

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1990

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ENROLLED

Com. Sub. for
HOUSE BILL No. 4134

(By ~~Mr.~~ *Del. Landerback & Wooten*)

— ● —

Passed *March 6,* 1990

In Effect *ninety days from* Passage

•  C-641



ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 4134
(By DELEGATES LOUDERBACK AND WOOTON)

[Passed March 6, 1990; in effect ninety days from passage.]

AN ACT to amend and reenact article twelve, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to architects; the West Virginia board of architects; definitions; fees; registration qualifications; registration renewal; certificate of registration; requiring seal; disciplinary powers of board; disciplinary proceedings; registration prima facie evidence; prohibited acts; construction administration services; exceptions; enforcement of rules by attorney general or prosecuting attorney; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

That article twelve, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 12. ARCHITECTS.

§30-12-1. Board of architects.

- 1 The West Virginia board of architects, heretofore
- 2 created, shall continue in existence and shall consist of
- 3 seven members, five of whom shall be architects,
- 4 appointed by the governor by and with the advice and

5 consent of the Senate and two of whom shall be lay
6 members, not of the same political party affiliation,
7 appointed by the governor by and with the advice and
8 consent of the Senate. Each member who is an architect
9 shall have been engaged in the active practice of his
10 profession in the state of West Virginia for not fewer
11 than ten years previous to his appointment. The
12 members of the board in office on the date this article
13 takes effect, in the year one thousand nine hundred
14 ninety, shall, unless sooner removed, continue to serve
15 until their respective terms expire and until their
16 successors have been appointed and have qualified.

17 The board, in addition to the authority, powers and
18 duties granted to it by this article, has the authority to
19 promulgate rules, pursuant to the provisions of chapter
20 twenty-nine-a of this code. Any disciplinary proceedings
21 held by the board shall be held in accordance with the
22 provisions of the administrative procedures act for
23 contested cases pursuant to the provisions of article five
24 of chapter twenty-nine-a of this code.

25 Pursuant to the provisions of section four, article ten,
26 chapter four of this code, the West Virginia board of
27 architects shall continue to exist until the first day of
28 July, one thousand nine hundred ninety-two.

§30-12-2. Definitions.

1 The following words as used in this article, unless the
2 context otherwise requires, have the following
3 meanings:

4 (1) "Architect" means any person who engages in the
5 practice of architecture as hereinafter defined.

6 (2) "Board" means the West Virginia board of archi-
7 tects established by section one of this article.

8 (3) "Direct supervision" means that degree of super-
9 vision by a person overseeing the work of another person
10 whereby the supervisor has both control over and
11 detailed professional knowledge of the work prepared
12 under his or her supervision.

13 (4) "Good moral character" means such character as

14 will enable a person to discharge the fiduciary duties of
15 an architect to his client and to the public for the
16 protection of health, safety and welfare. Evidence of
17 inability to discharge such duties include the commis-
18 sion of an offense justifying discipline under section
19 eight of this article.

20 (5) "Practice of architecture" means rendering or
21 offering to render those services, hereinafter described,
22 in connection with the design and construction, enlarge-
23 ment or alteration of a building or group of buildings
24 and the space within and surrounding such buildings,
25 which have as their principal purpose human occupancy
26 or habitation; the services referred to include planning,
27 providing preliminary studies, designs, drawings,
28 specifications and other technical submissions and
29 administration of construction contracts.

30 (6) "Registered architect" means an architect holding
31 a current registration.

32 (7) "Registration" means the certificate of registration
33 issued by board.

34 (8) "Technical submissions" means designs, drawings,
35 specifications, studies and other technical reports
36 prepared in the course of practicing architecture.

§30-12-3. Fees.

1 (a) Notwithstanding any other provision of the law to
2 the contrary, the board is authorized and empowered to
3 establish a schedule of fees to be charged to applicants.
4 The board shall charge for: Examination, reexamina-
5 tion, renewal of certificates, restoration of expired
6 certificates, reciprocal registration and for any other
7 matters deemed appropriate by the board.

8 (b) The board shall cause such schedule of fees to be
9 published annually in the state register. Until such time
10 as the board establishes otherwise, the fees previously
11 set by statute remain in effect.

§30-12-4. Registration qualifications.

