

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 489

BY SENATORS MAYNARD, CLEMENTS, SMITH, SYPOLT,

TARR, SWOPE, AND CLINE

[Introduced January 15, 2020; referred
to the Committee on Government Organization]

1 A BILL to repeal §21-11-1, §21-11-2, §21-11-3, §21-11-4, §21-11-5, §21-11-6, §21-11-7, §21-11-
2 8, §21-11-9, §21-11-10, §21-11-10a, §21-11-11, §21-11-12, §21-11-13, §21-11-14, §21-
3 11-15, §21-11-16, §21-11-17, §21-11-18, and §21-11-20 of the Code of West Virginia,
4 1931, as amended; and to amend said code by adding thereto a new article, designated
5 §30-11-1, §30-11-2, §30-11-3, §30-11-4, §30-11-5, §30-11-6, §30-11-7, §30-11-8, §30-
6 11-9, §30-11-10, §30-11-10a, §30-11-11, §30-11-12, §30-11-13, §30-11-14, §30-11-15,
7 §30-11-16, §30-11-17, §30-11-18, and §30-11-19, all relating to moving provisions relating
8 to the licensing of contractors to Chapter 30 of this code; updating archaic language;
9 correcting cross-references; and making no substantive changes to any of these sections.

Be it enacted by the Legislature of West Virginia:

CHAPTER 21. LABOR.

ARTICLE 11. WEST VIRGINIA CONTRACTOR LICENSING ACT.

§21-11-1. Short title.

1 [Repealed.]

§21-11-2. Policy declared.

1 [Repealed.]

§21-11-3. Definitions.

1 [Repealed.]

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

1 [Repealed.]

§21-11-5. Administrative duties of the board; regulations.

1 [Repealed.]

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

1 [Repealed.]

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

1 [Repealed.]

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

1 [Repealed.]

§21-11-9. Unlawful use, assignment, transfer of license; revocation.

1 [Repealed.]

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

1 [Repealed.]

§21-11-10a. Informational list for basic universal design features; penalties.

1 [Repealed.]

§21-11-11. Notice included with invitations to bid and specifications.

1 [Repealed.]

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

1 [Repealed.]

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

1 [Repealed.]

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

1 [Repealed.]

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

1 [Repealed.]

§21-11-16. Rules.

1 [Repealed.]

§21-11-17. Recordkeeping; fees.

1 [Repealed.]

§21-11-18. Reciprocity.

1 [Repealed.]

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

1 [Repealed.]

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 11. WEST VIRGINIA CONTRACTOR LICENSING ACT.

§30-11-1. Short title.

1 This article shall be known and may be cited as the West Virginia Contractor Licensing
2 Act.

§30-11-2. Policy declared.

1 It is hereby declared to be the policy of the State of West Virginia that all persons desiring
2 to perform contracting work in this state be duly licensed to ensure capable and skilled
3 craftsmanship utilized in construction projects in this state, both public and private, fair bidding
4 practices between competing contractors through uniform compliance with the laws of this state,
5 and protection of the public from unfair, unsafe, and unscrupulous bidding and construction
6 practices.

§30-11-3. Definitions.

1 "Commissioner" means the Commissioner of the Division of Labor.

2 "Board" means the West Virginia Contractor Licensing Board.

3 "Contractor" means a person who in any capacity for compensation, other than as an
4 employee of another, undertakes, offers to undertake, purports to have the capacity to undertake
5 or submits a bid to construct, alter, repair, add to, subtract from, improve, move, wreck, or
6 demolish any building, highway, road, railroad, structure, or excavation associated with a project,
7 development, or improvement, or to do any part thereof, including the erection of scaffolding or
8 other structures or works in connection therewith, where the cost of the undertaking is \$2,500 or
9 more.

10 Contractor includes a construction manager who performs management and counseling
11 services for a construction project for a professional fee.

