

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Committee Substitute

for

House Bill 2006

BY DELEGATES HOWELL, ESPINOSA, FOSTER, HORST,
HAMRICK, MILLER, STEELE, HOLSTEIN, CLARK, KEATON
AND BURKHAMMER

[Originating in the Committee on Government

Organization February 11, 2021]

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; to amend and reenact §5-11A-3a of said code; to amend and reenact
5 §5-22-1 of said code; to amend and reenact §21-1-3 of said code; to amend and reenact
6 §21-3C-10a, §21-3C-10b, and §21-3C-11 of said code; to amend and reenact §21-9-2
7 and §21-9-9 of said code; to amend and reenact §21-11A-2 and §21-11A-4 of said code;
8 to amend and reenact §21-16-4 of said code; to amend and reenact §21A-10-11 of said
9 code; to amend said code by adding thereto a new article, designated §30-42-1, §30-42-
10 2, §30-42-3, §30-42-4, §30-42-5, §30-42-6, §30-42-7, §30-42-8, §30-42-9, §30-42-10,
11 §30-42-11, §30-42-12, §30-42-13, §30-42-14, §30-42-15, §30-42-16, §30-42-17, §30-42-
12 18, §30-42-19, and §30-42-20, all relating to the West Virginia Contractor Licensing Act;
13 providing for relocating the licensing of contractors from Chapter 21 to Chapter 30 of this
14 code; providing a short title and declaration of policy with definitions; continuing the West
15 Virginia Contractor Licensing Board, composition, terms, qualifications and appointment;
16 administrative duties of board and legislative rules; providing for necessity for contractor
17 license and exemptions; providing for procedure for licensing; providing for expiration
18 date, fees and renewal of license; providing for revocation for unlawful use, assignment
19 or transfer of license; providing for prerequisites to obtaining building permit and
20 mandatory written contracts; providing for requiring informational list for basic universal
21 design features; providing for injunction and criminal penalties for violation of article;
22 providing for specific administrative duties of board and record keeping by the board;
23 establishing authorization to grant reciprocity and to provide training to students who
24 desire to obtain a West Virginia contractor license; providing for misdemeanor criminal
25 penalties for violations of article; providing for limitations on municipalities, local
26 governments, and counties from requiring a license to perform contractor work; providing
27 for an exemption from a contractor license for residential work up to \$10,000 and

28 commercial work up to \$50,000; providing for an exemption from a contractor license for
29 a person performing landscaping and painting services; and providing for technical
30 updates which updates code references to contractors throughout this code to the correct
31 code.

Be it enacted by the Legislature of West Virginia:

**CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE
GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL;
BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES,
COMMISSIONS, OFFICES, PROGRAMS, ETC.**

ARTICLE 11A. WEST VIRGINIA FAIR HOUSING ACT.

**§5-11A-3a. Volunteer services or materials to build or install basic universal design
features; workers, contractors, engineers, architects; immunity from civil liability.**

1 Any person, including a worker, contractor, engineer or architect, who in good faith
2 provides services or materials, without remuneration, to build or install basic universal design
3 features as set forth in ~~section ten-a, article eleven, chapter twenty-one~~ §30-42-10 of this code
4 may not be liable for any civil damages as the result of any act or omission in providing such
5 services or materials: *Provided*, That the basic universal design feature or features shall be built
6 or constructed in accordance with applicable state and federal laws and applicable building codes.

ARTICLE 22. GOVERNMENT CONSTRUCTION CONTRACTS.

**§5-22-1. Bidding required; government construction contracts to go to lowest qualified
responsible bidder; procedures to be followed in awarding government
construction projects; penalties for violation of procedures and requirements
debarment; exceptions.**

1 (a) This section and the requirements in this section may be referred to as the West
2 Virginia Fairness in Competitive Bidding Act.

3 (b) As used in this section:

4 (1) "Lowest qualified responsible bidder" means the bidder that bids the lowest price and
5 that meets, at a minimum, all the following requirements in connection with the bidder's response
6 to the bid solicitation. The bidder shall certify that it:

7 (A) Is ready, able, and willing to timely furnish the labor and materials required to complete
8 the contract;

9 (B) Is in compliance with all applicable laws of the State of West Virginia; and

10 (C) Has supplied a valid bid bond or other surety authorized or approved by the contracting
11 public entity.

12 (2) "The state and its subdivisions" means the State of West Virginia, every political
13 subdivision thereof, every administrative entity that includes such a subdivision, all municipalities,
14 and all county boards of education.

15 (3) "State spending unit" means a department, agency, or institution of the state
16 government for which an appropriation is requested, or to which an appropriation is made by the
17 Legislature.

18 (4) "Alternates" means any additive options or alternative designs included in a solicitation
19 for competitive bids that are different from and priced separately from what is included in a base
20 bid.

21 (5) "Construction project" means a specifically identified scope of work involving the act,
22 trade, or process of building, erecting, constructing, adding, repairing, remodeling, rehabilitating,
23 reconstructing, altering, converting, improving, expanding, or demolishing of a building, structure,
24 facility, road, or highway. Repair and maintenance of existing public improvements that are
25 recurring or ongoing in nature and that are not fully identified or known at any one time shall be
26 considered a construction project and procured according to this article on an open-ended basis,
27 so long as the work to be performed under the contract falls into a generally accepted single class,

28 or type, and bidders are notified of the open-ended nature of the work in the solicitation: *Provided,*
29 That no open-ended repair or maintenance contract may exceed \$500,000.

30 (c) The state and its subdivisions shall, except as provided in this section, solicit
31 competitive bids for every construction project exceeding \$25,000 in total cost.

32 (1) If a solicitation contains a request for any alternates, the alternates shall be listed
33 numerically in the order of preference in the solicitation.

34 (2) A vendor who has been debarred pursuant to §5A-3-33b through §5A-3-33f of this
35 code, may not bid on or be awarded a contract under this section.

36 (d) All bids submitted pursuant to this chapter shall include a valid bid bond or other surety
37 as approved by the State of West Virginia or its subdivisions.

38 (e) Following the solicitation of bids, the construction contract shall be awarded to the
39 lowest qualified responsible bidder who shall furnish a sufficient performance and payment bond.
40 The state and its subdivisions may reject all bids and solicit new bids on the project.

41 (f) Any solicitation of bids shall include no more than five alternates. Alternates, if
42 accepted, shall be accepted in the order in which they are listed on the bid form. Any unaccepted
43 alternate contained within a bid shall expire 90 days after the date of the opening of bids for
44 review.

