

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2203

BY DELEGATE FOSTER, JENNINGS, COWLES AND

PORTERFIELD

[Introduced January 10, 2019; Referred
to the Committee on Government Organization then
the Judiciary.]

1 A BILL to repeal §21-11-1, §21-11-2, §21-11-3, §21-11-4, §21-11-5, §21-11-6, §21-11-7, §21-11-
 2 8, §21-11-9, §21-11-10, §21-11-10a, §21-11-11, §21-11-12, §21-11-13, §21-11-14, §21-
 3 11-15, §21-11-16, §21-11-17, §21-11-18, and §21-11-20 of the Code of West Virginia,
 4 1931, as amended; and to amend said code by adding thereto a new article, designated
 5 §30-41-1, §30-41-2, §30-41-3, §30-41-4, §30-41-5, §30-41-6, §30-41-7, §30-41-8, §30-
 6 41-9, §30-41-10, §30-41-11, §30-41-12, §30-41-13, §30-41-14, §30-41-15, §30-41-16,
 7 §30-41-17, §30-41-18, §30-41-19, and §30-41-20, all relating to the West Virginia
 8 Contractor Act; providing a short title and declaration of policy with definitions; continuing
 9 the West Virginia Contractor Licensing Board, composition, terms, qualifications and
 10 appointment; administrative duties of board and legislative rules; necessity for contractor
 11 license and exemptions; procedure for licensing; providing for expiration date, fees and
 12 renewal of license; providing for revocation for unlawful use, assignment or transfer of
 13 license; prerequisites to obtaining building permit and mandatory written contracts;
 14 requiring informational list for basic universal design features; providing injunction and
 15 criminal penalties for violation of article; specific administrative duties of board and record
 16 keeping by the board; authorizing to grant reciprocity and to provide training to students
 17 who desire to obtain a West Virginia contractor license; and misdemeanor criminal
 18 penalties for violations of article.

Be it enacted by the Legislature of West Virginia:

CHAPTER 21. LABOR

ARTICLE 11. WEST VIRGINIA CONTRACTOR LICENSING ACT.

§21-11-1. Short title.

1 [Repealed]

§21-11-2. Policy Declared.

1 [Repealed]

§21-11-3. Definitions.

1 [Repealed]

§21-11-4. West Virginia Contractor Licensing Board created; members; appointment; terms; vacancies; qualifications; quorum.

1 [Repealed]

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

1 [Repealed]

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

1 [Repealed]

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

1 [Repealed]

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

1 [Repealed]

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

1 [Repealed]

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

1 [Repealed]

§21-11-10a. Informational list for basic universal design features; penalties.

1 [Repealed]

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

1 [Repealed]

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

1 [Repealed]

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

1 [Repealed]

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

1 [Repealed]

§21-11-15. Administrative duties of Division.

1 [Repealed]

§21-11-16. Rules.

1 [Repealed]

§21-11-17. Record keeping.

1 [Repealed]

§21-11-18. Reciprocity.

1 [Repealed]

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

1 [Repealed]

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 41. WEST VIRGINIA CONTRACTOR LICENSING ACT.

§30-41-1 Short title.

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

§30-41-2. Policy declared.

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

§30-41-3. Definitions.

1 (a) “Basic universal design” means the design of products and environments to be useable
2 by all people, to the greatest extent possible, without the need for adaptation or specialization.

3 (b) “Board” means the West Virginia Contractor Licensing Board.

4 (c) "Cease and desist order" means an order issued by the board pursuant to the
5 provisions of this article.

6 (d) "Contractor" means a person who in any capacity for compensation, other than as an
7 employee of another, undertakes, offers to undertake, purports to have the capacity to undertake
8 or submits a bid to construct, alter, repair, add to, subtract from, improve, move, wreck or demolish
9 any building, highway, road, railroad, structure or excavation associated with a project,
10 development or improvement, or to do any part thereof, including the erection of scaffolding or
11 other structures or works in connection therewith, where the cost of the undertaking is \$2,500 or
12 more.