12 Contractor does not include:

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

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

17 (3) A person who is licensed or registered as a professional and who functions under the
18 control of any other licensing or regulatory board, whose primary business is real estate sales,
19 appraisal, development, management, and maintenance, who acting in his or her respective
20 professional capacity and any employee of such professional, acting in the course of his or her
21 employment, performs any work which may be considered to be performing contracting work;

22 (4) A pest control operator licensed under the provisions of §19-16A-7 of this code to
23 engage in the application of pesticides for hire, unless the operator also performs structural
24 repairs exceeding \$1,000 on property treated for insect pests; or

25 (5) A corporation, partnership, or sole proprietorship whose primary purpose is to prepare
26 construction plans and specifications used by the contractors defined in this subsection and who
27 employs full time, a registered architect licensed to practice in this state or a registered
28 professional engineer licensed to practice in this state. Employees of such corporation,
29 partnership, or sole proprietorship shall also be exempt from the requirements of this article.

30 “Electrical contractor” means a person who engages in the business of contracting to
31 install, erect, repair, or alter electrical equipment for the generation, transmission, or utilization of
32 electrical energy.

33 “General building contractor” means a person whose principal business is in connection
34 with any structures built, being built, or to be built for the support, shelter, and enclosure of
35 persons, animals, chattels, or movable property of any kind, requiring in the construction the use
36 of more than two contractor classifications, or a person who supervises the whole or any part of
37 such construction.

38 “General engineering contractor” means a person whose principal business is in
39 connection with public or private works projects, including, but not limited to, one or more of the
40 following: Irrigation, drainage, and water supply projects; electrical generation projects; swimming
41 pools; flood control; harbors; railroads; highways; tunnels; airports and airways; sewers and
42 sewage disposal systems; bridges; inland waterways; pipelines for transmission of petroleum and
43 other liquid or gaseous substances; refineries; chemical plants and other industrial plants
44 requiring a specialized engineering knowledge and skill; piers and foundations; and structures or
45 work incidental thereto.

46 “Heating, ventilating, and cooling contractor” means a person who engages in the
47 business of contracting to install, erect, repair, service, or alter heating, ventilating, and air
48 conditioning equipment or systems to heat, cool, or ventilate residential and commercial
49 structures.

50 “License” means a license to engage in business in this state as a contractor in one of the
51 classifications set out in this article.

52 “Multifamily contractor” means a person who is engaged in construction, repair, or
53 improvement of a multifamily residential structure.

54 “Person” includes an individual, firm, sole proprietorship, partnership, corporation,
55 association, or other entity engaged in the undertaking of construction projects or any combination
56 thereof.

57 “Piping contractor” means a person whose principal business is the installation of process,
58 power plant, air, oil, gasoline, chemical, or other kinds of piping; and boilers and pressure vessels
59 using joining methods of thread, weld, solvent weld, or mechanical methods.

60 “Plumbing contractor” means a person whose principal business is the installation,
61 maintenance, extension, and alteration of piping, plumbing fixtures, plumbing appliances and
62 plumbing appurtenances, venting systems, and public or private water supply systems within or
63 adjacent to any building or structure; included in this definition is installation of gas piping, chilled

64 water piping in connection with refrigeration processes and comfort cooling, hot water piping in
65 connection with building heating, and piping for stand pipes.

66 “Residential contractor” means a person whose principal business is in connection with
67 construction, repair, or improvement of real property used as, or intended to be used for,
68 residential occupancy.

69 “Specialty contractor” means a person who engages in specialty contracting services
70 which do not substantially fall within the scope of any contractor classification as set out herein.

71 “Residential occupancy” means occupancy of a structure for residential purposes for
72 periods greater than 30 consecutive calendar days.

73 “Residential structure” means a building or structure used or intended to be used for
74 residential occupancy, together with related facilities appurtenant to the premises as an adjunct
75 of residential occupancy, which contains not more than three distinct floors which are above grade
76 in any structural unit regardless of whether the building or structure is designed and constructed
77 for one or more living units. Dormitories, hotels, motels, or other transient lodging units are not
78 residential structures.