45 Determination of the lowest qualified responsible bidder shall be based on the sum of the
46 base bid and any alternates accepted.

47 (g) The apparent low bidder on a contract valued at more than \$250,000 for the
48 construction, alteration, decoration, painting, or improvement of a new or existing building or
49 structure with a state spending unit shall submit a list of all subcontractors who will perform more
50 than \$25,000 worth of work on the project including labor and materials. This section does not
51 apply to other construction projects such as highway, mine reclamation, water, or sewer projects.
52 The list shall include the names of the bidders and the license numbers as required by ~~§21-11-4~~
53 §30-42-1 *et seq.* of this code. This information shall be provided to the state spending unit within

54 one business day of the opening of bids for review prior to the awarding of a construction contract.
55 If the apparent low bidder fails to submit the subcontractor list, the spending unit shall promptly
56 request by telephone and electronic mail that the low bidder and second low bidder provide the
57 subcontractor list within one business day of the request. Failure to submit the subcontractor list
58 within one business day of receiving the request shall result in disqualification of the bid. A
59 subcontractor list may not be required if the bidder provides notice in the bid submission or in
60 response to a request for a subcontractor list that no subcontractors who will perform more than
61 \$25,000 worth of work will be used to complete the project.

62 (h) Written approval must be obtained from the state spending unit before any
63 subcontractor substitution is permitted. Substitutions are not permitted unless:

64 (1) The subcontractor listed in the original bid has filed for bankruptcy;

65 (2) The state spending unit refuses to approve a subcontractor in the original bid because
66 the subcontractor is under a debarment pursuant to §5A-3-33d of this code or a suspension under
67 §5A-3-32 of this code; or

68 (3) The contractor certifies in writing that the subcontractor listed in the original bill fails, is
69 unable, or refuses to perform the subcontract.

70 (i) The contracting public entity may not award the contract to a bidder which fails to meet
71 the minimum requirements set out in this section. As to a prospective low bidder which the
72 contracting public entity determines not to have met one or more of the requirements of this
73 section or other requirements as determined by the public entity in the written bid solicitation, prior
74 to the time a contract award is made, the contracting public entity shall document in writing and
75 in reasonable detail the basis for the determination and shall place the writing in the bid file. After
76 the award of a bid under this section, the bid file of the contracting public agency and all bids
77 submitted in response to the bid solicitation shall be open and available for public inspection.

78 (j) The contracting public entity shall not award a contract pursuant to this section to any
79 bidder that is known to be in default on any monetary obligation owed to the state or a political

80 subdivision of the state, including, but not limited to, obligations related to payroll taxes, property
81 taxes, sales and use taxes, fire service fees, or other fines or fees. Any governmental entity may
82 submit to the Division of Purchasing information which identifies vendors that qualify as being in
83 default on a monetary obligation to the entity. The contracting public entity shall take reasonable
84 steps to verify whether the lowest qualified bidder is in default pursuant to this subsection prior to
85 awarding a contract.

86 (k) A public official or other person who individually or together with others knowingly
87 makes an award of a contract under this section in violation of the procedures and requirements
88 of this section is subject to the penalties set forth in §5A-3-29 of this code.

89 (l) No officer or employee of this state or of a public agency, public authority, public
90 corporation, or other public entity and no person acting or purporting to act on behalf of an officer
91 or employee or public entity may require that a performance bond, payment bond, or surety bond
92 required or permitted by this section be obtained from a particular surety company, agent, broker,
93 or producer.

94 (m) All bids shall be open in accordance with the provisions of §5-22-2 of this code, except
95 design-build projects which are governed by §5-22A-1 *et seq.* of this code and are exempt from
96 these provisions.

97 (n) Nothing in this section applies to:

98 (1) Work performed on construction or repair projects by regular full-time employees of
99 the state or its subdivisions;

100 (2) Prevent students enrolled in vocational educational schools from being utilized in
101 construction or repair projects when the use is a part of the student's training program;

102 (3) Emergency repairs to building components, systems, and public infrastructure. For the
103 purpose of this subdivision, the term "emergency repairs" means repairs that if not made
104 immediately will seriously impair the use of building components, systems, and public

105 infrastructure or cause danger to persons using the building components, systems, and public
106 infrastructure; and

107 (4) A situation where the state or subdivision thereof reaches an agreement with
108 volunteers, or a volunteer group, in which the governmental body will provide construction or
109 repair materials, architectural, engineering, technical, or other professional services, and the
110 volunteers will provide the necessary labor without charge to, or liability upon, the governmental
111 body.

CHAPTER 21. LABOR.

ARTICLE 1. DIVISION OF LABOR.

§21-1-3. Inspections by commissioner; duties and records of employers; commissioner may appoint assistants.

1 The commissioner of labor and his or her authorized representatives shall have the power
2 and authority in the discharge of their duties, to enter any place of employment or public institution,
3 for the purpose of collecting facts and statistics relating to the employment of workers and of
4 making inspections for the proper enforcement of all labor laws of the state. No employer or owner
5 shall refuse to admit the commissioner of labor or his or her authorized representative when they
6 so seek admission to his place of employment, public building, or place of public assembly.

7 The commissioner or his or her authorized representative shall, at least once each year,
8 visit and inspect the principal factories and workshops of the state, and shall, upon complaint and
9 request of any three or more reputable citizens, visit and inspect any place where labor is
10 employed and make true report of the result of his or her inspection.

11 Every employer and owner shall furnish to the ~~department~~ division of labor all information
12 which the commissioner of labor or his or her representative is ~~authorize~~ authorized to require,
13 and shall make true and specific answers to all questions submitted by the ~~department~~ division of
14 labor, orally or in writing as required by said division ~~department~~. Every employer shall keep a

15 true and accurate record of the name, address, and occupation of each person employed by him
16 or her and of the daily and weekly hours worked by each such person, and of the wages paid
17 each pay period to each such person. Such records shall be kept on file for at least one year after
18 the date of the record. No employer shall make or cause to be made any false entries in any such
19 record.

20 In addition to such other powers and duties as may be conferred upon the commissioner
21 of labor by law, the said commissioner of labor shall have the power, duty, jurisdiction, and
22 authority to employ, promote, and remove deputies, inspectors, clerks, and other assistants, as
23 needed, and to fix their compensation, with regard to existing laws applicable to the employment
24 and compensation of officers and employees of the State of West Virginia, and to assign to them
25 their duties; to make or cause to be made all necessary inspections, including inspections relating
26 to enforcing the West Virginia Contractor Licensing Act, §30-42-1 et seq., of this code, to see that
27 all laws and lawful orders which the department has the duty, power, and authority to enforce, are
28 promptly and effectively carried out.

