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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2004



ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 4299

(By Delegates Stemple and Kominar)



Passed March 11, 2004

In Effect Ninety Days from Passage

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H. B. 4299

(BY DELEGATES STEMPLER AND KOMINAR)

[Passed March 11, 2004; in effect ninety days from passage.]

AN ACT to amend and reenact §21-11-3, §21-11-4, §21-11-6, §21-11-12, §21-11-13, §21-11-15, §21-11-17 and §21-11-20 of the code of West Virginia, 1931, as amended, all relating to modifications to the West Virginia Contractor Licensing Act; by increasing the cost of the undertaking in the definition of a contractor; providing compensation for board members; increasing the penalty for failing to conspicuously display license; exempting certain work from licensure; decreasing the period that a lapsed license may be renewed; providing for an appeal of penalty for contracting without a license; and removal of references to the board in certain sections.

Be it enacted by the Legislature of West Virginia:

That §21-11-3, §21-11-4, §21-11-6, §21-11-12, §21-11-13, §21-11-15, §21-11-17 and §21-11-20 of the code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 11. WEST VIRGINIA CONTRACTOR LICENSING ACT.

§21-11-3. Definitions

1 (a) "Commissioner" means the commissioner of the
2 division of labor.

3 (b) "Board" means the West Virginia contractor licensing
4 board.

5 (c) "Contractor" means a person who in any capacity for
6 compensation, other than as an employee of another, under-
7 takes, offers to undertake, purports to have the capacity to
8 undertake, or submits a bid to construct, alter, repair, add to,
9 subtract from, improve, move, wreck or demolish any building,
10 highway, road, railroad, structure or excavation associated with
11 a project, development or improvement, or to do any part
12 thereof, including the erection of scaffolding or other structures
13 or works in connection therewith, where the cost of the under-
14 taking is two thousand five hundred dollars or more.

15 Contractor includes a construction manager who performs
16 management and counseling services for a construction project
17 for a professional fee.

18 Contractor does not include:

19 (1) One who merely furnishes materials or supplies without
20 fabricating or consuming them in the construction project;

21 (2) A person who personally performs construction work on
22 the site of real property which the person owns or leases
23 whether for commercial or residential purposes;

24 (3) A person who is licensed or registered as a professional
25 and who functions under the control of any other licensing or
26 regulatory board, whose primary business is real estate sales,
27 appraisal, development, management and maintenance, who

28 acting in his or her respective professional capacity and any
29 employee of such professional, acting in the course of his or her
30 employment, performs any work which may be considered to
31 be performing contracting work;

32 (4) A pest control operator licensed under the provisions of
33 section seven, article sixteen-a, chapter nineteen of this code to
34 engage in the application of pesticides for hire, unless the
35 operator also performs structural repairs exceeding one thou-
36 sand dollars on property treated for insect pests; or

37 (5) A corporation, partnership or sole proprietorship whose
38 primary purpose is to prepare construction plans and specifica-
39 tions used by the contractors defined in subsection (c) of this
40 section and who employs full time a registered architect
41 licensed to practice in this state or a registered professional
42 engineer licensed to practice in this state. Employees of such
43 corporation, partnership or sole proprietorship shall also be
44 exempt from the requirements of this article.

45 (d) “Electrical contractor” means a person who engages in
46 the business of contracting to install, erect, repair or alter
47 electrical equipment for the generation, transmission or
48 utilization of electrical energy.

49 (e) “General building contractor” means a person whose
50 principal business is in connection with any structures built,
51 being built or to be built for the support, shelter and enclosure
52 of persons, animals, chattels or movable property of any kind,
53 requiring in the construction the use of more than two contrac-
54 tor classifications, or a person who supervises the whole or any
55 part of such construction.

56 (f) “General engineering contractor” means a person whose
57 principal business is in connection with public or private works
58 projects, including, but not limited to, one or more of the
59 following: Irrigation, drainage and water supply projects;

60 electrical generation projects; swimming pools; flood control;
61 harbors; railroads; highways; tunnels; airports and airways;
62 sewers and sewage disposal systems; bridges; inland water-
63 ways; pipelines for transmission of petroleum and other liquid
64 or gaseous substances; refineries; chemical plants and other
65 industrial plants requiring a specialized engineering knowledge
66 and skill; piers and foundations; and structures or work inciden-
67 tal thereto.

68 (g) "Heating, ventilating and cooling contractor" means a
69 person who engages in the business of contracting to install,
70 erect, repair, service or alter heating, ventilating and air
71 conditioning equipment or systems to heat, cool or ventilate
72 residential and commercial structures.

