WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2001

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 2801

(By Delegates Tucker, Staton, Marshall, Varner, 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.

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

1. Permanently revoke a license;
2. Suspend a license for a specified period;
3. Censure or reprimand a licensee;
4. Impose limitations or conditions on the professional practice of a licensee;
5. Impose requirements for remedial professional education to correct deficiencies in the education, training and skill of a licensee; and
6. Impose a probationary period requiring a licensee to report regularly to the board on matters related to the grounds for probation; the board may withdraw probationary status if the deficiencies that require the sanction are remedied.

(b) The board may summarily suspend a licensee pending a hearing or pending an appeal after hearing upon a determination that the licensee poses a clear, significant and immediate danger to the public health and safety.

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

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

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

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

(g) The following are causes for disciplinary action:

1. Abandonment, without legal excuse, of any construction
project or operation engaged in or undertaken by the licensee;

2. Willful failure or refusal to complete a construction
project or operation with reasonable diligence, thereby causing
material injury to another;

3. Willful departure from or disregard of plans or specifica-
tions in any material respect without the consent of the
parties to the contract;

4. Willful or deliberate violation of the building laws or
regulations of the state or of any political subdivision thereof;

5. Willful or deliberate failure to pay any moneys when
due for any materials free from defect, or services rendered in
connection with the person’s operations as a contractor when
the person has the capacity to pay or when the person has
received sufficient funds under the contract as payment for the
particular construction work for which the services or materials
were rendered or purchased, or the fraudulent denial of any
amount with intent to injure, delay or defraud the person to
whom the debt is owed;
(6) Willful or deliberate misrepresentation of a material fact by an applicant or licensee in obtaining a license, or in connection with official licensing matters;

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

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

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

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

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

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

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

(i) On or before the first day of January, two thousand one, the board shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, which shall specify a procedure for the investigation and resolution of all complaints against persons licensed 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 __th day of April, 2001.

Governor