ARTICLE 3C. ELEVATOR SAFETY.

**§21-3C-10a. License requirements for elevator mechanics, accessibility technicians,
limited technicians; contractors license requirements; supervision of elevator
apprentices requirements.**

1 (a) A person may not engage or offer to engage in the business of erecting, constructing,
2 installing, altering, servicing, repairing, or maintaining elevators or related conveyances covered
3 by this article in this state, unless he or she has a license issued by the commissioner in
4 accordance with this article.

5 (b) A person licensed under this article shall:

6 (1) Have in his or her possession a copy of the license issued pursuant to this article on
7 any job on which he or she is performing elevator mechanic work; and

8 (2) Be, or be employed by, a contractor licensed pursuant to the provisions of ~~article~~
9 ~~eleven, chapter twenty-one~~ §30-42-1 et seq., of this code unless the work is performed by a
10 historic resort hotel's regular employees, for which the employees are paid regular wages and not
11 a contract price, on property owned or leased by the historic resort hotel which is not intended for
12 speculative sale or lease;

13 (c) *Elevator mechanic license.* —

14 (1) To obtain an elevator mechanic's license, a person shall:

15 (A) Successfully complete educational programs that are registered with the Bureau of
16 Apprenticeship and Training of the United States Department of Labor, including all required
17 examinations and work experience: *Provided*, That if an applicant successfully completes such
18 educational program prior to being registered with the Bureau of Apprenticeship and Training of
19 the United States Department of Labor, the division may grant a license to the applicant after he
20 or she demonstrates to the commissioner that he or she has successfully completed all the test
21 and work experience requirements; or

22 (B) (i) Provide to the commissioner an acceptable combination of documented experience
23 and educational credits of not less than four years of recent and active experience in the elevator
24 industry in construction, maintenance, or service/repair or any combination thereof, as verified by
25 current and previous employers listed to do business in this state, on a sworn affidavit; and

26 (ii) Obtain a score of 70 percent or better on a written competency examination approved
27 or provided by the division.

28 (2) A licensed elevator mechanic may work on all elevators covered by this article.

29 (d) *Accessibility technician license.* —

30 (1) To obtain an accessibility technician's license a person shall:

31 (A) Provide to the commissioner a certificate of completion of an accessibility training
32 program for the elevator industry such as the Certified Accessibility Training (CAT) program by
33 the National Association of Elevator Contractors, or an equivalent nationally recognized training
34 program; or

35 (B) (i) Have at least 18 months experience in the construction, maintenance, service and
36 repair, or any combination thereof, as verified by current and previous employers, licensed to do
37 business in this state, on a sworn affidavit, of accessibility lifts;

38 (ii) Have at least one year of documented vocational training and/or an associate degree
39 in a related field; and

40 (iii) Obtain a score of 70 percent or better on a written competency examination approved
41 or provided by the commissioner.

42 (2) A person holding an accessibility technician license may only perform work on
43 accessibility equipment.

44 (3) A person holding an accessibility technician license may obtain a limited use/limited
45 application (LULA) elevator endorsement. To obtain the LULA elevator endorsement, such person
46 shall:

47 (A) (i) Hold a current accessibility technician license;

48 (ii) Provide the commissioner with a certificate of LULA manufacturer's training; and

49 (iii) Provide at least one year of documented work experience to the commissioner, on a
50 sworn affidavit, in the construction, maintenance, service and repair of LULA elevators and
51 comparable equipment, which was completed under the supervision of a licensed accessibility
52 technician; or

53 (B) As of July 1, 2012, have at least 18 months of accessibility technician's experience in
54 construction, maintenance, service and repair, or any combination thereof, as verified by current
55 and previous employers, licensed to do business in this state, on a sworn affidavit: *Provided*, That
56 an additional one year of documented work as an accessibility technician with certification of
57 manufacturer's factory training, is required before a LULA endorsement may be obtained.

58 (4) Any person carrying an accessibility license as of July 1, 2012, shall receive the
59 required endorsement to continue to work on this type of equipment, and will be qualified to
60 supervise future applicants as described in this section.

61 (e) *Limited technician license.* —

62 (1) To obtain a limited technician's license an applicant shall:

63 (A) Complete a certified apprenticeship program, registered by the United States
64 Department of Labor established at a historic resort hotel, qualifying for a limited technician
65 license; or

66 (B) Provide an acceptable combination of documented experience, and educational
67 credits of not less than three years of recent and active experience in the elevator industry, in
68 maintenance, or service/repair or any combination thereof, as verified by current and previous
69 employers authorized to do business in this state, on a sworn affidavit; and obtain a score of 70
70 percent or better on a written competency examination approved or provided by the division.

71 (2) A person holding a limited technician license may only perform work at a historic resort
72 hotel: *Provided*, That for purposes of this section, "historic resort hotel" has the same meaning
73 ascribed to it in §29-25-2 of this code.

74 (f) *Elevator apprentice.* —

75 (1) An elevator apprentice who is enrolled in an apprenticeship program approved by the
76 commissioner, and who is in good standing in the program, may work under the supervision of a
77 licensed elevator mechanic, as follows:

78 (A) An apprentice who has not successfully completed the equivalent of at least one year
79 of the program may work only under the direct supervision of a licensed elevator mechanic who
80 is present on the premises and available to the apprentice at all times.

81 (B) An apprentice who has successfully completed the equivalent of at least one year of
82 the program may:

83 (i) Work under the direct supervision of a licensed elevator mechanic as set forth in
84 subdivision (1) of this subsection; and

85 (ii) Perform the tasks set forth in this paragraph, only if delegated by and performed under
86 the general supervision of a licensed elevator mechanic, who must, at a minimum, meet the
87 apprentice on the job at the beginning of each day to delegate the specific tasks, and who remains
88 responsible for the delegated tasks:

- 89 (I) Oiling, cleaning, greasing and painting;
90 (II) Replacing of combplate teeth;
91 (III) Relamping and fixture maintenance;
92 (iv) Inspection, cleaning and lubricating of hoistway doors, car tops, bottoms and pits; and
93 (IV) Observing operation of equipment.

§21-3C-10b. Issuance and renewal of licenses.

1 (a) Upon approval of a properly completed application for licensure, the commissioner
2 may issue a person a license under the provisions of this article.