1 Every person applying to the board for initial
2 registration shall submit an application accompanied by

3 the fee established in accordance with section three of
4 this article with satisfactory evidence that such person
5 holds an accredited professional degree in architecture
6 or has completed such other education as the board
7 considers equivalent to an accredited professional
8 degree and with satisfactory evidence that such person
9 has completed such practical training in architectural
10 work as the board requires. If an applicant is qualified,
11 the board shall, by means of a written examination,
12 examine the applicant on such technical and profes-
13 sional subjects as prescribed by it. None of the exam-
14 ination materials are public records as defined in article
15 one, chapter twenty-nine-b of this code. The board may
16 exempt from such written examination an applicant
17 who holds certification issued by the national council of
18 architectural registration boards. The board may adopt
19 as its own rules governing practical training and
20 education those guidelines published from time to time
21 by the national council of architectural registration
22 boards. The board may also adopt the examinations and
23 grading procedures of the national council of architec-
24 tural registration board and the accreditation decisions
25 of the national architectural accrediting board. The
26 board shall issue its registration to each applicant who
27 is found to be of good moral character and who satisfies
28 the requirements set forth in this section. The registra-
29 tion is effective upon issuance.

§30-12-5. Registration renewal.

1 The board shall mail each year to every registered
2 architect an application for renewal of registration. The
3 application, properly filled out and accompanied by the
4 renewal fee established in accordance with section three
5 of this article, shall be returned to the board on or before
6 the date established by the board. After verification of
7 the facts stated in the renewal application, the board
8 shall issue a registration which is valid for one year,
9 expiring on the thirtieth day of June of each year. Any
10 holder of a registration who fails to renew his or her
11 application on or before the prescribed date, before
12 again engaging in the practice of architecture within
13 the state, is required to apply for reinstatement, pay the

14 prescribed fee and, in circumstances considered appropriate by the board, may be required to be reexamined.

§30-12-6. Certificate of registration.

1 Every registered architect having a place of business
2 or employment within the state shall display his or her
3 certificate of registration in a conspicuous place in such
4 place of business or employment. A new certificate of
5 registration, to replace a lost, destroyed or mutilated
6 certificate, shall be issued by the board upon payment
7 of a fee established in accordance with section three of
8 this article and such certificate shall be stamped or
9 marked "duplicate."

§30-12-7. Seal.

1 (a) Every registered architect shall have a seal of a
2 design authorized by the board by rule. All technical
3 submissions prepared by such architect, or under his or
4 her direct supervision, shall be stamped with the
5 impression of his or her seal. No architect holding a
6 registration may impress his or her seal on any technical
7 submissions unless they were prepared under his or her
8 direct supervision: *Provided*, That in the case of the
9 portions of such technical submissions prepared under
10 the direct supervision of persons consulting with or
11 employed by the architect, the architect may sign or seal
12 those portions of the technical submission if the
13 architect has reviewed such portions and has coordinated their preparation.

15 (b) No public official charged with the enforcement
16 duties of a municipal building inspector may accept or
17 approve any technical submissions involving the practice of architecture unless the technical submissions
18 have been stamped as required by this section or by a
19 registered engineer or the applicant has certified
20 thereon the applicability of a specific exception under
21 section twelve of this article permitting the preparation
22 of such technical submissions by a person not registered
23 thereunder. A building permit issued with respect to
24 technical submissions which do not conform with the
25 requirements of this section is invalid.
26

§30-12-8. Disciplinary powers.

1 The board may revoke, suspend or annul a registra-
2 tion, or impose a civil penalty in an amount not more
3 than two thousand dollars for each violation, upon
4 satisfactory proof to the board that any person has
5 violated the provisions of this article or any rules
6 promulgated by the board under this article. In hearing
7 matters arising under this section, the board may take
8 into account suitable evidence of reform.

§30-12-9. Disciplinary proceedings.

1 Charges against any person involving any matter
2 coming within the jurisdiction of the board shall be in
3 writing and shall be filed with the board. Such charges,
4 at the discretion of the board, shall be heard within a
5 reasonable time after being so filed. The accused person
6 has the right at such hearing to appear personally, with
7 or without counsel, to cross-examine adverse witnesses
8 and to produce evidence and witnesses in his or her
9 defense. The board shall set the time and place for such
10 hearing and shall cause a copy of the charges, together
11 with a notice of the time and place fixed for the hearing,
12 to be sent by registered mail to the accused person, at
13 his or her latest place or residence or business known
14 to the board, at least thirty days before such date. If
15 after such hearing the board finds the accused person
16 has violated any of the provisions of this article or any
17 of the rules promulgated by the board, it may issue any
18 order described in section eight of this article. If the
19 board finds no such violation, then it shall enter an order
20 dismissing the charges. If the order revokes, suspends
21 or annuls an architect's registration, the board shall so
22 notify, in writing, the secretary of state and the clerk
23 of the municipality in the state wherein such architect
24 has a place of business, if any.

