

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

### **§21-11-1. Short title.**

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

### **§21-11-2. Policy declared.**

It is hereby declared to be the policy of the state of West Virginia that all persons desiring to perform contracting work in this state be duly licensed to ensure capable and skilled craftsmanship utilized in construction projects in this state, both public and private, fair bidding practices between competing contractors through uniform compliance with the laws of this state, and protection of the public from unfair, unsafe and unscrupulous bidding and construction practices.

### **§21-11-3. Definitions.**

- (a) “Commissioner” means the commissioner of the division of labor.
- (b) “Board” means the West Virginia contractor licensing board.
- (c) “Contractor” means a person who in any capacity for compensation, other than as an employee of another, undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid to construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, railroad, structure or excavation associated with a project, development or improvement, or to do any part thereof, including the erection of scaffolding or other structures or works in connection therewith, where the cost of the undertaking is Two thousand five hundred dollars or more.

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

Contractor does not include:

- (1) One who merely furnishes materials or supplies without fabricating or consuming them in the construction project;
- (2) A person who personally performs construction work on the site of real property which the person owns or leases whether for commercial or residential purposes;
- (3) A person who is licensed or registered as a professional and who functions under the control of any other licensing or regulatory board, whose primary business is real estate sales, appraisal, development, management and maintenance, who acting in his or

her respective professional capacity and any employee of such professional, acting in the course of his or her employment, performs any work which may be considered to be performing contracting work;

(4) A pest control operator licensed under the provisions of section seven, article sixteen-a, chapter nineteen of this code to engage in the application of pesticides for hire, unless the operator also performs structural repairs exceeding one thousand dollars on property treated for insect pests; or

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

(d) “Electrical contractor” means a person who engages in the business of contracting to install, erect, repair or alter electrical equipment for the generation, transmission or utilization of electrical energy.

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

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

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

(h) “License” means a license to engage in business in this state as a contractor in one of the classifications set out in this article.

- (i) “Multifamily contractor” means a person who is engaged in construction, repair or improvement of a multifamily residential structure.
- (j) “Person” includes an individual, firm, sole proprietorship, partnership, corporation, association or other entity engaged in the undertaking of construction projects or any combination thereof.
- (k) “Piping contractor” means a person whose principal business is the installation of process, power plant, air, oil, gasoline, chemical or other kinds of piping; and boilers and pressure vessels using joining methods of thread, weld, solvent weld or mechanical methods.
- (l) “Plumbing contractor” means a person whose principal business is the installation, maintenance, extension and alteration of piping, plumbing fixtures, plumbing appliances and plumbing appurtenances, venting systems and public or private water supply systems within or adjacent to any building or structure; included in this definition is installation of gas piping, chilled water piping in connection with refrigeration processes and comfort cooling, hot water piping in connection with building heating, and piping for stand pipes.
- (m) “Residential contractor” means a person whose principal business is in connection with construction, repair or improvement of real property used as, or intended to be used for, residential occupancy.
- (n) “Specialty contractor” means a person who engages in specialty contracting services which do not substantially fall within the scope of any contractor classification as set out herein.
- (o) “Residential occupancy” means occupancy of a structure for residential purposes for periods greater than thirty consecutive calendar days.
- (p) “Residential structure” means a building or structure used or intended to be used for residential occupancy, together with related facilities appurtenant to the premises as an adjunct of residential occupancy, which contains not more than three distinct floors which are above grade in any structural unit regardless of whether the building or structure is designed and constructed for one or more living units. Dormitories, hotels, motels or other transient lodging units are not residential structures.
- (q) “Subcontractor” means a person who performs a portion of a project undertaken by a principal or general contractor or another subcontractor.
- (r) “Division” means the division of labor.
- (s) “Cease and desist order” means an order issued by the commissioner pursuant to the provisions of this article.

**§21-11-4. West Virginia contractor licensing board created; members; appointment; terms; vacancies; qualifications; quorum.**

(a) There is hereby created the West Virginia contractor licensing board. The board shall consist of ten members appointed by the governor by and with the advice and consent of the Senate for terms of four years. Such members shall serve until their successors are appointed and have qualified. Eight of the appointed members shall be owners of businesses engaged in the various contracting industries, with at least one member appointed from each of the following contractor classes: One electrical contractor, one general building contractor, one general engineering contractor, one heating, ventilating and cooling contractor, one multifamily contractor, one piping contractor, one plumbing contractor and one residential contractor, as defined in section three hereof. Two of the appointed members shall be building code officials who are not members of any contracting industry. At least three members of the board shall reside at the time of their appointment in each congressional district as existing on the first day of January, one thousand nine hundred ninety-eight. The commissioner of labor, the secretary of the department of tax and revenue or his designee, and the commissioner of the bureau of employment programs or his designee shall be ex officio nonvoting members of the board.