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

15 Contractor does not include:

16 (1) One who merely furnishes materials or supplies without fabricating or consuming them
17 in the construction project;

18 (2) A person who personally performs construction work on the site of real property which
19 the person owns or leases whether for commercial or residential purposes;

20 (3) A person who is licensed or registered as a professional and who functions under the
21 control of any other licensing or regulatory board, whose primary business is real estate sales,
22 appraisal, development, management and maintenance, who acting in his or her respective
23 professional capacity and any employee of the professional, acting in the course of his or her
24 employment, performs any work which may be considered to be performing contracting work;

25 (4) A pest control operator licensed under the provisions of §19-16A-7 of this code to
26 engage in the application of pesticides for hire, unless the operator also performs structural
27 repairs exceeding \$1,000 on property treated for insect pests; or

28 (5) A corporation, partnership or sole proprietorship whose primary purpose is to prepare
29 construction plans and specifications used by the contractors defined in this subsection and who

30 employs full-time a registered architect licensed to practice in this state or a registered
31 professional engineer licensed to practice in this state. Employees of the corporation, partnership
32 or sole proprietorship shall also be exempt from the requirements of this article.

33 (e) "Electrical contractor" means a person who engages in the business of contracting to
34 install, erect, repair or alter electrical equipment for the generation, transmission or utilization of
35 electrical energy.

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

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

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

53 (i) "License" means a license to engage in business in this state as a contractor in one of
54 the classifications set out in this article.

55 (j) "Multifamily contractor" means a person who is engaged in construction, repair or

56 improvement of a multifamily residential structure.

57 (k) "Person" includes an individual, firm, sole proprietorship, partnership, corporation,
58 association or other entity engaged in the undertaking of construction projects or any combination
59 thereof.

60 (l) "Piping contractor" means a person whose principal business is the installation of
61 process, power plant, air, oil, gasoline, chemical or other kinds of piping; and boilers and pressure
62 vessels using joining methods of thread, weld, solvent weld or mechanical methods.

63 (m) "Plumbing contractor" means a person whose principal business is the installation,
64 maintenance, extension and alteration of piping, plumbing fixtures, plumbing appliances and
65 plumbing appurtenances, venting systems and public or private water supply systems within or
66 adjacent to any building or structure; included in this definition is installation of gas piping, chilled
67 water piping in connection with refrigeration processes and comfort cooling, hot water piping in
68 connection with building heating and piping for standpipes.

69 (n) "Residential contractor" means a person whose principal business is in connection with
70 construction, repair or improvement of real property used as, or intended to be used for, residential
71 occupancy.

72 (o) "Specialty contractor" means a person who engages in specialty contracting services
73 which do not substantially fall within the scope of any contractor classification as set out herein.

74 (p) "Residential occupancy" means occupancy of a structure for residential purposes for
75 periods greater than 30 consecutive calendar days.

76 (q) "Residential structure" means a building or structure used or intended to be used for
77 residential occupancy, together with related facilities appurtenant to the premises as an adjunct
78 of residential occupancy, which contains not more than three distinct floors which are above grade
79 in any structural unit regardless of whether the building or structure is designed and constructed
80 for one or more living units. Dormitories, hotels, motels or other transient lodging units are not
81 residential structures.

82 (r) "Subcontractor" means a person who performs a portion of a project undertaken by a
83 principal or general contractor or another subcontractor.

§30-41-4. West Virginia contractor licensing board created; members; appointment; terms;
vacancies; qualifications; quorum.

1 (a) The West Virginia Contractor Licensing Board is continued. The board shall consist of
2 10 members appointed by the Governor by and with the advice and consent of the Senate for
3 terms of four years. The members shall serve until their successors are appointed and have
4 qualified. Eight of the appointed members shall be owners of businesses engaged in the various
5 contracting industries, with at least one member appointed from each of the following contractor
6 classes: One electrical contractor, one general building contractor, one general engineering
7 contractor, one heating, ventilating and cooling contractor, one multifamily contractor, one piping
8 contractor, one plumbing contractor and one residential contractor, as defined in §30-41-3 of this
9 code. Two of the appointed members shall be building code officials who are not members of any
10 contracting industry. At least three members of the board shall reside at the time of their
11 appointment in each congressional district as existing on January 1, 2018. The Secretary of the
12 Department of Tax and Revenue or designee, and the Commissioner of the Bureau of
13 Employment Programs or designee shall be ex-officio nonvoting members of the board.

