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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# **WEST VIRGINIA LEGISLATURE**

FIRST REGULAR SESSION, 2001



# **ENROLLED**

**COMMITTEE SUBSTITUTE  
FOR**

**House Bill No. 2801**

(By Delegates Tucker, Staton, Marshall,  
Vamer, Caputo, Kuhn and Hubbard)



Passed April 13, 2001

In Effect Ninety Days from Passage

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FOR

**H. B. 2801**

(BY DELEGATES TUCKER, STATON, MARSHALL,  
VARNER, CAPUTO, KUHN AND HUBBARD)

[Passed April 13, 2001; in effect ninety days from passage.]

AN ACT to amend and reenact section fourteen, article eleven, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the contractors' licensing board; providing for an additional cause for disciplinary action; and removing obsolete language concerning disciplinary hearing requirements provided by legislative rule.

*Be it enacted by the Legislature of West Virginia:*

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

**ARTICLE 11. WEST VIRGINIA CONTRACTOR LICENSING ACT.**

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

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

3 (1) Permanently revoke a license;

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

5 (3) Censure or reprimand a licensee;

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

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

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

15 (b) The board may summarily suspend a licensee pending  
16 a hearing or pending an appeal after hearing upon a determina-  
17 tion that the licensee poses a clear, significant and immediate  
18 danger to the public health and safety.

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

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

27 (e) A person or contractor adversely affected by disciplin-  
28 ary action may appeal to the board within sixty days of the date

29 the disciplinary action is taken. he board shall hear the appeal  
30 within thirty days from receipt of notice of appeal in accordance  
31 with the provisions of chapter twenty-nine-a of this code.  
32 Hearings shall be held in Charleston. The board may retain a  
33 hearing examiner to conduct the hearings and present proposed  
34 findings of fact and conclusions of law to the board for its  
35 action.

36 (f) Any party adversely affected by any action of the board  
37 may appeal that action pursuant to the provisions of chapter  
38 twenty-nine-a of this code.

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

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

42 (2) Willful failure or refusal to complete a construction  
43 project or operation with reasonable diligence, thereby causing  
44 material injury to another;

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

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

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

59 (6) Willful or deliberate misrepresentation of a material fact  
60 by an applicant or licensee in obtaining a license, or in connec-  
61 tion with official licensing matters;

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

65 (8) Willfully or deliberately acting in the capacity of a  
66 contractor when not licensed, or as a contractor by a person  
67 other than the person to whom the license is issued except as an  
68 employee of the licensee;

69 (9) Willfully or deliberately acting with the intent to evade  
70 the provisions of this article by: (i) Aiding or abetting an  
71 unlicensed person to evade the provisions of this article; (ii)  
72 combining or conspiring with an unlicensed person to perform  
73 an unauthorized act; (iii) allowing a license to be used by an  
74 unlicensed person; or (iv) attempting to assign, transfer or  
75 otherwise dispose of a license or permitting the unauthorized  
76 use thereof;

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

80 (11) Performing work which is not commensurate with a  
81 general standard of the specific classification of contractor or  
82 which is below a building or construction code adopted by the  
83 municipality or county in which the work is performed; or

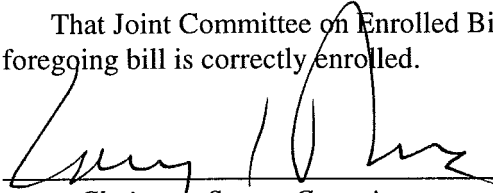
84 (12) Knowingly employing a person or persons who do not  
85 have the legal right to be employed in the United States.

86 (h) In all disciplinary hearings the board has the burden of  
87 proof as to all matters in contention. No disciplinary action may  
88 be taken by the board except on the affirmative vote of at least

89 six members thereof. Other than as specifically set out herein,  
90 the board has no power or authority to impose or assess  
91 damages.

92 (i) On or before the first day of January, two thousand one,  
93 the board shall propose rules for legislative approval in accor-  
94 dance with the provisions of article three, chapter twenty-nine-a  
95 of this code, which shall specify a procedure for the investiga-  
96 tion and resolution of all complaints against persons licensed  
97 under this chapter.

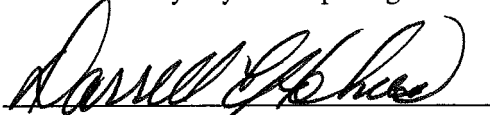
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

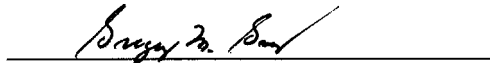
  
Chairman Senate Committee

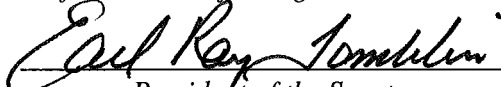
  
Chairman House Committee

Originating in the House.

In effect ninety days from passage.

  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within is approved this the 24th  
day of April, 2001.

  
Governor

PRESENTED TO THE

GOVERNOR

Date 4/21/01

Time 2:08