79 “Subcontractor” means a person who performs a portion of a project undertaken by a
80 principal or general contractor or another subcontractor.

81 “Division” means the Division of Labor.

82 “Cease and desist order” means an order issued by the commissioner pursuant to the
83 provisions of this article.

84 The term “basic universal design” means the design of products and environments to be
85 useable by all people, to the greatest extent possible, without the need for adaptation or
86 specialization.

§30-11-4. West Virginia Contractor Licensing Board created; members; appointment;
terms; vacancies; qualifications; quorum.

1 (a) The West Virginia Contractor Licensing Board is continued. The board shall consist of

2 10 members appointed by the Governor by and with the advice and consent of the Senate for
3 terms of four years. Such members shall serve until their successors are appointed and have
4 qualified. Eight of the appointed members shall be owners of businesses engaged in the various
5 contracting industries, with at least one member appointed from each of the following contractor
6 classes: One electrical contractor, one general building contractor, one general engineering
7 contractor, one heating, ventilating and cooling contractor, one multifamily contractor, one piping
8 contractor, one plumbing contractor, and one residential contractor. Two of the appointed
9 members shall be building code officials who are not members of any contracting industry. At
10 least three members of the board shall reside at the time of their appointment in each
11 congressional district as existing on January 1, 1998. The Commissioner of the Division of Labor,
12 the Secretary of the Department of Tax and Revenue or his or her designee, and the
13 Commissioner of WorkForce West Virginia or his or her designee shall be ex officio, nonvoting
14 members of the board.

15 (b) Terms of the members first appointed shall be two members for one year, two members
16 for two years, three members for three years and three members for four years, as designated by
17 the Governor at the time of appointment. Thereafter, terms shall be for four years. A member who
18 has served all or part of two consecutive terms shall not be subject to reappointment unless four
19 years have elapsed since the member last served. Vacancies shall be filled by appointment by
20 the Governor for the unexpired term of any member whose office is vacant and shall be made
21 within 60 days of the occurrence of the vacancy. A vacancy on the board shall not impair the right
22 of the remaining members to exercise all the powers of the board.

23 (c) The board shall elect a chair from one of the voting members of the board. The board
24 shall meet at least once annually and at such other times as called by the chair or a majority of
25 the board. Board members shall receive compensation not to exceed the amount paid to
26 members of the Legislature for the interim duties as recommended by the Citizens Legislative
27 Compensation Commission and authorized by law for each day or portion of a day spent attending

28 meetings of the board and shall be reimbursed for all reasonable and necessary expenses
29 incurred incident to his or her duties as a member of the board. A majority of the members
30 appointed shall constitute a quorum of the board.

§30-11-5. Administrative duties of the board; regulations.

1 (a) The board shall propose rules for legislative approval in accordance with the provisions
2 of §29-3-1 et seq. of this code relating to the following:

3 (1) The minimum qualifications for applicants for examination and license in each of the
4 following specified classes of contractor:

5 (A) Electrical contractor;

6 (B) General building contractor;

7 (C) General engineering contractor;

8 (D) Heating, ventilating, and cooling contractor;

9 (E) Multifamily contractor;

10 (F) Piping contractor;

11 (G) Plumbing contractor;

12 (H) Residential contractor; or

13 (I) Specialty contractor.

14 (2) The content of examinations for applicants in each class;

15 (3) Procedures for application, examination, and license renewal, and the manner in which
16 the examination will be conducted;

17 (4) The continued competency of licensees for purposes of renewal and reinstatement of
18 licenses; and

19 (5) Procedures for disciplinary action before the board.

20 (b) The board shall:

21 (1) Hold at least one examination in each calendar quarter for each specific classification
22 of contractor, designate the time and place of such examinations, and notify applicants thereof;

23 (2) Request, through the division, investigation of any alleged violation of this article or of
24 the regulations;

25 (3) Forward results of examinations to the division within 20 days following the
26 examination;

27 (4) Notify the commissioner and board members of meeting dates and agenda items at
28 least five days prior to such meetings; and

29 (5) Take minutes and records of all meetings and proceedings.