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

(c) The board shall elect a chair from one of the voting members of the board. The board shall meet at least once annually and at such other times as called by the chair or a majority of the board. Board members shall receive no remuneration for their service, but shall be reimbursed for their actual expenses incurred in the performance of their duties as such. A majority of the membership of the board shall constitute a quorum of the board.

**§21-11-5. Administrative duties of the board; regulations.**

(a) Pursuant to the provisions of chapter twenty-nine-a of this code, the board shall adopt rules and regulations relating to the following:

(1) The minimum qualifications for applicants for examination and license in each of the following specified classes of contractor:

- (A) Electrical contractor;
- (B) General building contractor;
- (C) General engineering contractor;
- (D) Heating, ventilating and cooling contractor;
- (E) Multifamily contractor;
- (F) Piping contractor;
- (G) Plumbing contractor;
- (H) Residential contractor; or
- (I) Specialty contractor;

(2) The content of examinations for applicants in each class;

(3) Procedures for application, examination and license renewal, and the manner in which the examination will be conducted;

(4) The continued competency of licensees for purposes of renewal and reinstatement of licenses; and

(5) Procedures for disciplinary action before the board.

**(b) The board shall:**

(1) Hold at least one examination in each calendar quarter for each specific classification of contractor, designate the time and place of such examinations, and notify applicants thereof;

- (2) Request, through the division, investigation of any alleged violation of this article or of the regulations;
- (3) Forward results of examinations to the division within twenty days following the examination;
- (4) Notify the commissioner and board members of meeting dates and agenda items at least five days prior to such meetings; and
- (5) Take minutes and records of all meetings and proceedings.

**§21-11-6. Necessity for license; exemptions.**

(a) On or after the first day of October, one thousand nine hundred ninety-one, no person shall engage in this state in any act as a contractor, as defined in this article, unless such person holds a license issued under the provisions of this article. No firm, partnership, corporation, association or other entity shall engage in contracting in this state unless an officer thereof holds a license issued pursuant to this article.

(b) Any person to whom a license has been issued under this article shall keep the license or a copy thereof posted in a conspicuous position at every construction site where work is being done by the contractor. The contractor's license number shall be included in all contracting advertisements and all fully executed and binding contracts. Any person violating the provisions of this subsection shall be subject, after hearing, to a warning, a reprimand, or a fine of not more than two hundred dollars.

(c) Except as otherwise provided in this code, the following are exempt from licensure:

(1) Work done exclusively by employees of the United States government, the state of West Virginia, a county, municipality or municipal corporation, and any governmental subdivision or agency thereof;

(2) The sale or installation of a finished product, material or article or merchandise which is not actually fabricated into and does not become a permanent fixed part of the structure;

(3) Work performed personally by an owner or lessee of real property on property the primary use of which is for agricultural or farming enterprise;

(4) A material supplier who renders advice concerning use of products sold and who does not provide construction or installation services;

- (5) Work performed by a public utility company regulated by the West Virginia public service commission and its employees;
- (6) Repair work contracted for by the owner of the equipment on an emergency basis in order to maintain or restore the operation of such equipment;
- (7) Work performed by an employer's regular employees, for which the employees are paid regular wages and not a contract price, on property owned or leased by the employer; which is not intended for speculative sale or lease;
- (8) Work personally performed on a structure by the owner or occupant thereof; and
- (9) Work performed when the specifications for such work have been developed or approved by engineering personnel employed by the owner of a facility by registered professional engineers licensed pursuant to the laws of this state when the work to be performed because of its specialized nature or process cannot be reasonably or timely contracted for within the general area of the facility.

**§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 hereof, 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 and two.

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

(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.

**§21-11-9. Unlawful use, assignment, transfer of license; revocation.**

No license may be used for any purpose by any person other than the person to whom the license is issued. No license may be assigned, transferred or otherwise disposed of so as to permit the unauthorized use thereof. Any person who violates this section is subject to the penalties imposed in section thirteen of this article.

**§21-11-10. Prerequisites to obtaining building permit.**

Any person making application to the building inspector or other authority of any incorporated municipality 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 shall not issue a building permit to any person who does not possess a valid contractor's license when required by this article.

**§21-11-11. Notice included with invitations to bid and specifications.**

Any architect or engineer preparing any plan and specification for contracting work to be performed in this state shall include in such plan, specification and invitation to bid a reference to this article informing any prospective bidder that such person's contractor's license number must be included on any bid submission. A subcontractor shall furnish such person's contractor's license number to the contractor prior to the award of the contract.

