WEST VIRGINIA LEGISLATURE
Regular Session, 2002

ENROLLED

SENATE BILL NO. 2429

(By Senators Bowman, Bailey and Minear)

PASSED March 9, 2002

In Effect ninety days from Passage
ENROLLED

Senate Bill No. 429

(By Senators Bowman, Bailey and Minear)

[Passed March 9, 2002; in effect ninety days from passage.]

AN ACT to amend and reenact sections seven, eight, ten, thirteen and fourteen, article eleven, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to licenses issued by the contractor licensing board; deleting outdated language creating exemption from examination; clarifying right to a hearing before suspension or revocation of license; clarifying right to appeal board decisions to circuit court; requiring written contracts; requiring board to file procedural rule; allowing board to require financial assurance from contractors who violate act or rule; and providing for civil and criminal penalties.

Be it enacted by the Legislature of West Virginia:

That sections seven, eight, ten, thirteen and fourteen, article eleven, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:
ARTICLE 11. WEST VIRGINIA CONTRACTOR LICENSING ACT.

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

(a) A person desiring to be licensed as a contractor under this article shall submit to the board a written application requesting licensure, providing the applicant's social security number and such other information as the board may require, on forms supplied by the board. The applicant shall pay a license fee not to exceed one hundred fifty dollars: Provided, That electrical contractors already licensed under section four, article three-b, chapter twenty-nine of this code shall pay no more than twenty dollars.

(b) A person holding a business registration certificate to conduct business in this state as a contractor on the thirtieth day of September, one thousand nine hundred ninety-one, may register with the board, certify by affidavit the requirements of subsection (c), section fifteen of this article and pay such license fee not to exceed one hundred fifty dollars and shall be issued a contractor's license without further examination: Provided, That no license may be issued without examination pursuant to this subsection after the first day of April, two thousand two.

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

(a) A license issued under the provisions of this article expires one year from the date on which it is issued. The board shall establish application and annual license fees not to exceed one hundred fifty dollars.

(b) The board may propose rules in accordance with the provisions of article three, chapter twenty-nine-a of this code, to establish license and renewal fees.

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

(a) Any person making application to the building inspector or other authority of any incorporated munici-
pality or other political subdivision in this state charged
with the duty of issuing building or other permits for the
construction of any building, highway, sewer or structure
or for any removal of materials or earth, grading or
improvement shall, before issuance of the permit, either
furnish satisfactory proof to the inspector or authority
that such person is duly licensed under the provisions of
this article to carry out or superintend the same or file a
written affidavit that such person is not subject to
licensure as a contractor or subcontractor as defined in
this article. The inspector or authority may not issue a
building permit to any person who does not possess a valid
contractor's license when required by this article.

(b) Effective the first day of October, two thousand two,
no person licensed under the provisions of this article may
perform contracting work of an aggregate value of ten
thousand dollars or more, including materials and labor,
without a written contract, setting forth a description and
cost of the work to be performed, signed by the licensee
and the person for whom the work is to be performed.

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

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

(a) Upon a determination that a person is engaged in
contracting business in the state without a valid license,
the board or commissioner shall issue a cease and desist
order requiring such person to immediately cease all
operations in the state. The order shall be withdrawn upon issuance of a license to such person. After a hearing, the board may impose a penalty of not less than two hundred dollars nor more than one thousand dollars upon any person engaging in contracting business in the state without a valid license.

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

(1) For a first offense, a fine of not less than two hundred dollars nor more than one thousand dollars;

(2) For a second offense, a fine of not less than five hundred dollars nor more than five thousand dollars, or confinement in the county or regional jail for not more than six months, or both;

(3) For a third or subsequent offense, a fine of not less than one thousand dollars nor more than five thousand dollars, and confinement in the county or regional jail for not less than thirty days nor more than one year.

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

(d) Any person who undertakes any construction work without a valid license when such license is required by this article, when the total cost of the contractor's construction contract on any project upon which the work is undertaken is twenty-five thousand dollars or more, shall, in addition to any other penalty herein provided, be assessed by the board an administrative penalty not to exceed two hundred dollars per day for each day the person is in violation.
(e) The board shall, by rule, provide for an administrative hearing before a penalty is levied and for review of any final ruling issued pursuant to such hearing.


(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;
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; and
7. Order a contractor who has been found, after hearing, to have violated any provision of this article or the rules of the board to provide, as a condition of licensure, assurance of financial responsibility. The form of financial assurance may include, but is not limited to, a surety bond, a cash bond, a certificate of deposit, an irrevocable letter of credit or performance insurance: Provided, That the amount of financial assurance required under this subdivision may not exceed the total of the aggregate amount of the judgments or liens levied against the contractor or the aggregate value of any corrective work ordered by the board or both: Provided, however, That the board may remove this requirement for licensees against whom no
complaints have been filed for a period of five continuous years.

(b) No license issued under the provisions of this article may be suspended or revoked without a prior hearing before the board: Provided, That 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. The 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 in either the circuit court of Kanawha County, West Virginia, or in the circuit court of the county in which the petitioner resides or does business, within thirty days after the date upon which the petitioner received notice of the final order or decision of the board.

(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 specifications 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;

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

(13) Failing to execute written contracts prior to performing contracting work, in accordance with section ten of this article; or

(14) Failing to abide by an order of the board.

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

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 2nd Day of April, 2002.

Governor