

5
SB 421
FILED

2002 APR -3 P 3:57

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

Regular Session, 2002

ENROLLED

SENATE BILL NO. 429

(By Senators Bowman, Bailey and Minear)

PASSED March 9, 2002

In Effect ninety days from **Passage**

FILED

2002 APR -3 P 3:57

OFFICE WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

Senate Bill No. 429

(BY SENATORS BOWMAN, BAILEY AND MINEAR)

[Passed March 9, 2002; in effect ninety days from passage.]

AN ACT to amend and reenact sections seven, eight, ten, thirteen and fourteen, article eleven, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to licenses issued by the contractor licensing board; deleting outdated language creating exemption from examination; clarifying right to a hearing before suspension or revocation of license; clarifying right to appeal board decisions to circuit court; requiring written contracts; requiring board to file procedural rule; allowing board to require financial assurance from contractors who violate act or rule; and providing for civil and criminal penalties.

Be it enacted by the Legislature of West Virginia:

That sections seven, eight, ten, thirteen and fourteen, article eleven, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 11. WEST VIRGINIA CONTRACTOR LICENSING ACT.

§21-11-7. Application for and issuance of license.

1 (a) A person desiring to be licensed as a contractor under
2 this article shall submit to the board a written application
3 requesting licensure, providing the applicant's social
4 security number and such other information as the board
5 may require, on forms supplied by the board. The appli-
6 cant shall pay a license fee not to exceed one hundred fifty
7 dollars: *Provided*, That electrical contractors already
8 licensed under section four, article three-b, chapter
9 twenty-nine of this code shall pay no more than twenty
10 dollars.

11 (b) A person holding a business registration certificate to
12 conduct business in this state as a contractor on the
13 thirtieth day of September, one thousand nine hundred
14 ninety-one, may register with the board, certify by affida-
15 vit the requirements of subsection (c), section fifteen of
16 this article and pay such license fee not to exceed one
17 hundred fifty dollars and shall be issued a contractor's
18 license without further examination: *Provided*, That no
19 license may be issued without examination pursuant to
20 this subsection after the first day of April, two thousand
21 two.

§21-11-8. Licenses; expiration date; fees; renewal.

1 (a) A license issued under the provisions of this article
2 expires one year from the date on which it is issued. The
3 board shall establish application and annual license fees
4 not to exceed one hundred fifty dollars.

5 (b) The board may propose rules in accordance with the
6 provisions of article three, chapter twenty-nine-a of this
7 code, to establish license and renewal fees.

§21-11-10. Prerequisites to obtaining building permit; manda-
tory written contracts.

1 (a) Any person making application to the building
2 inspector or other authority of any incorporated munici-

3 pality or other political subdivision in this state charged
4 with the duty of issuing building or other permits for the
5 construction of any building, highway, sewer or structure
6 or for any removal of materials or earth, grading or
7 improvement shall, before issuance of the permit, either
8 furnish satisfactory proof to the inspector or authority
9 that such person is duly licensed under the provisions of
10 this article to carry out or superintend the same or file a
11 written affidavit that such person is not subject to
12 licensure as a contractor or subcontractor as defined in
13 this article. The inspector or authority may not issue a
14 building permit to any person who does not possess a valid
15 contractor's license when required by this article.

16 (b) Effective the first day of October, two thousand two,
17 no person licensed under the provisions of this article may
18 perform contracting work of an aggregate value of ten
19 thousand dollars or more, including materials and labor,
20 without a written contract, setting forth a description and
21 cost of the work to be performed, signed by the licensee
22 and the person for whom the work is to be performed.

23 (c) On or before the first day of June, two thousand two,
24 the board shall file a procedural rule setting forth a
25 standard contract form which meets the minimum require-
26 ments of this subsection for use by licensees. The board
27 shall post the contract form on its website and shall assist
28 licensees in the correct completion of the form. On or
29 before the first day of August, two thousand two, the
30 board shall mail a written notice of the requirements
31 imposed by the rule to each licensed contractor at the
32 address provided to the board by the contractor on his or
33 her last application for licensure or renewal.

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

1 (a) Upon a determination that a person is engaged in
2 contracting business in the state without a valid license,
3 the board or commissioner shall issue a cease and desist
4 order requiring such person to immediately cease all

5 operations in the state. The order shall be withdrawn
6 upon issuance of a license to such person. After a hearing,
7 the board may impose a penalty of not less than two
8 hundred dollars nor more than one thousand dollars upon
9 any person engaging in contracting business in the state
10 without a valid license.

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

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

17 (2) For a second offense, a fine of not less than five
18 hundred dollars nor more than five thousand dollars, or
19 confinement in the county or regional jail for not more
20 than six months, or both;

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

25 (c) The board may institute proceedings in the circuit
26 court of the county in which the alleged violations of the
27 provisions of this article occurred or are now occurring to
28 enjoin any violation of any provision of this article.

29 (d) Any person who undertakes any construction work
30 without a valid license when such license is required by
31 this article, when the total cost of the contractor's con-
32 struction contract on any project upon which the work is
33 undertaken is twenty-five thousand dollars or more, shall,
34 in addition to any other penalty herein provided, be
35 assessed by the board an administrative penalty not to
36 exceed two hundred dollars per day for each day the
37 person is in violation.

38 (e) The board shall, by rule, provide for an administra-
39 tive hearing before a penalty is levied and for review of
40 any final ruling issued pursuant to such hearing.

§21-11-14. Disciplinary powers of the board.

