate a law enforcement officer of the United States, this state, or any of its political subdivisions;

(7) Engaged in, or permitted any employee to engage in, any locksmithing business when not in possession of a valid license under the provisions of this act;

(8) Been found guilty by the commissioner of misconduct, gross negligence or incompetence;

(9) Committed any act that is grounds for the denial of an application or a license under this act;

(10) Failed to maintain insurance as required by this act; or

(11) Engaged in, or permitted any employee to engage in, any improper, fraudulent, or dishonest dealing with the public.

SECTION 11.

(a) Any person who engages in or offers to engage in locksmithing services without a license, or who violates the terms and conditions of any licensure or license or

renewal thereof granted by the commissioner pursuant to this act, shall be subject to a civil penalty of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000) per occurrence.

(b) Any person who engages in or offers to engage in locksmithing services without a license as required by this act shall be ineligible to apply for such license until six (6) months after such violation has occurred.

(c) In addition to revocation or suspension of license, a civil penalty of not more than five thousand dollars (\$5,000), may be assessed by the commissioner against any person who violates any provision of this act, or any rule of the commissioner promulgated pursuant to this act.

(d) In determining the amount of any penalty, the commissioner shall consider the degree and extent of harm caused by the violation.

SECTION 12. (a) Any person desiring to be licensed as a locksmith shall make written application to the commissioner on forms prescribed by the commissioner. The applicant shall have a street address and zip code at which a summons may be served, except that a walk-in shop open to the public is not required. The application shall contain details of the applicant's training, experience, and other qualifications relevant to locksmithing. An application fee, as set by the commissioner, shall accompany the application. The application shall be accompanied by the following documents:

(1) Proof that the applicant is at least eighteen (18) years of age;

(2) Sets of classifiable fingerprints on standard FBI/TBI application cards;

(3) Recent color photograph of acceptable quality for identification;

(4) Proof of a valid business license for each business entity for the county and city in which the business is located, or proof of employment by an association, corporation, partnership, institution, or government agency exempt from paying privilege taxes under Title 67, Chapter 4 and a notarized statement that no locksmithing services are being offered directly to the public;

(5) Proof of insurance as required by section 9;

(6) Proof that the applicant has passed an examination approved by the commissioner pursuant to Section 7; and

(7) Statements of any criminal records in each area where the applicant has resided. The commissioner may consider rehabilitation of individuals with a criminal record, or records, and may deem certain criminal activities to not prohibit licensure of individuals. Persons convicted of offenses involving fraud or theft shall not be entitled to licensure as a locksmith.

(b) The application shall disclose any and all persons, firms, associations, corporations, or other entities that own or control a ten percent (10%) or greater interest in the applicant's business. The commissioner may require FBI/TBI background checks and other information as deemed necessary by the commissioner from any individual, firm, or business owning or controlling ten percent (10%) or greater interest in the applicant's business and may at the commissioner's discretion withhold licensing until such information is satisfactorily produced and verified.

(c) If the application is satisfactory to the commissioner, the commissioner may interview the applicant to determine such applicant's qualifications. If the results of the interview of the applicant are satisfactory to the commissioner, then the commissioner shall issue to the applicant a license as a locksmith in this state. Included in the documents issued by the commissioner shall be a photo identification card on which shall be provided the locksmith's name, address, and license number, and the expiration date of the license. The photo identification card shall be carried by the locksmith at all times when performing duties as a licensed locksmith and shall be shown upon request. The commissioner shall have the authority to enter into agreements with any state agency for the production or distribution of the photo identification cards.

(d) Licenses as a locksmith shall expire on the last day of the twenty-fourth month following their issuance or renewal, and shall become invalid on such date unless renewed.

(e) It shall be the duty of the commissioner to notify every person licensed under this act of the date of expiration of such person's certificate of license and the fee required for its renewal for two (2) years. Renewal notices shall be mailed to the last known address of the locksmith ninety (90) days prior to the expiration date of the license.

(f) Such renewal must be received in the office of the commissioner thirty (30) days prior to the expiration of the license.

(g) The fee to be paid before 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 late. The maximum fee for a late renewal shall not exceed twice the normal fee.

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

(i) The commissioner shall not grant renewal of a locksmith license until it has received satisfactory evidence of continuing education during the previous year.

(j) All applications and documents required in subsection (a) shall be maintained by the commissioner for two (2) years from the date of their receipt.

SECTION 13.

(a) All locksmith apprentices of any sole proprietorship, partnership, corporation, association, public or private institution, or state agency with access to records, diagrams, key codes, or other sensitive material pertaining to proposed or installed master key systems, any proposed or installed lock, or any safe opening procedure shall be registered with the commissioner.