**§21-11-12. License renewal, lapse and reinstatement.**

(a) A license which is not renewed on or before the renewal date shall lapse. The board may establish by regulation a delayed renewal fee to be paid for issuance of any license which has lapsed: **Provided**, That no license which has lapsed for a period of ninety days or more may be renewed. Provided, that if a licensee is in a dispute with a state agency, and it is determined that the licensee is not at fault, the board shall renew the license.

(b) In the event that continuing education or other requirements are made a condition of license reinstatement after lapse, suspension or revocation, such requirements must be satisfied before the license is reissued.

**§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 thereof, shall be fined not less than two hundred dollars nor more than five thousand dollars, or imprisoned in the county jail not more than one month, or both fined and imprisoned.

(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 regulation, provide for an administrative hearing before a penalty is levied, and for review of any final ruling issued pursuant to such hearing.

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

(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. 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 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 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; 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.

**§21-11-15. Administrative duties of division.**

(a) For and on behalf of the board, the division and commissioner shall perform the following administrative duties:

- (1) Collect and record all fees;
- (2) Maintain records and files;
- (3) Issue and receive application forms;
- (4) Notify applicants of the results of the board examination;
- (5) Arrange space for holding examinations and other proceedings;
- (6) Issue licenses and temporary licenses as authorized by this article and the board;
- (7) Issue duplicate licenses upon submission of a written request by the licensee attesting to loss of or the failure to receive the original and payment by the licensee of a fee established by regulation adopted by the division;
- (8) Notify licensees of renewal dates at least thirty days before the expiration date of their license;
- (9) Answer routine inquiries;
- (10) Maintain files relating to individual licensees;
- (11) Arrange for printing and advertising;
- (12) Purchase supplies;
- (13) Employ additional help when needed;
- (14) Perform other services that may be requested by the board;
- (15) Provide inspection, enforcement and investigative services to the board; and

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

(b) All authority not specifically delegated to the commissioner and division shall be the responsibility of the board.

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

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

(2) Has registered, and is in compliance, with the workers' compensation fund and the employment security fund, as required by chapter twenty-three and chapter twenty-one-a of this code; and

(3) Is in compliance with the applicable wage bond requirements of section one, article five of this chapter: **Provided**, That in the case of an out-of-state contractor not doing business in this state and seeking licensure for bidding purposes only, the applicant may be granted a conditional license for bid purposes only.

#### **§21-11-16. Rules.**

The board may adopt rules and regulations as are necessary to carry out the provisions of this article pursuant to the provisions of chapter twenty-nine-a of this code. The board may disseminate educational or any other material designed to improve performance standards of any contractor group to contractors within the state. The board may adopt, and use, a seal with the words "state contractor licensing board of West Virginia".

#### **§21-11-17. Record keeping.**

(a) The board shall keep a record of all actions taken and account for moneys received. All moneys shall be deposited in a special account in the state treasury to be known as the "West Virginia Contractor Licensing Board Fund". Expenditures from said fund shall be for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter five-a of this code: **Provided**, That for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-two, expenditures are authorized from collections rather than pursuant to

an appropriation by the Legislature. Amounts collected which are found from time to time to exceed the funds needed for purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature.

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

(c) (1) All investigations, complaints, reports, records, proceedings and other information received by the commissioner and board and related to complaints made to the commissioner or board or investigations conducted by the commissioner or board pursuant to this article, including the identity of the complainant or respondent, shall be confidential and shall not be knowingly and improperly disclosed by any member or former member of the board, the commissioner or staff, except as follows:

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

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

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

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

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

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

(d) If any person violates the provisions of subsection © of this section by knowingly and willfully disclosing any information made confidential by such section or by the commissioner or board, such person shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five hundred dollars nor more than five thousand dollars, or imprisoned in the county jail not more than one month, or both fined and imprisoned.

(e) The commissioner shall certify to the state auditor and to the board a detailed statement of all moneys received and spent during the preceding fiscal year.

#### **§21-11-18. Reciprocity.**

To the extent that other states which provide for the licensing of contractors provide for similar action, the board, in its discretion, may grant licenses of the same or equivalent classification to contractors licensed by other states, without written examination upon satisfactory proof furnished to the board that the qualifications of such applicants are equal to the qualifications of holders of similar licenses in this state, and upon certification to the commissioner as required by subsection ©, section fifteen of this article, and upon payment of the required fee.

#### **§21-11-19. Termination of board.**

The West Virginia contractor licensing board shall be terminated pursuant to the provisions of article ten, chapter four of this code, on the first day of July, two thousand two.

#### **§21-11-20. Board authorized to provide training.**

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

(b) For the purposes of this section, the board is authorized to expend funds from its special revenue account, known as the contractor licensing fund, to support this activity. Funding is to be limited to the availability of funds and may not exceed fifty thousand dollars annually.