14 (b) Terms of the members first appointed shall be two members for one year, two members
15 for two years, three members for three years and three members for four years, as designated by
16 the Governor at the time of appointment. Thereafter, terms shall be for four years. A member who
17 has served all or part of two consecutive terms shall not be subject to reappointment unless four
18 years have elapsed since the member last served. Vacancies shall be filled by appointment by
19 the Governor for the unexpired term of any member whose office is vacant and shall be made
20 within 60 days of the occurrence of the vacancy. A vacancy on the board shall not impair the right
21 of the remaining members to exercise all the powers of the board.

22 (c) The board shall elect a chair from one of the voting members of the board. The board

23 shall meet at least once annually and at such other times as called by the chair or a majority of
24 the board. Board members shall receive compensation not to exceed the amount paid to
25 members of the Legislature for the interim duties as recommended by the Citizens Legislative
26 Compensation Commission and authorized by law for each day or portion of a day spent attending
27 meetings of the board and shall be reimbursed for all reasonable and necessary expenses
28 incurred incident to his or her duties as a member of the board. A majority of the members
29 appointed shall constitute a quorum of the board.

§30-41-5. Administrative duties and powers of the board; rules.

1 (a) The board shall propose rules for legislative approval in accordance with §29A-3-1 et
2 seq. of this code relating to the following:

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

5 (A) Electrical contractor;

6 (B) General building contractor;

7 (C) General engineering contractor;

8 (D) Heating, ventilating and cooling contractor;

9 (E) Multifamily contractor;

10 (F) Piping contractor;

11 (G) Plumbing contractor;

12 (H) Residential contractor; or

13 (I) Specialty contractor;

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

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

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

19 (5) Procedures for disciplinary action before the board.

20 (b) The board shall:

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

23 (2) Investigate alleged violations of this article and legislative rules, orders and final
24 decisions of the board;

25 (3) Notify the board members of meeting dates and agenda items at least five days prior
26 to the meetings; and

27 (4) Take minutes and records of all meetings and proceedings.

28 (c) The board has all the powers and duties set forth in this article, including:

29 (1) To maintain an office and hire, discharge, establish the job requirements and fix the
30 compensation of employees and contract persons necessary to enforce the provisions of this
31 article;

32 (2) To sue and be sued in its official name as an agency of this state; and

33 (3) To confer with the Attorney General or assistants of the Attorney General in connection
34 with legal matters and questions.

§30-41-6. Necessity for license; exemptions.

1 (a) No person may engage in this state in any activity as a contractor or submit a bid to
2 perform work as a contractor, as defined in this article, unless that person holds a license issued
3 under the provisions of this article. No firm, partnership, corporation, association or other entity
4 may engage in contracting in this state unless an officer thereof holds a license issued pursuant
5 to this article.

6 (b) Any person to whom a license has been issued under this article shall keep the license
7 or a copy thereof posted in a conspicuous position at every construction site where work is being
8 done by the contractor. The contractor's license number shall be included in all contracting
9 advertisements and all fully executed and binding contracts. Any person violating the provisions

10 of this subsection is subject, after hearing, to a warning, a reprimand, or a fine of not more than
11 \$200.

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

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

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

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

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

22 (5) Work performed by a public utility company regulated by the West Virginia Public
23 Service Commission and its employees;

24 (6) Repair work contracted by the owner of the equipment on an emergency basis in order
25 to maintain or restore the operation of the equipment;

26 (7) Work performed by an employer's regular employees, for which the employees are
27 paid regular wages and not a contract price, on property owned or leased by the employer which
28 is not intended for speculative sale or lease;

29 (8) Work personally performed on a structure by the owner or occupant thereof; and

30 (9) Work performed when the specifications for the work have been developed or
31 approved by engineering personnel employed by the owner of a facility by registered professional
32 engineers licensed pursuant to the laws of this state when the work to be performed because of
33 its specialized nature or process cannot be reasonably or timely contracted for within the general
34 area of the facility.

§30-41-7. Application for and issuance of license.