73 (h) "License" means a license to engage in business in this
74 state as a contractor in one of the classifications set out in this
75 article.

76 (i) "Multifamily contractor" means a person who is
77 engaged in construction, repair or improvement of a multifam-
78 ily residential structure.

79 (j) "Person" includes an individual, firm, sole proprietor-
80 ship, partnership, corporation, association or other entity
81 engaged in the undertaking of construction projects or any
82 combination thereof.

83 (k) "Piping contractor" means a person whose principal
84 business is the installation of process, power plant, air, oil,
85 gasoline, chemical or other kinds of piping; and boilers and
86 pressure vessels using joining methods of thread, weld, solvent
87 weld or mechanical methods.

88 (l) "Plumbing contractor" means a person whose principal
89 business is the installation, maintenance, extension and alter-
90 ation of piping, plumbing fixtures, plumbing appliances and

91 plumbing appurtenances, venting systems and public or private
92 water supply systems within or adjacent to any building or
93 structure; included in this definition is installation of gas piping,
94 chilled water piping in connection with refrigeration processes
95 and comfort cooling, hot water piping in connection with
96 building heating, and piping for stand pipes.

97 (m) "Residential contractor" means a person whose
98 principal business is in connection with construction, repair or
99 improvement of real property used as, or intended to be used
100 for, residential occupancy.

101 (n) "Specialty contractor" means a person who engages in
102 specialty contracting services which do not substantially fall
103 within the scope of any contractor classification as set out
104 herein.

105 (o) "Residential occupancy" means occupancy of a struc-
106 ture for residential purposes for periods greater than thirty
107 consecutive calendar days.

108 (p) "Residential structure" means a building or structure
109 used or intended to be used for residential occupancy, together
110 with related facilities appurtenant to the premises as an adjunct
111 of residential occupancy, which contains not more than three
112 distinct floors which are above grade in any structural unit
113 regardless of whether the building or structure is designed and
114 constructed for one or more living units. Dormitories, hotels,
115 motels or other transient lodging units are not residential
116 structures.

117 (q) "Subcontractor" means a person who performs a portion
118 of a project undertaken by a principal or general contractor or
119 another subcontractor.

120 (r) "Division" means the division of labor.

121 (s) "Cease and desist order" means an order issued by the
122 commissioner pursuant to the provisions of this article.

**§21-11-4. West Virginia contractor licensing board created;
members; appointment; terms; vacancies; qualifi-
cations; quorum.**

1 (a) The West Virginia contractor licensing board is contin-
2 ued. The board shall consist of ten members appointed by the
3 governor by and with the advice and consent of the Senate for
4 terms of four years. Such members shall serve until their
5 successors are appointed and have qualified. Eight of the
6 appointed members shall be owners of businesses engaged in
7 the various contracting industries, with at least one member
8 appointed from each of the following contractor classes: One
9 electrical contractor, one general building contractor, one
10 general engineering contractor, one heating, ventilating and
11 cooling contractor, one multifamily contractor, one piping
12 contractor, one plumbing contractor and one residential
13 contractor, as defined in section three hereof. Two of the
14 appointed members shall be building code officials who are not
15 members of any contracting industry. At least three members of
16 the board shall reside at the time of their appointment in each
17 congressional district as existing on the first day of January, one
18 thousand nine hundred ninety-eight. The commissioner of
19 labor, the secretary of the department of tax and revenue or his
20 designee, and the commissioner of the bureau of employment
21 programs or his designee shall be ex officio nonvoting members
22 of the board.

23 (b) Terms of the members first appointed shall be two
24 members for one year, two members for two years, three
25 members for three years and three members for four years, as
26 designated by the governor at the time of appointment. Thereaf-
27 ter, terms shall be for four years. A member who has served all
28 or part of two consecutive terms shall not be subject to reap-

29 pointment unless four years have elapsed since the member last
30 served. Vacancies shall be filled by appointment by the
31 governor for the unexpired term of any member whose office is
32 vacant and shall be made within sixty days of the occurrence of
33 the vacancy. A vacancy on the board shall not impair the right
34 of the remaining members to exercise all the powers of the
35 board.