§30-11-6. Necessity for license; exemptions.

1 (a) No person may engage in this state in any act as a contractor, or submit a bid to
2 perform work as a contractor, as defined in this article, unless such person holds a license issued
3 under the provisions of this article. No firm, partnership, corporation, association, or other entity
4 shall engage in contracting in this state unless an officer thereof holds a license issued pursuant
5 to this article.

6 (b) Any person to whom a license has been issued under this article shall keep the license
7 or a copy thereof posted in a conspicuous position at every construction site where work is being
8 done by the contractor. The contractor's license number shall be included in all contracting
9 advertisements and all fully executed and binding contracts. Any person violating the provisions
10 of this subsection shall be subject, after hearing, to a warning, a reprimand, or a fine of not more
11 than \$200.

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

13 (1) Work done exclusively by employees of the United States Government, the State of
14 West Virginia, a county, municipality or municipal corporation, and any governmental subdivision
15 or agency thereof;

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

18 (3) Work performed personally by an owner or lessee of real property on property the

19 primary use of which is for agricultural or farming enterprise;

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

22 (5) Work performed by a public utility company regulated by the West Virginia Public
23 Service Commission and its employees;

24 (6) Repair work contracted for by the owner of the equipment on an emergency basis in
25 order to maintain or restore the operation of such equipment;

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

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

30 (9) Work performed when the specifications for such work have been developed or
31 approved by engineering personnel employed by the owner of a facility by registered professional
32 engineers licensed pursuant to the laws of this state when the work to be performed because of
33 its specialized nature or process cannot be reasonably or timely contracted for within the general
34 area of the facility.

§30-11-7. Application for and issuance of license.

1 (a) A person desiring to be licensed as a contractor under this article shall submit to the
2 board a written application requesting licensure, providing the applicant's Social Security number
3 and such other information as the board may require on forms supplied by the board. The
4 applicant shall pay a license fee not to exceed \$150: *Provided*, That electrical contractors already
5 licensed under §29-3B-4 of this code shall pay no more than \$20.

6 (b) A person holding a business registration certificate to conduct business in this state as
7 a contractor on September 30, 1991, may register with the board, certify by affidavit the
8 requirements of §30-11-15(c) of this code, and pay such license fee not to exceed \$150 and shall
9 be issued a contractor's license without further examination: *Provided*, That no license may be

10 issued without examination pursuant to this subsection after April 1, 2002: *Provided, however,*
11 That any person issued a contractor's license by the board pursuant to this subsection may apply
12 to the board for transfer of the license to a new business entity in which the license holder is the
13 principal owner, partner, or corporate officer: *Provided further,* That a license holder may hold a
14 license on behalf of only one business entity during a given time period. The board may transfer
15 the license issued pursuant to this subsection to the new business entity without requiring
16 examination of the license holder.

§30-11-8. Licenses; expiration date; fees; renewal.

1 (a) A license issued under the provisions of this article expires one year from the date on
2 which it is issued. The board shall establish application and annual license fees not to exceed
3 \$150.

4 (b) The board may propose rules for legislative approval in accordance with the provisions
5 of §29-3-1 *et seq.* of this code to establish license and renewal fees.

§30-11-9. Unlawful use, assignment, transfer of license; revocation.

1 No license may be used for any purpose by any person other than the person to whom
2 the license is issued. No license may be assigned, transferred, or otherwise disposed of so as to
3 permit the unauthorized use thereof. No license issued pursuant to the provisions of §30-11-7(b)
4 of this code may be assigned, transferred, or otherwise disposed of except as provided in said
5 subsection. Any person who violates this section is subject to the penalties imposed in §30-11-13
6 of this code.

§30-11-10. Prerequisites to obtaining building permit; mandatory written contracts.