1 (a) The board has the power and authority to impose the
2 following disciplinary actions:

3 (1) Permanently revoke a license;

4 (2) Suspend a license for a specified period;

5 (3) Censure or reprimand a licensee;

6 (4) Impose limitations or conditions on the professional
7 practice of a licensee;

8 (5) Impose requirements for remedial professional
9 education to correct deficiencies in the education, training
10 and skill of a licensee;

11 (6) Impose a probationary period requiring a licensee to
12 report regularly to the board on matters related to the
13 grounds for probation; the board may withdraw proba-
14 tionary status if the deficiencies that require the sanction
15 are remedied; and

16 (7) Order a contractor who has been found, after hearing,
17 to have violated any provision of this article or the rules of
18 the board to provide, as a condition of licensure, assurance
19 of financial responsibility. The form of financial assur-
20 ance may include, but is not limited to, a surety bond, a
21 cash bond, a certificate of deposit, an irrevocable letter of
22 credit or performance insurance: *Provided*, That the
23 amount of financial assurance required under this subdivi-
24 sion may not exceed the total of the aggregate amount of
25 the judgments or liens levied against the contractor or the
26 aggregate value of any corrective work ordered by the
27 board or both: *Provided, however*, That the board may
28 remove this requirement for licensees against whom no

29 complaints have been filed for a period of five continuous
30 years.

31 (b) No license issued under the provisions of this article
32 may be suspended or revoked without a prior hearing
33 before the board: *Provided*, That the board may summarily
34 suspend a licensee pending a hearing or pending an appeal
35 after hearing upon a determination that the licensee poses
36 a clear, significant and immediate danger to the public
37 health and safety.

38 (c) The board may reinstate the suspended or revoked
39 license of a person, if, upon a hearing, the board finds and
40 determines that the person is able to practice with skill
41 and safety.

42 (d) The board may accept the voluntary surrender of a
43 license: *Provided*, That the license may not be reissued
44 unless the board determines that the licensee is competent
45 to resume practice and the licensee pays the appropriate
46 renewal fee.

47 (e) A person or contractor adversely affected by disci-
48 plinary action may appeal to the board within sixty days
49 of the date the disciplinary action is taken. The board
50 shall hear the appeal within thirty days from receipt of
51 notice of appeal in accordance with the provisions of
52 chapter twenty-nine-a of this code. Hearings shall be held
53 in Charleston. The board may retain a hearing examiner
54 to conduct the hearings and present proposed findings of
55 fact and conclusions of law to the board for its action.

56 (f) Any party adversely affected by any action of the
57 board may appeal that action in either the circuit court of
58 Kanawha County, West Virginia, or in the circuit court of
59 the county in which the petitioner resides or does business,
60 within thirty days after the date upon which the petitioner
61 received notice of the final order or decision of the board.

62 (g) The following are causes for disciplinary action:

- 63 (1) Abandonment, without legal excuse, of any construc-
64 tion project or operation engaged in or undertaken by the
65 licensee;
- 66 (2) Willful failure or refusal to complete a construction
67 project or operation with reasonable diligence, thereby
68 causing material injury to another;
- 69 (3) Willful departure from or disregard of plans or
70 specifications in any material respect without the consent
71 of the parties to the contract;
- 72 (4) Willful or deliberate violation of the building laws or
73 regulations of the state or of any political subdivision
74 thereof;
- 75 (5) Willful or deliberate failure to pay any moneys when
76 due for any materials free from defect, or services rendered
77 in connection with the person's operations as a contractor
78 when the person has the capacity to pay or when the
79 person has received sufficient funds under the contract as
80 payment for the particular construction work for which
81 the services or materials were rendered or purchased, or
82 the fraudulent denial of any amount with intent to injure,
83 delay or defraud the person to whom the debt is owed;
- 84 (6) Willful or deliberate misrepresentation of a material
85 fact by an applicant or licensee in obtaining a license, or
86 in connection with official licensing matters;
- 87 (7) Willful or deliberate failure to comply in any material
88 respect with the provisions of this article or the rules of
89 the board;
- 90 (8) Willfully or deliberately acting in the capacity of a
91 contractor when not licensed or as a contractor by a
92 person other than the person to whom the license is issued
93 except as an employee of the licensee;
- 94 (9) Willfully or deliberately acting with the intent to
95 evade the provisions of this article by: (i) Aiding or abet-
96 ting an unlicensed person to evade the provisions of this

97 article; (ii) combining or conspiring with an unlicensed
98 person to perform an unauthorized act; (iii) allowing a
99 license to be used by an unlicensed person; or (iv) attempt-
100 ing to assign, transfer or otherwise dispose of a license or
101 permitting the unauthorized use thereof;

102 (10) Engaging in any willful, fraudulent or deceitful act
103 in the capacity as a contractor whereby substantial injury
104 is sustained by another;

105 (11) Performing work which is not commensurate with
106 a general standard of the specific classification of contrac-
107 tor or which is below a building or construction code
108 adopted by the municipality or county in which the work
109 is performed;

110 (12) Knowingly employing a person or persons who do
111 not have the legal right to be employed in the United
112 States;

113 (13) Failing to execute written contracts prior to per-
114 forming contracting work, in accordance with section ten
115 of this article; or

116 (14) Failing to abide by an order of the board.

117 (h) In all disciplinary hearings the board has the burden
118 of proof as to all matters in contention. No disciplinary
119 action may be taken by the board except on the affirma-
120 tive vote of at least six members thereof. Other than as
121 specifically set out herein, the board has no power or
122 authority to impose or assess damages.

123 (i) On or before the first day of January, two thousand
124 one, the board shall propose rules for legislative approval
125 in accordance with the provisions of article three, chapter
126 twenty-nine-a of this code which shall specify a procedure
127 for the investigation and resolution of all complaints
128 against persons licensed under this chapter.

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

[Signature]
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

[Signature]
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is* approved this the *2nd*
Day of *April*, 2002.

[Signature]
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/26/02

Time 2:52