3 (b) The licenses issued under the provisions of this article shall be renewed biennially
4 upon application for renewal on a form prescribed by the commissioner and payment of a fee
5 established by legislative rule.

6 (c) Upon a proper application for renewal, the commissioner shall renew a license, even
7 if the license holder is unemployed or not working in the industry at the time of renewal: *Provided*,
8 That before the license holder may engage or offer to engage in the business of erecting,
9 constructing, installing, altering, servicing, repairing, or maintaining an elevator or related
10 conveyance covered by this article, the license holder shall be a contractor, or be employed by a
11 contractor licensed pursuant to the provisions of ~~section ten(a), article eleven, chapter twenty-one~~
12 ~~of the code~~ §30-42-1 et seq., of this code.

§21-3C-11. Disposition of fees; legislative rules.

1 (a) The division shall propose rules for legislative approval in accordance with §29A-3-1
2 *et seq.* of this code, for the implementation and enforcement of the provisions of this article, which
3 shall provide:

4 (1) Standards, qualifications and procedures for submitting applications, taking
5 examinations and issuing and renewing licenses, certificates of competency and certificates of
6 operation of the three licensure classifications set forth in §21-3C-10a of this code;

7 (2) For the renewal of a license, even if the licensee is unemployed or not working in the
8 industry: *Provided*, That to engage or offer to engage in the business of erecting, constructing,
9 installing, altering, servicing, repairing or maintaining an elevator or related conveyance covered
10 by this article, the licensee shall be a contractor, or be employed by a contractor licensed pursuant
11 to ~~§21-11-6 of the code~~ §30-42-1 et seq., of this code;

12 (3) Qualifications and supervision requirements for elevator apprentices;

13 (4) Provisions for the granting of licenses without examination, to applicants who present
14 satisfactory evidence of having the expertise required to perform work as defined in this article
15 and who apply for licensure on or before July 1, 2010: *Provided*, That if a license issued under
16 the authority of this subsection subsequently lapses, the applicant may, at the discretion of the
17 commissioner, be subject to all licensure requirements, including the examination;

18 (5) Provisions for the granting of emergency licenses in the event of an emergency due to
19 disaster, act of God or work stoppage when the number of persons in the state holding licenses
20 issued pursuant to this article is insufficient to cope with the emergency;

21 (6) Provisions for the granting of temporary licenses in the event that there are no elevator
22 mechanics available to engage in the work of an elevator mechanic as defined by this article;

23 (7) Continuing education requirements;

24 (8) Procedures for investigating complaints and revoking or suspending licenses,
25 certificates of competency and certificates of operation, including appeal procedures;

26 (9) Fees for testing, issuance and renewal of licenses, certificates of competency and
27 certificates of operation, and other costs necessary to administer the provisions of this article;

28 (10) Enforcement procedures; and

29 (11) Any other rules necessary to effectuate the purposes of this article.

30 (b) The rules proposed for promulgation pursuant to subsection (a) of this section shall
31 establish the amount of any fee authorized pursuant to the provisions of this article: *Provided*,
32 That in no event may the fees established for the issuance of certificates of operation exceed \$90.

33 (c) All fees paid pursuant to this article shall be paid to the Commissioner of Labor and
34 deposited in an appropriated special revenue account hereby created in the State Treasury known
35 as the Elevator Safety Fund and expended for the implementation and enforcement of this article.
36 Through June 30, 2019, amounts collected which are found from time to time to exceed funds
37 needed for the purposes set forth in this article may be utilized by the commissioner as needed
38 to meet the division's funding obligations: *Provided*, That beginning July 1, 2019, amounts
39 collected may not be utilized by the commissioner as needed to meet the division's funding
40 obligations.

41 (d) The division may enter into agreements with counties and municipalities whereby such
42 counties and municipalities be permitted to retain the inspection fees collected to support the
43 enforcement activities at the local level.

44 (e) The commissioner or his or her authorized representatives may consult with
45 engineering authorities and organizations concerned with standard safety codes, rules and
46 regulations governing the operation, maintenance, servicing, construction, alteration, installation
47 and the qualifications which are adequate, reasonable and necessary for the elevator mechanic
48 and inspector.

**ARTICLE 9. MANUFACTURED HOUSING CONSTRUCTION AND SAFETY
STANDARDS.**

§21-9-2. Definitions.

1 (a) "Board" means the West Virginia Manufactured Housing Construction and Safety
2 Board created in this article.

3 (b) "Commissioner" means the Commissioner of the West Virginia State Division of Labor.

4 (c) "Contractor" means any person who performs operations in this state at the occupancy
5 site which render a manufactured home fit for habitation. The operations include, without
6 limitation, installation or construction of the foundation, positioning, blocking, leveling, supporting,

7 tying down, connecting utility systems, making minor adjustments or assembling multiple or
8 expandable units. The operations also include transporting the unit to the occupancy site by other
9 than a motor carrier regulated by the West Virginia Public Service Commission.

10 Contractor does not include:

11 (1) A person who personally does work on a manufactured home which the person owns
12 or leases; or

13 (2) A person who is licensed under ~~article eleven of this chapter~~ §30-42-1 et seq., of this
14 code and is performing work on a manufactured home pursuant to a contract with a person
15 licensed under §21-9-9 of this code.

16 (d) "Dealer" means any person engaged in this state in the sale, leasing or distributing of
17 new or used manufactured homes, primarily to persons who in good faith purchase or lease a
18 manufactured home for purposes other than resale.

19 (e) "Defect" includes any defect in the performance, construction, components or material
20 of a manufactured home that renders the home or any part of the home not fit for the ordinary use
21 for which it was intended.

22 (f) "Distributor" means any person engaged in this state in the sale and distribution of
23 manufactured homes for resale.

24 (g) "Federal standards" means the National Manufactured Housing Construction and
25 Safety Standards Act of 1974, and federal manufactured home construction and safety standards
26 and regulations promulgated by the Secretary of HUD to implement that act.

27 (h) "HUD" means the United States Department of Housing and Urban Development.

28 (i) "Manufacturer" means any person engaged in manufacturing or assembling
29 manufactured homes, including any person engaged in importing manufactured homes for resale.