36 (c) The board shall elect a chair from one of the voting
37 members of the board. The board shall meet at least once
38 annually and at such other times as called by the chair or a
39 majority of the board. Board members shall receive compensa-
40 tion not to exceed the amount paid to members of the Legisla-
41 ture for the interim duties as recommended by the citizens
42 legislative compensation commission and authorized by law for
43 each day or portion of a day spent attending meetings of the
44 board and shall be reimbursed for all reasonable and necessary
45 expenses incurred incident to his or her duties as a member of
46 the board. A majority of the members appointed shall constitute
47 a quorum of the board.

§21-11-6. Necessity for license; exemptions.

1 (a) On or after the first day of October, one thousand nine
2 hundred ninety-one, no person shall engage in this state in any
3 act as a contractor, as defined in this article, unless such person
4 holds a license issued under the provisions of this article. No
5 firm, partnership, corporation, association or other entity shall
6 engage in contracting in this state unless an officer thereof
7 holds a license issued pursuant to this article.

8 (b) Any person to whom a license has been issued under
9 this article shall keep the license or a copy thereof posted in a
10 conspicuous position at every construction site where work is
11 being done by the contractor. The contractor's license number
12 shall be included in all contracting advertisements and all fully

13 executed and binding contracts. Any person violating the
14 provisions of this subsection shall be subject, after hearing, to
15 a warning, a reprimand, or a fine of not more than two hundred
16 dollars.

17 (c) Except as otherwise provided in this code, the following
18 are exempt from licensure:

19 (1) Work done exclusively by employees of the United
20 States government, the state of West Virginia, a county,
21 municipality or municipal corporation, and any governmental
22 subdivision or agency thereof;

23 (2) The sale or installation of a finished product, material
24 or article or merchandise which is not actually fabricated into
25 and does not become a permanent fixed part of the structure;

26 (3) Work performed personally by an owner or lessee of
27 real property on property the primary use of which is for
28 agricultural or farming enterprise;

29 (4) A material supplier who renders advice concerning use
30 of products sold and who does not provide construction or
31 installation services;

32 (5) Work performed by a public utility company regulated
33 by the West Virginia public service commission and its
34 employees;

35 (6) Repair work contracted for by the owner of the equip-
36 ment on an emergency basis in order to maintain or restore the
37 operation of such equipment;

38 (7) Work performed by an employer's regular employees,
39 for which the employees are paid regular wages and not a
40 contract price, on property owned or leased by the employer
41 which is not intended for speculative sale or lease;

42 (8) Work personally performed on a structure by the owner
43 or occupant thereof; and

44 (9) Work performed when the specifications for such work
45 have been developed or approved by engineering personnel
46 employed by the owner of a facility by registered professional
47 engineers licensed pursuant to the laws of this state when the
48 work to be performed because of its specialized nature or
49 process cannot be reasonably or timely contracted for within the
50 general area of the facility.

§21-11-12. License renewal, lapse and reinstatement.

1 (a) A license which is not renewed on or before the renewal
2 date shall lapse. The board may establish by regulation a
3 delayed renewal fee to be paid for issuance of any license which
4 has lapsed: Provided, That no license which has lapsed for a
5 period of ninety days or more may be renewed: *Provided*, That,
6 if a licensee is in a dispute with a state agency, and it is
7 determined that the licensee is not at fault, the board shall
8 renew the license.

9 (b) In the event that continuing education or other require-
10 ments are made a condition of license reinstatement after lapse,
11 suspension or revocation, such requirements must be satisfied
12 before the license is reissued.

§21-11-13. Violation of article; injunction; criminal penalties

1 (a)(1) Upon a determination that a person is engaged in
2 contracting business in the state without a valid license, the
3 board or commissioner shall issue a cease and desist order
4 requiring such person to immediately cease all operations in the
5 state. The order shall be withdrawn upon issuance of a license
6 to such person.

7 (2) After affording an opportunity for a hearing, the board
8 may impose a penalty of not less than two hundred dollars nor
9 more than one thousand dollars upon any person engaging in
10 contracting business in the state without a valid license. The
11 board may accept payment of the penalty in lieu of a hearing.

12 (3) Within thirty days after receipt of the final order issued
13 pursuant to this section, any party adversely affected by the
14 order may appeal the order to the circuit court of Kanawha
15 County, West Virginia, or to the circuit court of the county in
16 which the petitioner resides or does business.

17 (b) Any person continuing to engage in contracting business
18 in the state without a valid license after service of a cease and
19 desist order is guilty of a misdemeanor and, upon conviction, is
20 subject to the following penalties:

21 (1) For a first offense, a fine of not less than two hundred
22 dollars nor more than one thousand dollars;

23 (2) For a second offense, a fine of not less than five
24 hundred dollars nor more than five thousand dollars, or confine-
25 ment in the county or regional jail for not more than six months,
26 or both;

27 (3) For a third or subsequent offense, a fine of not less than
28 one thousand dollars nor more than five thousand dollars, and
29 confinement in the county or regional jail for not less than thirty
30 days nor more than one year.