1 (a) A person desiring to be licensed as a contractor under this article shall submit to the
2 board a written application requesting licensure, providing the applicant's social security number
3 and such other information as the board may require on forms supplied by the board. The
4 applicant shall pay a license fee not to exceed \$150: *Provided*, That electrical contractors already
5 licensed under §29-3B-4 of this code shall pay no more than \$20.

6 (b) No license may be issued without examination pursuant to this subsection: *Provided*,
7 That any person issued a contractor's license by the board pursuant to this subsection may apply
8 to the board for transfer of the license to a new business entity in which the license holder is the
9 principal owner, partner or corporate officer: *Provided, however*, That a license holder may hold
10 a license on behalf of only one business entity during a given time period. The board may transfer
11 the license issued pursuant to this subsection to the new business entity without requiring
12 examination of the license holder.

§30-41-8. Licenses; expiration date; fees; renewal.

1 (a) A license issued under the provisions of this article expires one year from the date on
2 which it is issued. The board shall establish application and annual license fees not to exceed
3 \$150.

4 (b) The board may propose rules for legislative approval in accordance with §29A-3-1 *et*
5 *seq.* of this code, to establish license and renewal fees.

§30-41-9. Unlawful use, assignment, transfer of license; revocation.

1 No license may be used for any purpose by any person other than the person to whom
2 the license is issued. No license may be assigned, transferred or otherwise disposed of so as to
3 permit the unauthorized use thereof. No license issued pursuant to the provisions of §30-41-7(b)
4 of this code may be assigned, transferred or otherwise disposed of except as provided in said
5 subsection. Any person who violates this section is subject to the penalties imposed in §30-41-14
6 of this code.

§30-41-10. Prerequisites to obtaining building permit; mandatory written contracts.

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

10 (b) No person licensed under the provisions of this article may perform contracting work
11 of an aggregate value of \$10,000 or more, including materials and labor, without a written contract,
12 setting forth a description and cost of the work to be performed, signed by the licensee and the
13 person for whom the work is to be performed.

14 (c) The board shall file a procedural rule setting forth a standard contract form which meets
15 the minimum requirements of this subsection for use by licensees. The board shall post the
16 contract form on its website and shall assist licensees in the correct completion of the form. The
17 board shall mail a written notice of the requirements imposed by the rule to each licensed
18 contractor at the address provided to the board by the contractor on his or her last application for
19 licensure or renewal.

§30-41-11. Informational list for basic universal design features.

1 (a) Ninety days after the Contractor Licensing Board certifies and makes available to the
2 general public the standard form informational list of basic universal design features pursuant to
3 this section, a licensed contractor of any proposed residential housing in the state shall provide
4 to the buyer an informational list of basic universal design features that would make the home
5 entrance, interior routes of travel, the kitchen and the bathroom or bathrooms universally
6 accessible. Basic universal design features are to include, but not be limited to, the following:

- 7 (1) At least one nonstep entrance into the dwelling;
8 (2) All doors on the entry-level floor, including bathrooms, have a minimum of 36 inches;
9 (3) At least one accessible bathroom on the entry-level floor with ample maneuvering
10 space;
11 (4) Kitchen, general living space and one room capable of conversion into a bedroom, all
12 with ample maneuvering space, on the entry-level floor; and
13 (5) Any other external or internal feature requested at a reasonable time by the buyer and
14 agreed to by the seller.
- 15 (b) If a buyer is interested in a specific informational feature on the list established by §30-
16 41-11(a) of this code, the seller or builder upon request of the buyer shall indicate whether the
17 feature is standard, limited, optional or not available and, if available, shall further indicate the
18 cost of such a feature to the buyer.
- 19 (c) The standard form informational list of basic universal design features shall be certified
20 and made available for reproduction by the board, in accordance with the provisions of §30-41-
21 11(a) of this code, based on mutual recommendation of the board, the American Institute of
22 Architects-West Virginia, the Home Builders Association of West Virginia and the West Virginia
23 Center for Excellence in Disabilities.

§30-41-12. Notice included with invitations to bid and specifications.

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

§30-41-13. License renewal, lapse and reinstatement.

- 1 (a) A license which is not renewed on or before the renewal date shall lapse. The board
2 may establish by rule on a delayed renewal fee to be paid for issuance of any license which has

3 lapsed: *Provided*, That no license which has lapsed for a period of 90 days or more may be
4 renewed: *Provided, however*, That if a licensee is in a dispute with a state agency, and it is
5 determined that the licensee is not at fault, the board shall renew the license.