30 (j) "Manufactured home" means a structure, transportable in one or more sections, which
31 in the traveling mode is eight body feet or more in width or ~~forty~~ 40 or more feet in length or, when
32 erected on site, is 320 or more square feet, and which is built on a permanent chassis and

33 designed to be used as a dwelling with or without a permanent foundation when connected to the
34 required utilities, and includes the plumbing, heating, air-conditioning and electrical systems
35 contained therein; except that such term shall include any structure which meets all the
36 requirements of this definition except the size requirements and with respect to which the
37 manufacturer voluntarily files a certificate which complies with the applicable federal standards.
38 Calculations used to determine the number of square feet in a structure will be based on the
39 structure's exterior dimensions measured at the largest horizontal projections when erected on
40 site.

41 (k) "Purchaser" means the first person purchasing a manufactured home in good faith for
42 purposes other than resale.

**§21-9-9. License required; fees; form of license; display of license; denial, suspension, or
revocation.**

1 (a) No manufacturer, dealer, distributor or contractor shall engage in business in this state
2 without first having applied for and received a license pursuant to this section. The license shall
3 authorize the holder to engage in the business permitted by the license. All license applications
4 shall be accompanied by the required fee and surety bond or other form of assurance or fee
5 assessed in satisfaction of assurance as required by rule or regulation promulgated by the board.

6 (b) All licenses shall be granted or refused within 30 days after proper and complete
7 application. All licenses shall expire on June 30 of each year, unless sooner revoked or
8 suspended. Applications shall be deemed valid for a period of 30 days.

9 (c) The annual license fees shall be in the amounts prescribed from time to time by rules
10 promulgated by the board but in no event less than the following amounts:

- 11 (1) For manufacturers, \$300;
- 12 (2) For dealers, \$100;
- 13 (3) For distributors, \$100; and

14 (4) For contractors, \$50: *Provided*, That if a contractor has met the licensing requirements
15 of this article and the West Virginia Contractor Licensing Act in ~~§21-11-1 et seq.~~ §30-42-1 et seq.,
16 of this code, has paid the annual license fee under ~~§21-11-8~~ §30-42-8 of this code and has
17 furnished bond or other assurance or fee under §21-9-10 of this code, he or she shall not be
18 required to pay the annual license fee set forth in this section.

19 (d) The board shall prescribe the form of license and each license shall have affixed
20 thereon the seal of the State Division of Labor.

21 (e) Each licensee shall conspicuously display the license in its established place of
22 business.

23 (f) Pursuant to such rules and regulations as may be promulgated by the board, the board
24 may deny the issuance of a license or revoke or suspend any license.

25 (g) All fees paid pursuant to this article shall be paid to the Commissioner of Labor and
26 deposited in an appropriated special revenue account in the State Treasury to be known as the
27 State Manufactured Housing Administration Fund. Expenditures from the fund shall be for the
28 administration and enforcement of this article. Through June 30, 2019, amounts collected which
29 are found from time to time to exceed funds needed for the purposes set forth in this article may
30 be utilized by the commissioner as needed to meet the division's funding obligations: *Provided*,
31 That beginning July 1, 2019, amounts collected may not be utilized by the commissioner as
32 needed to meet the division's funding obligations.

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.]

ARTICLE 11A. NOTICE AND OPPORTUNITY TO CURE CONSTRUCTION DEFECTS.

§21-11A-2. Applicability of article.

1 This article does not apply to an action:

2 (1) Against a contractor for which a claimant, as a consumer, is entitled to a specific
3 remedy pursuant to chapter 46A of this code;

4 (2) Against a contractor who is not licensed under the provisions of ~~article eleven of this~~
5 ~~chapter~~ §30-42-1 et seq., of this code;

6 (3) Demanding damages of \$5,000 or less;

7 (4) Alleging a construction defect that poses an imminent threat of injury to person or
8 property;

9 (5) Alleging a construction defect that causes property not to be habitable;

10 (6) Against a contractor who failed to provide the notice required by §21-11A-5 or §21-
11 11A-6 of this code;

12 (7) Against a contractor if the parties to the contract agreed to submit claims to mediation,
13 arbitration or another type of alternative dispute resolution; or

14 (8) Alleging claims for personal injury or death.

§21-11A-4. Applicability of definitions; definitions.

1 For the purposes of this article, the words or terms defined in this article, and any variation
2 of those words or terms required by the context, have the meanings ascribed to them in this
3 article. These definitions are applicable unless a different meaning clearly appears from the
4 context.

5 (1) "Action" means any civil action, or any alternative dispute resolution proceeding other
6 than the negotiation required under this article, for damages, asserting a claim for injury or loss
7 to real or personal property caused by an alleged defect arising out of or related to residential
8 improvements.

9 (2) "Claim" means a demand for damages by a claimant based upon an alleged
10 construction defect in residential improvements.

11 (3) "Claimant" means a homeowner, including a subsequent purchaser, who asserts a
12 claim against a contractor concerning an alleged construction defect in residential improvements.

13 (4) "Construction defect" means a deficiency in, or a deficiency arising out of, the design,
14 specifications, planning, supervision or construction of residential improvements that results from
15 any of the following:

16 (A) Defective material, products or components used in the construction of residential
17 improvements;

18 (B) Violation of the applicable codes in effect at the time of construction of residential
19 improvements;

20 (C) Failure in the design of residential improvements to meet the applicable professional
21 standards of care;

22 (D) Failure to complete residential improvements in accordance with accepted trade
23 standards for good and workmanlike construction: *Provided*, That compliance with the applicable
24 codes in effect at the time of construction is *prima facie* evidence of construction in accordance

25 with accepted trade standards for good and workmanlike construction, with respect to all matters
26 specified in those codes; or

27 (E) Failure to properly oversee, supervise and inspect services or goods provided by the
28 contractor's subcontractor, officer, employee, agent or other person furnishing goods or services.

29 (5) "Contract" means a written contract between a contractor and a claimant by the terms
30 of which the contractor agrees to provide goods or services, by sale or lease, to or for a claimant.

31 (6) "Contractor" means a contractor, licensed under the provisions of ~~article eleven of this~~
32 ~~chapter~~ §30-42-1 et seq., of this code, who has entered into a contract directly with a claimant.
33 The term does not include the contractor's subcontractor, officer, employee, agent or other person
34 furnishing goods or services to a claimant.

35 (7) "Day" means a calendar day. If an act is required to occur on a day falling on a
36 Saturday, Sunday or holiday, the first working day which is not one of these days should be
37 counted as the required day for purposes of this article.

38 (8) "Goods" means supplies, materials or equipment.

39 (9) "Parties" means: (A) The claimant; and (B) any contractor, subcontractor, agent or
40 other person furnishing goods or services and upon whom a claim of an alleged construction
41 defect has been served under this article.