25 The board may reissue a registration to any person
26 whose registration has been revoked. Application for the
27 reissuance of the registration shall be made in such a
28 manner as the board may direct and shall be accompan-
29 ied by a fee established in accordance with section three
30 of this article.

§30-12-10. Registration; prima facie evidence.

1 Every registration issued and remaining in force is
2 prima facie evidence in all courts of the state that the
3 person named therein is legally registered as an
4 architect for the period for which it is issued and of all
5 other facts stated therein.

§30-12-11. Prohibition.

1 Except as hereinafter set forth in section twelve of
2 this article, no person may directly or indirectly engage
3 in the practice of architecture in the state or use the title
4 "architect," "registered architect," "architectural
5 designer," or display or use any words, letters, figures,
6 titles, sign, card, advertisement or other symbol or
7 device indicating that such person is an architect or is
8 practicing architecture, unless he or she is registered
9 under the provisions of this article. No person may aid
10 or abet any person, not registered under the provisions
11 of this chapter, in the practice of architecture.

§30-12-11a. Construction administration services required.

1 (a) The owner of any real property who allows a
2 project to be constructed on such real property shall be
3 engaged in the practice of architecture unless such
4 owner may have employed or may have caused others
5 to have employed a registered architect or registered
6 engineer to furnish "construction administration servi-
7 ces" with respect to such project.

8 (b) For purposes of this section, the following terms
9 shall have the following meanings:

10 (1) "Building official" means the person appointed by
11 the municipality or state subdivision having jurisdiction
12 over the project to have principal responsibility for the
13 safety of the project as finally built.

14 (2) "Construction administration services" comprises
15 at the following services: (A) Visiting the construction
16 site on a regular basis as is necessary to determine that
17 the work is proceeding generally in accordance with the
18 technical submissions submitted to the building official

19 at the time the building permit was issued; (B) process-
20 ing shop drawings, samples, and other submittals
21 required of the contractor by the terms of construction
22 contract documents; and (C) notifying an owner and the
23 building official of any code violations, changes which
24 affect code compliance, the use of any materials,
25 assemblies, components, or equipment prohibited by a
26 code, major or substantial changes between such
27 technical submissions which he or she identifies as
28 constituting a hazard to the public, which he or she
29 observes in the course of performing his or her duties.

30 (3) "Owner" means with respect to any real property
31 and of the following persons: (A) The holder of a
32 mortgage secured by such real property; (B) the holder,
33 directly or indirectly, of an equity interest in such real
34 property exceeding ten percent of the aggregate equity
35 interests in such real property; (C) the record owner of
36 such real property; or (D) the lessee of all or any portion
37 of such real property when the lease covers all of that
38 portion of such real property upon which the project is
39 being constructed, the lessee has significant approval
40 rights with respect to the project, and the lease, at the
41 time the construction of the project begins, has a
42 remaining term of not less than ten years.

43 (4) "Project" means the construction, enlargement, or
44 alteration of a building, other than a building exempted
45 by the provisions of section twelve of this article, which
46 has as its principal purpose human occupancy or
47 habitation.

48 (c) If the registered engineer or registered architect
49 who sealed the technical submissions which were
50 submitted to the building official at the time the
51 building permit was issued has not been employed to
52 furnish construction administration services at the time
53 such registered architect or registered engineer issued
54 such technical submissions, he or she shall note on such
55 technical submissions that he or she has not been so
56 employed. If he or she is not employed to furnish
57 construction administration services when construction
58 of the project begins, he or she shall file, not later than
59 thirty days after such construction begins, with the

60 board and with the building official, on a form pres-
 61 cribed by the board, a notice setting forth the names of
 62 the owner or owners known to him or her, the address
 63 of the project, and the name, if known to him or her,
 64 of the registered architect employed to perform con-
 65 struction administration services. If he or she believes
 66 that no registered architect or registered engineer has
 67 been so employed, he or she shall so state on the form.
 68 Any registered architect or registered engineer who
 69 fails to place the note on his or her technical submissions
 70 or to file such notice, as required by this paragraph,
 71 shall have violated the provisions of this chapter and
 72 shall be subject to discipline as set forth herein.