1 (a) Any person making application to the building inspector or other authority of any
2 incorporated municipality or other political subdivision in this state charged with the duty of issuing
3 building or other permits for the construction of any building, highway, sewer, or structure or for
4 any removal of materials or earth, grading, or improvement, shall, before issuance of the permit,
5 either furnish satisfactory proof to the inspector or authority that such person is duly licensed

6 under the provisions of this article to carry out or superintend the same, or file a written affidavit
7 that such person is not subject to licensure as a contractor or subcontractor as defined in this
8 article. The inspector or authority may not issue a building permit to any person who does not
9 possess a valid contractor's license when required by this article.

10 (b) Effective October 1, 2002, no person licensed under the provisions of this article may
11 perform contracting work of an aggregate value of \$10,000 or more, including materials and labor,
12 without a written contract, setting forth a description and cost of the work to be performed, signed
13 by the licensee and the person for whom the work is to be performed.

14 (c) On or before June 1, 2002, the board shall file a procedural rule setting forth a standard
15 contract form which meets the minimum requirements of this subsection for use by licensees. The
16 board shall post the contract form on its website and shall assist licensees in the correct
17 completion of the form. On or before August 1, 2002, the board shall mail a written notice of the
18 requirements imposed by the rule to each licensed contractor at the address provided to the board
19 by the contractor on his or her last application for licensure or renewal.

§30-11-10a. Informational list for basic universal design features; penalties.

1 (a) Ninety days after the Contractor Licensing Board certifies and makes available to the
2 general public the standard form informational list of basic universal design features pursuant to
3 this section, a licensed contractor of any proposed residential housing in the state shall provide
4 to the buyer an informational list of basic universal design features that would make the home
5 entrance, interior routes of travel, the kitchen, and the bathroom or bathrooms universally
6 accessible. Basic universal design features are to include, but not be limited to, the following:

- 7 (1) At least one nonstep entrance into the dwelling;
8 (2) All doors on the entry-level floor, including bathrooms, have a minimum of 36 inches;
9 (3) At least one accessible bathroom on the entry-level floor with ample maneuvering
10 space;
11 (4) Kitchen, general living space, and one room capable of conversion into a bedroom, all

12 with ample maneuvering space, on the entry-level floor; and

13 (5) Any other external or internal feature requested at a reasonable time by the buyer and
14 agreed to by the seller.

15 (b) If a buyer is interested in a specific informational feature on the list established by
16 subsection (a) of this section, the seller or builder upon request of the buyer shall indicate whether
17 the feature is standard, limited, optional, or not available and, if available, shall further indicate
18 the cost of such a feature to the buyer.

19 (c) The standard form informational list of basic universal design features shall be certified
20 and made available for reproduction by the board, in accordance with the provisions of subsection
21 (a) of this section, based on mutual recommendation of the board, the American Institute of
22 Architects-West Virginia, the Home Builders Association of West Virginia, and the West Virginia
23 Center for Excellence in Disabilities.

§30-11-11. Notice included with invitations to bid and specifications.

1 Any architect or engineer preparing any plan and specification for contracting work to be
2 performed in this state shall include in the plan, specification, and invitation to bid a reference to
3 this article informing any prospective bidder that the person's contractor's license number shall
4 be included on any bid submission. A subcontractor shall furnish his or her contractor's license
5 number to the contractor prior to the award of the contract. If an apparent low bidder for a public
6 improvement project, as defined in §21-1D-1 et seq. of this code, fails to submit a license number
7 in accordance with this section, the public authority, as defined in §21-1D-1 et seq. of this code,
8 shall promptly request by telephone and electronic mail that the low bidder and the second low
9 bidder provide the license number within one business day of the request. Failure of the bidder to
10 provide the license number within one business day of receiving the request shall result in
11 disqualification of the bid.

§30-11-12. License renewal, lapse and reinstatement.

1 (a) A license which is not renewed on or before the renewal date shall lapse. The board

2 may establish by regulation a delayed renewal fee to be paid for issuance of any license which
3 has lapsed: *Provided*, That no license which has lapsed for a period of 90 days or more may be
4 renewed: *Provided, however*, That, if a licensee is in a dispute with a state agency, and it is
5 determined that the licensee is not at fault, the board shall renew the license.