42 (10) "Residential improvements" means: (A) The construction of a residential dwelling or
43 appurtenant facility or utility; (B) an addition to, or alteration, modification or rehabilitation of an
44 existing dwelling or appurtenant facility or utility; or (C) repairs made to an existing dwelling or
45 appurtenant facility or utility; In addition to actual construction or renovation, residential
46 improvements actually added to residential real property include the design, specifications,
47 surveying, planning, goods, services and the supervision of a contractor's subcontractor, officer,
48 employee, agent or other person furnishing goods or services to a claimant.

49 (11) "Services" means the furnishing of skilled or unskilled labor or consulting or
50 professional work, or a combination thereof.

51 (12) "Subcontractor" means a contractor who performs work on behalf of another
52 contractor on residential improvements.

53 (13) "Supplier" means a person who provides goods for residential improvements.

ARTICLE 16. REGULATION OF HEATING, VENTILATING AND COOLING WORK.

§21-16-4. Scope of practice.

1 (a) A HVAC technician in training is authorized to assist in providing heating, ventilating,
2 and cooling work only under the direction and control of a HVAC technician.

3 (b) A HVAC technician is authorized to provide heating, ventilating, and cooling work
4 without supervision.

5 (c) Persons licensed under this article are subject to the applicable provisions of the
6 Contractor Licensing Act in ~~article eleven of this chapter~~ §30-42-1 et seq., of this code in the
7 performance of work authorized by this article.

CHAPTER 21A. UNEMPLOYMENT COMPENSATION.

ARTICLE 10. GENERAL PROVISIONS.

§21A-10-11. Reporting requirements and required information; use of information; libel and slander actions prohibited.

1 (a) Each employer, including labor organizations as defined in subsection (i) of this
2 section, shall, quarterly, submit certified reports on or before the last day of the month next
3 following the calendar quarter, on forms to be prescribed by the commissioner. The reports shall
4 contain:

5 (1) The employer's assigned unemployment compensation registration number, the
6 employer's name and the address at which the employer's payroll records are maintained;

7 (2) Each employee's Social Security account number, name and the gross wages paid to
8 each employee, which shall include the first \$12,000 of remuneration and all amounts in excess
9 of that amount, notwithstanding §21-1A-28(b)(1) of this code;

10 (3) The total gross wages paid within the quarter for employment, which includes money
11 wages and the cash value of other remuneration, and shall include the first \$12,000 of
12 remuneration paid to each employee and all amounts in excess of that amount, notwithstanding
13 §21-1A-28(b)(1) of this code; and

14 (4) Other information that is reasonably connected with the administration of this chapter.

15 (b) Information obtained may not be published or be open to public inspection to reveal
16 the identity of the employing unit or the individual.

17 (c) Notwithstanding the provisions of subsection (b) of this section, the commissioner may
18 provide information obtained to the following governmental entities for purposes consistent with
19 state and federal laws:

20 (1) The United States Department of Agriculture;

21 (2) The state agency responsible for enforcement of the Medicaid program under Title XIX
22 of the Social Security Act;

23 (3) The United States Department of Health and Human Services or any state or federal
24 program operating and approved under Title I, Title II, Title X, Title XIV or Title XVI of the Social
25 Security Act;

26 (4) Those agencies of state government responsible for economic and community
27 development; early childhood, primary, secondary, postsecondary and vocational education; the
28 West Virginia P-20 longitudinal data system established pursuant to §18B-1D-10 of this code; and
29 vocational rehabilitation, employment and training, including, but not limited to, the administration
30 of the Perkins Act and the Workforce Innovation and Opportunity Act;

31 (5) The Tax Division, but only for the purposes of collection and enforcement;

32 (6) The Division of Labor for purposes of enforcing the wage bond pursuant to the
33 provisions of §21-5-14 of this code ~~and the contractor licensing provisions of chapter twenty one~~
34 ~~of this code;~~

35 (7) The contractors licensing board for the purpose of enforcing the contractors licensing
36 provisions pursuant to §30-42-1 et seq., of this code;

37 ~~(7)~~ (8) Any agency of this or any other state, or any federal agency, charged with the
38 administration of an unemployment compensation law or the maintenance of a system of public
39 employment offices;

40 ~~(8)~~ (9) Any claimant for benefits or any other interested party to the extent necessary for
41 the proper presentation or defense of a claim; and

42 ~~(9)~~ (10) The Insurance Commissioner for purposes of its Workers Compensation
43 regulatory duties.

44 (d) The agencies or organizations which receive information under subsection (c) of this
45 section shall agree that the information shall remain confidential as not to reveal the identity of
46 the employing unit or the individual consistent with the provisions of this chapter.

47 (e) The commissioner may, before furnishing any information permitted under this section,
48 require that those who request the information shall reimburse ~~the Bureau of Employment~~
49 ~~Programs~~ WorkForce West Virginia for any cost associated for furnishing the information.

50 (f) The commissioner may refuse to provide any information requested under this section
51 if the agency or organization making the request does not certify that it will comply with the state
52 and federal law protecting the confidentiality of the information.

53 (g) A person who violates the confidentiality provisions of this section is guilty of a
54 misdemeanor and, upon conviction thereof, shall be fined not less than \$20 nor more than \$200
55 or confined in a county or regional jail not longer than 90 days, or both.

56 (h) An action for slander or libel, either criminal or civil, may not be predicated upon
57 information furnished by any employer or any employee to the commissioner in connection with
58 the administration of any of the provisions of this chapter.

59 (i) For purposes of subsection (a) of this section, the term "labor organization" means any
60 organization of any kind, or any agency or employee representation committee or plan, in which

61 employees participate and which exists for the purpose, in whole or in part, of dealing with
62 employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or
63 conditions of work. It includes any entity, also known as a hiring hall, which is used by the
64 organization and an employer to carry out requirements described in 29 U. S. C. §158(f)(3) of an
65 agreement between the organization and the employer.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 42. WEST VIRGINIA CONTRACTOR LICENSING ACT.

§30-42-1. Short title.

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

§30-42-2. 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.

§30-42-3. Definitions.

1 (a) “Basic universal design” means the design of products and environments to be useable
2 by all people, to the greatest extent possible, without the need for adaptation or specialization.

3 (b) “Board” means the West Virginia Contractor Licensing Board.

4 (c) “Cease and desist order” means an order issued by the board pursuant to the
5 provisions of this article.