(b) Any person required to be registered shall make written application to the commissioner on forms prescribed by the commissioner. The application shall disclose the name of the business entity and the names of all locksmiths currently employed by

the business entity. The commissioner shall verify that all named locksmiths are properly licensed locksmiths in the state. The application shall contain details of the applicant's training, experience, and other qualifications relevant to locksmithing. An application fee as set by the commissioner shall accompany the application. The application shall also be accompanied by the following documents:

(1) Proof that the applicant is at least sixteen (16) years of age;

(2) A set or sets of classifiable fingerprints on standard FBI/TBI applicant cards;

(3) A recent color photograph or photographs of acceptable quality for identification;

(4) Statements of any criminal records in each area where the applicant has resided. The commissioner may consider rehabilitation of individuals with a criminal record, or records, and may deem certain criminal activities not to prohibit licensure of individuals. Persons convicted of offenses involving fraud or theft shall not be entitled to registration as a locksmith apprentice.

(c) If the application is satisfactory to the commissioner, then the commissioner shall issue to the applicant a certificate as a registered apprentice. Included in the documents issued by the commissioner shall be a photo identification card on which the commissioner shall state the registrant's name, address, employer, licensure number, and the expiration date of the licensure. The photo identification card shall be carried by the registrant at all times when performing duties as a registered apprentice and shall be shown upon request.

(d) Certificates of registration shall expire on the last day of the twenty-fourth month following their issuance or renewal, and shall become invalid on such date unless renewed.

(e) It shall be the duty of the commissioner to notify every person registered under this act by mail of the date of expiration of such person's certificate of registration and the amount of fee required for its renewal for two (2) years. Renewal notices shall

be mailed to the last known address of the registrant ninety (90) days prior to the expiration date of the certificate.

(f) Such renewal must be received in the office of the commissioner thirty (30) days prior to the expiration of such certificate.

(g) The fee to be paid before the renewal of a certificate of registration after the expiration date shall be increased ten percent (10%) for each month or fraction of a month that payment for renewal is late; provided that the maximum fee for a late renewal shall not exceed twice the normal fee.

(h) No registered employee shall be qualified to receive a renewal certificate when such registrant has been in default in complying with the provision of this act for a period of one (1) year, and in such event, the registrant, in order to qualify, shall make a new application as in the case of the issuance of the original certificate of registration.

SECTION 14.

(a) Effective September 1, 2006, state agencies, counties and municipalities are prohibited from offering locksmithing services to the general public whether or not a fee is charged.

(b) Effective September 1, 2006, no county or municipality shall enact any legislation or promulgate any rules or regulations relating to the licensing of locksmiths required to be licensed under this act.

(c) On September 1, 2006, any resolution, ordinance, law, or rules or regulations of any county or municipality requiring the certifying or licensing of a locksmith, locksmith business or its employees shall be superseded by this act and shall no longer be effective.

(d) The provisions of this act are not intended and do not prevent the legally constituted authority of any county or municipality by legislation, rules, or regulations, and within the police power of such county or municipality, from requiring locksmith businesses or licensed locksmiths to register their names, addresses, and license certificate numbers with the county or municipality within which they operate. Such county or municipality may also require that locksmith businesses give reasonable notice of termination of licenses of registered employees.

No fee may be charged, nor any application be required, by any county or municipality for such licensure.

SECTION 15.

The commissioner shall have the authority to set and collect fees for the preparation of a photo identification card for each locksmith working in this state licensed under this act.

SECTION 16.

(a) To allow initial implementation of this act without interruption of existing services by locksmiths, licensure shall not be required under this act prior to September 1, 2006. During this initial period, the commissioner shall:

(1) Provide the necessary forms and procedures for licensure and licenses;

(2) Receive and process all applications for initial licensure and licenses;
and

(3) Issue certificates of licensures and licenses to initial applicants meeting the requirements of this act.

(b) Any locksmith making application prior to September 1, 2006, shall be granted a license as a locksmith that shall be subject to subsections 12(d) through 12(i), provided that such applicant:

(1) Meets the requirements of subsection 12(a);

(2) Meets the requirements of subsection 12(b); and

(3) Demonstrates to the satisfaction of the commissioner not less than two (2) years experience in the locksmithing business, or an equivalent amount of certified education or apprenticeship.

SECTION 17. The license number of a locksmith shall be displayed prominently on all motor vehicles used in the course of business and all written advertising by such locksmith.

SECTION 18. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the

act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 19. For the purpose of promulgating rules and regulations, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect September 1, 2006, the public welfare requiring it.