6 (b) In the event that continuing education or other requirements are made a condition of
7 license reinstatement after lapse, suspension, or revocation, such requirements must be satisfied
8 before the license is reissued.

§30-11-13. Violation of article; injunction; criminal penalties.

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

5 (2) After affording an opportunity for a hearing, the board may impose a penalty of not less
6 than \$200 nor more than \$1,000 upon any person engaging in contracting business in the state
7 without a valid license. The board may accept payment of the penalty in lieu of a hearing.

8 (3) Within 30 days after receipt of the final order issued pursuant to this section, any party
9 adversely affected by the order may appeal the order to the circuit court of Kanawha County,
10 West Virginia, or to the circuit court of the county in which the petitioner resides or does business.

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

14 (1) For a first offense, a fine of not less than \$200 nor more than \$1,000;

15 (2) For a second offense, a fine of not less than \$500 nor more than \$5,000, or
16 confinement in jail for not more than six months, or both;

17 (3) For a third or subsequent offense, a fine of not less than \$1,000 nor more than \$5,000,
18 and confinement in jail for not less than 30 days nor more than one year.

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

22 (d) Any person who undertakes any construction work without a valid license when such
23 license is required by this article, when the total cost of the contractor's construction contract on
24 any project upon which the work is undertaken is \$25,000 or more, shall, in addition to any other
25 penalty herein provided, be assessed by the board an administrative penalty not to exceed \$200
26 per day for each day the person is in violation.

§30-11-14. Disciplinary powers of the board.

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

2 (1) Permanently revoke a license;

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

4 (3) Censure or reprimand a licensee;

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

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

8 (6) Impose a probationary period requiring a licensee to report regularly to the board on
9 matters related to the grounds for probation; the board may withdraw probationary status if the
10 deficiencies that require the sanction are remedied;

11 (7) Order a contractor who has been found, after hearing, to have violated any provision
12 of this article or the rules of the board to provide, as a condition of licensure, assurance of financial
13 responsibility. The form of financial assurance may include, but is not limited to, a surety bond, a
14 cash bond, a certificate of deposit, an irrevocable letter of credit, or performance insurance:

15 Provided, That the amount of financial assurance required under this subdivision may not exceed
16 the total of the aggregate amount of the judgments or liens levied against the contractor or the
17 aggregate value of any corrective work ordered by the board or both: Provided, however, That

18 the board may remove this requirement for licensees against whom no complaints have been
19 filed for a period of five continuous years; and

20 (8) A fine not to exceed \$1,000.

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

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

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

30 (e) A person or contractor adversely affected by disciplinary action may appeal to the
31 board within 60 days of the date the disciplinary action is taken. The board shall hear the appeal
32 within 30 days from receipt of notice of appeal in accordance with the provisions of chapter 29A
33 of this code. Hearings shall be held in Charleston. The board may retain a hearing examiner to
34 conduct the hearings and present proposed findings of fact and conclusions of law to the board
35 for its action.

36 (f) Any party adversely affected by any action of the board may appeal that action in either
37 the circuit court of Kanawha County, West Virginia, or in the circuit court of the county in which
38 the petitioner resides or does business, within 30 days after the date upon which the petitioner
39 received notice of the final order or decision of the board.

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

41 (1) Abandonment, without legal excuse, of any construction project or operation engaged
42 in or undertaken by the licensee;

43 (2) Willful failure or refusal to complete a construction project or operation with reasonable

44 diligence, thereby causing material injury to another;

45 (3) Willful departure from or disregard of plans or specifications in any material respect
46 without the consent of the parties to the contract;

47 (4) Willful or deliberate violation of the building laws or regulations of the state or of any
48 political subdivision thereof;