6 (d) “Contractor” means a person who in any capacity for compensation, other than as an
7 employee of another, undertakes, offers to undertake, purports to have the capacity to undertake

8 or submits a bid to construct, alter, repair, add to, subtract from, improve, move, wreck, or
9 demolish any building, highway, road, railroad, structure, or excavation associated with a project,
10 development, or improvement, or to do any part thereof, including the erection of scaffolding or
11 other structures or works in connection therewith, where the cost of the undertaking is \$10,000 or
12 more for residential work or \$50,000 or more for commercial work.

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

15 Contractor does not include:

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

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

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

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

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

33 (6) A person who performs landscaping or painting services for commercial or residential
34 customers.

35 (e) "Electrical contractor" means a person who engages in the business of contracting to
36 install, erect, repair or alter electrical equipment for the generation, transmission, or utilization of
37 electrical energy.

38 (f) "General building contractor" means a person whose principal business is in connection
39 with any structures built, being built, or to be built for the support, shelter and enclosure of persons,
40 animals, chattels, or movable property of any kind, requiring in the construction the use of more
41 than two contractor classifications, or a person who supervises the, whole or any part, of the
42 construction.

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

51 (h) "Heating, ventilating and cooling contractor" means a person who engages in the
52 business of contracting to install, erect, repair, service or alter heating, ventilating and air
53 conditioning equipment or systems to heat, cool or ventilate residential and commercial
54 structures.

55 (i) "License" means a license to engage in business in this state as a contractor in one of
56 the classifications set out in this article.

57 (j) "Multifamily contractor" means a person who is engaged in construction, repair, or
58 improvement of a multifamily residential structure.

59 (k) "Person" includes an individual, firm, sole proprietorship, partnership, corporation,
60 association, or other entity engaged in the undertaking of construction projects or any combination
61 thereof.

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

65 (m) "Plumbing contractor" means a person whose principal business is the installation,
66 maintenance, extension and alteration of piping, plumbing fixtures, plumbing appliances and
67 plumbing appurtenances, venting systems and public or private water supply systems within or
68 adjacent to any building or structure; included in this definition is installation of gas piping, chilled
69 water piping in connection with refrigeration processes and comfort cooling, hot water piping in
70 connection with building heating and piping for stand pipes.

71 (n) "Residential contractor" means a person whose principal business is in connection with
72 construction, repair or improvement of real property used as, or intended to be used for, residential
73 occupancy.

74 (o) "Specialty contractor" means a person who engages in specialty contracting services
75 which do not substantially fall within the scope of any contractor classification as set out herein.

76 (p) "Residential occupancy" means occupancy of a structure for residential purposes for
77 periods greater than 30 consecutive calendar days.

78 (q) "Residential structure" means a building or structure used or intended to be used for
79 residential occupancy, together with related facilities appurtenant to the premises as an adjunct
80 of residential occupancy, which contains not more than three distinct floors which are above grade
81 in any structural unit regardless of whether the building or structure is designed and constructed
82 for one or more living units. Dormitories, hotels, motels or other transient lodging units are not
83 residential structures.

84 (r) "Subcontractor" means a person who performs a portion of a project undertaken by a
85 principal or general contractor or another subcontractor.

§30-42-4. 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. The 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, as defined in §30-42-3 of this
9 code. Two of the appointed members shall be building code officials who are not members of any
10 contracting industry. At least three members of the board shall reside, at the time of their
11 appointment, in each congressional district as existing on January 1, 2018. The Secretary of the
12 Department of Tax and Revenue or designee, and the Commissioner of WorkForce West Virginia
13 or designee shall be ex-officio nonvoting members of the board.

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

22 (c) The board shall elect a chair from one of the voting members of the board. The board
23 shall meet at least once annually and at such other times as called by the chair or a majority of
24 the board. Board members shall receive compensation not to exceed the amount paid to
25 members of the Legislature for the interim duties as recommended by the Citizens Legislative
26 Compensation Commission and authorized by law for each day or portion of a day spent attending
27 meetings of the board and shall be reimbursed for all reasonable and necessary expenses
28 incurred incident to his or her duties as a member of the board. A majority of the members
29 appointed shall constitute a quorum of the board.

§30-42-5. Administrative duties and powers of the board; rules.

1 (a) The board shall propose rules for legislative approval in accordance with §29A-3-1 et
2 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 the examinations, and notify applicants thereof;

23 (2) Investigate alleged violations of this article and legislative rules, orders, and final
24 decisions of the board;

25 (3) Notify the board members of meeting dates and agenda items at least five days prior
26 to the meetings; and

27 (4) Take minutes and records of all meetings and proceedings.

28 (c) The board has all the powers and duties set forth in this article, including:

29 (1) Maintaining an office and hire, discharge, establish the job requirements and fix the
30 compensation of employees, and contract persons necessary to enforce the provisions of this
31 article,

32 (2) To sue and be sued in its official name as an agency of this state; and

33 (3) Conferring with the Attorney General or assistants of the Attorney General in
34 connection with legal matters and questions.

35 (d) The board shall perform the following administrative duties:

36 (1) Collect and record all fees;

37 (2) Maintain records and files;

38 (3) Issue and receive application forms;

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

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

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

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

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

47 (9) Answer routine inquiries;

48 (10) Maintain files relating to individual licensees;

49 (11) Arrange for printing and advertising;

50 (12) Purchase supplies;

51 (13) Employ additional help when needed;

52 (14) Shall contract with the Division of Labor for, and the Division of Labor shall provide,
53 inspection, enforcement, and investigative services for 24 months after the effective date of this
54 article. After 24 months, the board shall be responsible for providing inspection, enforcement, and
55 investigative services; and

56 (15) Issue cease and desist orders to persons engaging in contracting within the state
57 without a valid license.

58 (e) Following successful completion of the examination, and prior to the issuance of the
59 license, the applicant shall certify by affidavit that the applicant:

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

61 (2) Has registered, and is in compliance, with the workers' compensation fund and the
62 employment security fund, as required by §23-1-1 et seq., and §21A-1-1 et seq., of this code; and

63 (3) Is in compliance with the applicable wage bond requirements of §21-5-14 of this code:

64 Provided, That in the case of an out-of-state contractor not doing business in this state and
65 seeking licensure for bidding purposes only, the applicant may be granted a conditional license
66 for bid purposes only.

§30-42-6. Necessity for license; exemptions.

1 (a) No person may engage in this state in any activity as a contractor or submit a bid to
2 perform work as a contractor, as defined in this article, unless that person holds a license issued
3 under the provisions of this article. No firm, partnership, corporation, association, or other entity
4 may 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 is subject, after hearing, to a warning, a reprimand, or a fine of not more than
11 \$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 by the owner of the equipment on an emergency basis in order
25 to maintain or restore the operation of the 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 the 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.