73 (d) If the board determines, with respect to a partic-
 74 ular project or class of projects, that the public is
 75 adequately protected without the necessity of a regis-
 76 tered architect or registered engineer performing
 77 construction administrative services, the board may
 78 waive the requirements of this section with respect to
 79 such project or class of projects.

§30-12-12. Exceptions.

1 Nothing in this article may be construed to prevent:

2 (a) Any of the activities that, apart from this exemp-
 3 tion, would constitute the practice of architecture, if
 4 performed in connection with any of the following:

5 (1) A detached single family dwelling and any sheds,
 6 storage buildings and garages incidental thereto;

7 (2) A multi-family residential structure not in excess
 8 of three stories excluding any basement area;

9 (3) Farm buildings, including barns, silos, sheds or
 10 housing for farm equipment and machinery, livestock,
 11 poultry or storage, if such structures are designed to be
 12 occupied by no more than ten persons;

13 (4) Any alteration, renovation or remodeling of a
 14 building, if such alteration, renovation or remodeling
 15 does not affect structural or other safety features of the
 16 building or if the work contemplated by the design does
 17 not require the issuance of a permit under any appli-

18 cable building code;

19 (5) Preengineered buildings, including mobile class-
20 rooms purchased by county school boards; and

21 (6) A commercial structure which is to contain not
22 more than seventy-six hundred square feet and not in
23 excess of one story excluding any basement area.

24 (b) The preparation of any detailed or shop drawings
25 required to be furnished by a contractor, or the
26 administration of construction contracts by persons
27 customarily engaged in contracting work.

28 (c) The preparation of technical submissions or the
29 administration of construction contracts by employees of
30 a person or organization lawfully engaged in the
31 practice of architecture when such employees are acting
32 under the direct supervision of a registered architect.

33 (d) Officers and employees of the United States of
34 America from engaging in the practice of architecture
35 as employees of said United States of America.

36 (e) A partnership, corporation or other business entity
37 from performing or holding itself out as able to perform
38 any of the services involved in the practice of architec-
39 ture, provided such practice is actually carried on under
40 the direct supervision of architects registered in the
41 state of West Virginia.

42 (f) A nonresident, who holds a certificate to practice
43 architecture in the state in which he resides and in
44 addition holds the certification issued by the national
45 council of architectural registration boards, from
46 agreeing to perform or holding herself or himself out as
47 able to perform any of the professional services involved
48 in the practice of architecture: *Provided*, That he or she
49 may not perform any of the professional services
50 involved in the practice of architecture until registered
51 as hereinbefore provided and he or she notifies the board
52 in writing if, prior to registration, he or she engages in
53 any of the activities permitted by this paragraph.

54 (g) The practice of landscape architecture as defined
55 in section two, article twenty-two of this code.

§30-12-13. Enforcement.

1 The board shall enforce the provisions of this article
2 and of the rules adopted hereunder. If any person
3 refuses to obey any decision or order of the board, the
4 board or, upon the request of the board, the attorney
5 general or the appropriate prosecuting attorney, may
6 file an action for the enforcement of such decision or
7 order, including injunctive relief, in the circuit court of
8 the county of residence of such person. After due
9 hearing, the court shall order the enforcement of such
10 decision or order, or any part thereof, if legally and
11 properly made by the board and, where appropriate,
12 injunctive relief.

§30-12-14. Penalties.

1 Whoever violates any provision of this article is guilty
2 of a misdemeanor, and, upon conviction thereof, shall be
3 fined not more than one thousand dollars or imprisoned
4 in the county jail for not more than twelve months, or
5 both fined and imprisoned.

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

Frederick L. Parker
Chairman Senate Committee

Bernard V. Kelly
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Samuel E. Adams
Clerk of the Senate

Donald T. Kopp
Clerk of the House of Delegates

Paul Burdette
President of the Senate

Robert C. Chubb
Speaker of the House of Delegates

The within *is approved* this the *19th*
day of *March*, 1990.

Winston Caperton
Governor

PRESENTED TO THE

GOVERNOR

Date 3/13/90

Time 2:30 pm

RECEIVED

1990 MAR 13 PM 4:49

OFFICE OF THE ATTORNEY GENERAL
SECRETARY OF STATE

FILED IN THE OFFICE OF
SECRETARY OF STATE OF
WEST VIRGINIA

THIS DATE 3/19/98