49 (5) Willful or deliberate failure to pay any moneys when due for any materials free from
50 defect, or services rendered in connection with the person's operations as a contractor when the
51 person has the capacity to pay or when the person has received sufficient funds under the contract
52 as payment for the particular construction work for which the services or materials were rendered
53 or purchased, or the fraudulent denial of any amount with intent to injure, delay, or defraud the
54 person to whom the debt is owed;

55 (6) Willful or deliberate misrepresentation of a material fact by an applicant or licensee in
56 obtaining a license or in connection with official licensing matters;

57 (7) Willful or deliberate failure to comply in any material respect with the provisions of this
58 article or the rules of the board;

59 (8) Willfully or deliberately acting in the capacity of a contractor when not licensed or as a
60 contractor by a person other than the person to whom the license is issued except as an employee
61 of the licensee;

62 (9) Willfully or deliberately acting with the intent to evade the provisions of this article by:
63 (i) Aiding or abetting an unlicensed person to evade the provisions of this article; (ii) combining or
64 conspiring with an unlicensed person to perform an unauthorized act; (iii) allowing a license to be
65 used by an unlicensed person; or (iv) attempting to assign, transfer, or otherwise dispose of a
66 license or permitting the unauthorized use thereof;

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

69 (11) Performing work which is not commensurate with a general standard of the specific

70 classification of contractor or which is below a building or construction code adopted by the
71 municipality or county in which the work is performed;

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

74 (13) Failing to execute written contracts prior to performing contracting work in accordance
75 with §30-11-10 of this code;

76 (14) Failing to abide by an order of the board; or

77 (15) Failing to satisfy a judgment or execution ordered by a magistrate court, circuit court,
78 or arbitration board.

79 (h) In all disciplinary hearings the board has the burden of proof as to all matters in
80 contention. No disciplinary action may be taken by the board except on the affirmative vote of at
81 least six members thereof. Other than as specifically set out herein, the board has no power or
82 authority to impose or assess damages.

§30-11-15. Administrative duties of division.

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

2 (1) Collect and record all fees;

3 (2) Maintain records and files;

4 (3) Issue and receive application forms;

5 (4) Notify applicants of the results of the board examination;

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

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

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

11 (8) Notify licensees of renewal dates at least 30 days before the expiration date of their
12 license;

- 13 (9) Answer routine inquiries;
- 14 (10) Maintain files relating to individual licensees;
- 15 (11) Arrange for printing and advertising;
- 16 (12) Purchase supplies;
- 17 (13) Employ additional help when needed;
- 18 (14) Perform other services that may be requested by the board;
- 19 (15) Provide inspection, enforcement, and investigative services to the board; and
- 20 (16) Issue cease and desist orders to persons engaging in contracting within the state
- 21 without a valid license.

22 (b) All authority not specifically delegated to the commissioner and division shall be the

23 responsibility of the board.

24 (c) Following successful completion of the examination, and prior to the issuance of the

25 license, the applicant shall certify by affidavit that the applicant:

26 (1) Is in compliance with the business franchise tax provisions of chapter 11 of this code;

27 (2) Has registered, and is in compliance, with the workers' compensation fund and the

28 employment security fund, as required by chapter 23 and chapter 21A of this code; and

29 (3) Is in compliance with the applicable wage bond requirements of §21-5-1 et seq. of this

30 code: *Provided*, That in the case of an out-of-state contractor not doing business in this state and

31 seeking licensure for bidding purposes only, the applicant may be granted a conditional license

32 for bid purposes only.

§30-11-16. Rules; publications; and seal.

1 The board may propose rules for legislative approval in accordance with the provisions of

2 §29A-3-1 et seq. of this code. The board may disseminate educational or any other material

3 designed to improve performance standards of any contractor group to contractors within the

4 state. The board may adopt, and use, a seal with the words "State Contractor Licensing Board of

5 West Virginia".

§30-11-17. Recordkeeping; fees.