31 (c) The board may institute proceedings in the circuit court
32 of the county in which the alleged violations of the provisions
33 of this article occurred or are now occurring to enjoin any
34 violation of any provision of this article.

35 (d) Any person who undertakes any construction work
36 without a valid license when such license is required by this

37 article, when the total cost of the contractor's construction
38 contract on any project upon which the work is undertaken is
39 twenty-five thousand dollars or more, shall, in addition to any
40 other penalty herein provided, be assessed by the board an
41 administrative penalty not to exceed two hundred dollars per
42 day for each day the person is in violation.

§21-11-15. Administrative duties of division.

1 (a) The division and commissioner shall perform the
2 following administrative duties:

3 (1) Collect and record all fees;

4 (2) Maintain records and files;

5 (3) Issue and receive application forms;

6 (4) Notify applicants of the results of the board examina-
7 tion;

8 (5) Arrange space for holding examinations and other
9 proceedings;

10 (6) Issue licenses and temporary licenses as authorized by
11 this article;

12 (7) Issue duplicate licenses upon submission of a written
13 request by the licensee attesting to loss of or the failure to
14 receive the original and payment by the licensee of a fee
15 established by regulation adopted by the division;

16 (8) Notify licensees of renewal dates at least thirty days
17 before the expiration date of their license;

18 (9) Answer routine inquiries;

19 (10) Maintain files relating to individual licensees;

20 (11) Arrange for printing and advertising;

21 (12) Purchase supplies;

22 (13) Employ additional help when needed;

23 (14) Perform other services that may be requested by the
24 board;

25 (15) Provide inspection, enforcement and investigative
26 services to the board; and

27 (16) Issue cease and desist orders to persons engaging in
28 contracting within the state without a valid license.

29 (b) All authority not specifically delegated to the commis-
30 sioner and division shall be the responsibility of the board.

31 (c) Following successful completion of the examination,
32 and prior to the issuance of the license, the applicant shall
33 certify by affidavit that the applicant:

34 (1) Is in compliance with the business franchise tax
35 provisions of chapter eleven of this code;

36 (2) Has registered, and is in compliance, with the workers'
37 compensation fund and the employment security fund, as
38 required by chapter twenty-three and chapter twenty-one-a of
39 this code; and

40 (3) Is in compliance with the applicable wage bond
41 requirements of section one, article five of this chapter:
42 Provided, That in the case of an out-of-state contractor not
43 doing business in this state and seeking licensure for bidding
44 purposes only, the applicant may be granted a conditional
45 license for bid purposes only.

§21-11-17. Record keeping.

1 (a) The division shall keep a record of all actions taken and
2 account for moneys received. All moneys shall be deposited in
3 a special account in the state treasury to be known as the “West
4 Virginia Contractor Licensing Board Fund”. Expenditures from
5 said fund shall be for the purposes set forth in this article and
6 are not authorized from collections but are to be made only in
7 accordance with appropriation by the Legislature and in
8 accordance with the provisions of article three, chapter twelve
9 of this code and upon the fulfillment of the provisions set forth
10 in article two, chapter five-a of this code: Provided, That for the
11 fiscal year ending the thirtieth day of June, one thousand nine
12 hundred ninety-two, expenditures are authorized from collec-
13 tions rather than pursuant to an appropriation by the Legisla-
14 ture. Amounts collected which are found from time to time to
15 exceed the funds needed for purposes set forth in this article
16 may be transferred to other accounts or funds and redesignated
17 for other purposes by appropriation of the Legislature.

18 (b) The division shall maintain at the principal office, open
19 for public inspection during office hours, a complete indexed
20 record of all applications, licenses issued, licenses renewed and
21 all revocations, cancellations and suspensions of licenses.
22 Applications shall show the date of application, name, qualifi-
23 cations, place of business and place of residence of each
24 applicant; and whether the application was approved or refused.