§30-42-7. 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) No license may be issued without examination pursuant to this subsection: *Provided*,
7 That any person issued a contractor's license by the board pursuant to this subsection may apply
8 to the board for transfer of the license to a new business entity in which the license holder is the
9 principal owner, partner, or corporate officer: *Provided, however*, That a license holder may hold
10 a license on behalf of only one business entity during a given time period. The board may transfer
11 the license issued pursuant to this subsection to the new business entity without requiring
12 examination of the license holder.

§30-42-8. 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 §29A-3-1 et
5 seq., of this code, to establish license and renewal fees.

§30-42-9. 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 §30-42-7(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 §30-42-14
6 of this code.

§30-42-10. 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 the person is duly licensed under
6 the provisions of this article to carry out or superintend the construction, or file a written affidavit
7 that the person is not subject to licensure as a contractor or subcontractor as defined in this article.
8 The inspector or authority may not issue a building permit to any person who does not possess a
9 valid contractor's license when required by this article.

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

14 (c) The board shall file a procedural rule setting forth a standard contract form which meets
15 the minimum requirements of this subsection for use by licensees. The board shall post the
16 contract form on its website and shall assist licensees in the correct completion of the form. The

17 board shall mail a written notice of the requirements imposed by the rule to each licensed
18 contractor at the address provided to the board by the contractor on his or her last application for
19 licensure or renewal.

§30-42-11. Informational list for basic universal design features.

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.

§30-42-12. 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 must
4 be included on any bid submission. A subcontractor shall furnish that person's contractor's license
5 number to the contractor prior to the award of the contract.

§30-42-13. 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 rule on a delayed renewal fee to be paid for issuance of any license which has
3 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) If continuing education or other requirements are made a condition of license
7 reinstatement after lapse, suspension, or revocation, these requirements must be satisfied before
8 the license is reissued.

§30-42-14. 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 shall issue a cease and desist order requiring the person to
3 immediately cease all operations in the state. The order shall be withdrawn upon issuance of a
4 license to that 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 fined and confined;

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 a
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.

§30-42-15. Disciplinary powers of the board.

1 (a) The board may 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 §30-42-10 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.

§30-42-16. Rules.

1 The board may propose rules for legislative approval in accordance with §29A-3-1 et seq.,
2 of this code that are necessary to carry out the provisions of this article. The board may
3 disseminate educational or any other material designed to improve performance standards of any
4 contractor group to contractors within the state. The board may adopt, and use, a seal with the
5 words "State Contractor Licensing Board of West Virginia". Any rule previously authorized under
6 the provisions of §21-11-1 et seq., of this code shall remain in effect until amended, replaced, or
7 repealed by the Legislature.

§30-42-17. Record keeping.

1 (a) The board shall keep a record of all actions taken and account for moneys received.
2 All moneys shall be deposited in a special account in the State Treasury to be known as the "West
3 Virginia Contractor Licensing Board Fund". Expenditures from this fund shall be for the purposes
4 set forth in this article and are not authorized from collections but are to be made only in
5 accordance with appropriation by the Legislature and in accordance with the provisions of §12-3-
6 1 et seq., of this code and upon the fulfillment of the provisions set forth in §5A-2-1 et seq., of this
7 code. Amounts collected which are found from time to time to exceed the funds needed for
8 purposes set forth in this article may be transferred to other accounts or funds and redesignated
9 for other purposes by appropriation of the Legislature.

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

15 (c)(1) All investigations, complaints, reports, records, proceedings, and other information
16 received by the board and related to complaints made to the board or investigations conducted
17 by the board pursuant to this article, including the identity of the complainant or respondent, are

18 confidential and may not be knowingly and improperly disclosed by any member or former
19 member of the board or staff, except as follows:

20 (A) Upon a finding that probable cause exists to believe that a respondent has violated
21 the provisions of this article, the complaint and all reports, records, nonprivileged and
22 nondeliberative materials introduced at any probable cause hearing held pursuant to the
23 complaint are thereafter not confidential: *Provided*, That confidentiality of the information shall
24 remain in full force and effect until the respondent has been served with a copy of the statement
25 of charges.

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

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

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

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

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

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

§30-42-18. Reciprocity.

1 To the extent that other states which provide for the licensing of contractors provide for
2 similar action, the board may grant licenses of the same or equivalent classification to contractors
3 licensed by other states, without written examination upon satisfactory proof furnished to the
4 board that the qualifications of the applicants are equal to the qualifications of holders of similar
5 licenses in this state, and upon certification to the board as required by §30-42-15(c) of this code,
6 and upon payment of the required fee.

§30-42-19. Board authorized to provide training.

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

6 (b) For the purposes of this section, the board may expend funds from its special revenue
7 account, known as the Contractor Licensing Fund, to support this activity.

§30-42-20. Nonapplicability of local ordinances; exclusive license.

1 After the effective date of this article no municipality, local government, or county may
2 require any license or other evidence of competence as a contractor from any person, firm, or
3 corporation who or which holds a valid and current license issued pursuant to this article, as a
4 condition precedent to permission for the performance of contractor work in such municipality,
5 local government jurisdiction, or county.

NOTE: The purpose of this bill is to transfer the West Virginia Contractor Licensing Act from administration and regulation by the Division of Labor to regulation under the provisions of professions and occupations in chapter 30 of this code. The bill retains the short title and declaration of policy with definitions of the existing act. It continues the West Virginia Contractor Licensing Board, composition, terms, qualifications, and appointment, together with administrative duties of board and legislative rules, without the Division of Labor. The bill does provide that the Division of Labor shall continue to perform inspections to ensure all applicable requirements are being met. The bill retains the necessity for contractor license and exemptions, procedure for licensing, expiration date, fees, and renewal of license. It continues procedure for revocation for unlawful use, assignment, or transfer of license. The bill continues the prerequisites to obtaining building permit and mandatory written contracts for certain work. The requirement of informational list for basic universal design features is retained, as is the provision for injunction and criminal penalties for violation of the article. Specific administrative duties of board and record keeping by the board are provided without the Division of Labor. The board is authorized to grant reciprocity and to provide training to students who desire to obtain a West Virginia contractor license. Misdemeanor criminal penalties for violations of article are retained. Finally, the bill restricts municipalities, local governments, and counties from requiring a license at their jurisdictional level to perform contracting work.

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