1 (a) The division shall keep a record of all actions taken and account for moneys received.
2 All fees paid pursuant to this article shall be paid to the Commissioner of the Division of Labor
3 and deposited in an appropriated special revenue account in the State Treasury to be known as
4 the West Virginia Contractor Licensing Board Fund and expended for the implementation and
5 enforcement of this article. Through June 30, 2019, amounts collected which are found from time-
6 to-time to exceed the funds needed for purposes set forth in this article may be utilized by the
7 commissioner as needed to meet the division's funding obligations: *Provided*, That beginning July
8 1, 2019, amounts collected may not be utilized by the commissioner as needed to meet the
9 division's funding obligations.

10 (b) The division shall maintain at its principal office, open for public inspection during
11 regular office hours, a complete indexed record of all applications, licenses issued, licenses
12 renewed, and all revocations, cancellations, and suspensions of licenses. Applications shall show
13 the date of application, name, qualifications, place of business, and place of residence of each
14 applicant, and whether the application was approved or refused.

15 (c) (1) All investigations, complaints, reports, records, proceedings, and other information
16 received by the commissioner and board and related to complaints made to the commissioner or
17 board or investigations conducted by the commissioner or board pursuant to this article, including
18 the identity of the complainant or respondent, shall be confidential and shall not be knowingly and
19 improperly disclosed by any member or former member of the board, the commissioner, or staff,
20 except as follows:

21 (A) Upon a finding that probable cause exists to believe that a respondent has violated
22 the provisions of this article, the complaint and all reports, records, nonprivileged and
23 nondeliberative materials introduced at any probable cause hearing held pursuant to the
24 complaint are thereafter not confidential: *Provided*, That confidentiality of such information shall

25 remain in full force and effect until the respondent has been served with a copy of the statement
26 of charges.

27 (B) Any subsequent hearing held in the matter for the purpose of receiving evidence or
28 the arguments of the parties or their representatives shall be open to the public and all reports,
29 records, and nondeliberative materials introduced into evidence at such subsequent hearing, as
30 well as the board's and commissioner's orders, are not confidential.

31 (C) The commissioner or board may release any information relating to an investigation
32 at any time if the release has been agreed to in writing by the respondent.

33 (D) The complaint as well as the identity of the complainant shall be disclosed to a person
34 named as respondent in any such complaint filed immediately upon such respondent's request.

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

38 (2) If, in a specific case, the commissioner or board finds that there is a reasonable
39 likelihood that the dissemination of information or opinion in connection with a pending or
40 imminent proceeding will interfere with a fair hearing or otherwise prejudice the due administration
41 of justice, the commissioner or board shall order that all or a portion of the information
42 communicated to the commissioner or board to cause an investigation and all allegations of
43 violations or misconduct contained in a complaint shall be confidential, and the person providing
44 such information or filing a complaint shall be bound to confidentiality until further order of the
45 board.

46 (d) If any person violates the provisions of subsection (c) of this section by knowingly and
47 willfully disclosing any information made confidential by such section or by the commissioner or
48 board, such person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not
49 less than \$500 nor more than \$5,000, or confined in jail not more than one month, or both fined
50 and confined.

51 (e) The commissioner shall certify to the State Auditor and to the board a detailed
52 statement of all moneys received and spent during the preceding fiscal year.

§30-11-18. Reciprocity.

1 To the extent that other states which provide for the licensing of contractors provide for
2 similar action, the board, in its discretion, may grant licenses of the same or equivalent
3 classification to contractors licensed by other states, without written examination, upon
4 satisfactory proof furnished to the board that the qualifications of such applicants are equal to the
5 qualifications of holders of similar licenses in this state, and upon certification to the commissioner
6 as required by §30-11-15(c) of this code, and upon payment of the required fee.

§30-11-19. Board authorized to provide training.

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

7 (b) For the purposes of this section, the division is authorized to expend funds from its
8 special revenue account, known as the Contractor Licensing Fund, to support this activity.

NOTE: The purpose of this bill is to move the provisions relating to the licensing of contractors to chapter 30 of the code, where other professional licensing laws are maintained.

This bill is recommended by the Joint Standing Committee on Government Organization for introduction and passage in the 2020 Regular Session.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.