25 (c) (1) All investigations, complaints, reports, records,
26 proceedings and other information received by the commis-
27 sioner and board and related to complaints made to the commis-
28 sioner or board or investigations conducted by the commis-
29 sioner or board pursuant to this article, including the identity of
30 the complainant or respondent, shall be confidential and shall
31 not be knowingly and improperly disclosed by any member or
32 former member of the board, the commissioner or staff, except
33 as follows:

34 (A) Upon a finding that probable cause exists to believe
35 that a respondent has violated the provisions of this article, the
36 complaint and all reports, records, nonprivileged and
37 nondeliberative materials introduced at any probable cause
38 hearing held pursuant to the complaint are thereafter not
39 confidential: Provided, That confidentiality of such information
40 shall remain in full force and effect until the respondent has
41 been served with a copy of the statement of charges.

42 (B) Any subsequent hearing held in the matter for the
43 purpose of receiving evidence or the arguments of the parties or
44 their representatives shall be open to the public and all reports,
45 records and nondeliberative materials introduced into evidence
46 at such subsequent hearing, as well as the board's and commis-
47 sioner's orders, are not confidential.

48 (C) The commissioner or board may release any informa-
49 tion relating to an investigation at any time if the release has
50 been agreed to in writing by the respondent.

51 (D) The complaint as well as the identity of the complain-
52 ant shall be disclosed to a person named as respondent in any
53 such complaint filed immediately upon such respondent's
54 request.

55 (E) Where the commissioner or board is otherwise required
56 by the provisions of this article to disclose such information or
57 to proceed in such a manner that disclosure is necessary and
58 required to fulfill such requirements.

59 (2) If, in a specific case, the commissioner or board finds
60 that there is a reasonable likelihood that the dissemination of
61 information or opinion in connection with a pending or immi-
62 nent proceeding will interfere with a fair hearing or otherwise
63 prejudice the due administration of justice, the commissioner or
64 board shall order that all or a portion of the information
65 communicated to the commissioner or board to cause an

66 investigation and all allegations of violations or misconduct
67 contained in a complaint shall be confidential, and the person
68 providing such information or filing a complaint shall be bound
69 to confidentiality until further order of the board.

70 (d) If any person violates the provisions of subsection (c) of
71 this section by knowingly and willfully disclosing any informa-
72 tion made confidential by such section or by the commissioner
73 or board, such person shall be guilty of a misdemeanor, and,
74 upon conviction thereof, shall be fined not less than five
75 hundred dollars nor more than five thousand dollars, or impris-
76 oned in the county jail not more than one month, or both fined
77 and imprisoned.

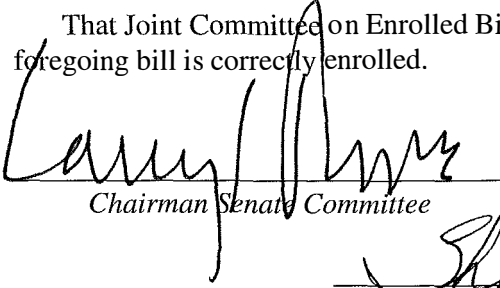
78 (e) The commissioner shall certify to the state auditor and
79 to the board a detailed statement of all moneys received and
80 spent during the preceding fiscal year.

§21-11-20. Board authorized to provide training.

1 (a) On behalf of the board, the division may enter into
2 work-sharing agreements with state vocational and technical
3 training schools to provide classroom training to students who
4 desire to obtain a West Virginia contractor license. The purpose
5 of the training is limited to instruction applicable to the
6 contractor license examinations required by the board. The
7 terms of the work-sharing agreements shall be determined by
8 the West Virginia contractor licensing board and county boards
9 of education.

10 (b) For the purposes of this section, the division is autho-
11 rized to expend funds from its special revenue account, known
12 as the contractor licensing fund, to support this activity.

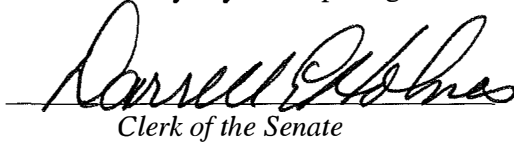
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

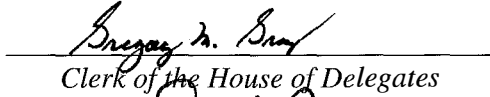

Chairman Senate Committee

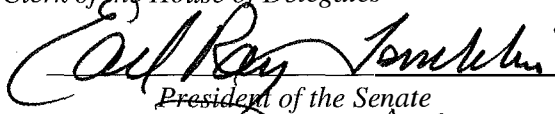

Chairman House Committee

Originating in the House.

In effect ninety days from passage.


Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved this the 25th
day of March 2004.


Governor

PRESENTED TO THE

GOVERNOR

DATE

2/19/04

TIME

2:55p