6 (b) If continuing education or other requirements are made a condition of license
7 reinstatement after lapse, suspension or revocation, these requirements must be satisfied before
8 the license is reissued.

§30-41-14. Violation of article; injunction; criminal penalties.

1 (a) (1) Upon a determination that a person is engaged in contracting business in the state
2 without a valid license, the board shall issue a cease and desist order requiring the person to
3 immediately cease all operations in the state. The order shall be withdrawn upon issuance of a
4 license to that person.

5 (2) After affording an opportunity for a hearing, the board may impose a penalty of not less
6 than \$200 nor more than \$1,000 upon any person engaging in contracting business in the state
7 without a valid license. The board may accept payment of the penalty in lieu of a hearing.

8 (3) Within 30 days after receipt of the final order issued pursuant to this section, any party
9 adversely affected by the order may appeal the order to the circuit court of Kanawha County,
10 West Virginia, or to the circuit court of the county in which the petitioner resides or does business.

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

14 (1) For a first offense, a fine of not less than \$200 nor more than \$1,000;

15 (2) For a second offense, a fine of not less than \$500 nor more than \$5,000, or confined
16 in jail for not more than six months, or both fined and confined;

17 (3) For a third or subsequent offense, a fine of not less than \$1,000 nor more than \$5,000,
18 and confined in jail for not less than 30 days nor more than one year.

19 (c) The board may institute proceedings in the circuit court of the county in which the

20 alleged violations of the provisions of this article occurred or are now occurring to enjoin any
21 violation of any provision of this article.

22 (d) Any person who undertakes any construction work without a valid license when a
23 license is required by this article, when the total cost of the contractor's construction contract on
24 any project upon which the work is undertaken is \$25,000 or more, shall, in addition to any other
25 penalty herein provided, be assessed by the board an administrative penalty not to exceed \$200
26 per day for each day the person is in violation.

§30-41-15. Disciplinary powers of the board.

1 (a) The board may impose the following disciplinary actions:

2 (1) Permanently revoke a license;

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

4 (3) Censure or reprimand a licensee;

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

6 (5) Impose requirements for remedial professional education to correct deficiencies in the
7 education, training and skill of a licensee;

8 (6) Impose a probationary period requiring a licensee to report regularly to the board on
9 matters related to the grounds for probation; the board may withdraw probationary status if the
10 deficiencies that require the sanction are remedied;

11 (7) Order a contractor who has been found, after hearing, to have violated any provision
12 of this article or the rules of the board to provide, as a condition of licensure, assurance of financial
13 responsibility. The form of financial assurance may include, but is not limited to, a surety bond, a
14 cash bond, a certificate of deposit, an irrevocable letter of credit or performance insurance:

15 Provided, That the amount of financial assurance required under this subdivision may not exceed
16 the total of the aggregate amount of the judgments or liens levied against the contractor or the
17 aggregate value of any corrective work ordered by the board or both: *Provided, however, That*
18 the board may remove this requirement for licensees against whom no complaints have been

19 filed for a period of five continuous years; and

20 (8) A fine not to exceed \$1,000.

21 (b) No license issued under the provisions of this article may be suspended or revoked
22 without a prior hearing before the board: *Provided*, That the board may summarily suspend a
23 licensee pending a hearing or pending an appeal after hearing upon a determination that the
24 licensee poses a clear, significant and immediate danger to the public health and safety.

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

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

30 (e) A person or contractor adversely affected by disciplinary action may appeal to the
31 board within 60 days of the date the disciplinary action is taken. The board shall hear the appeal
32 within 30 days from receipt of notice of appeal in accordance with the provisions of chapter 29A
33 of this code. Hearings shall be held in Charleston. The board may retain a hearing examiner to
34 conduct the hearings and present proposed findings of fact and conclusions of law to the board
35 for its action.

36 (f) Any party adversely affected by any action of the board may appeal that action in either
37 the circuit court of Kanawha County, West Virginia, or in the circuit court of the county in which
38 the petitioner resides or does business, within 30 days after the date upon which the petitioner
39 received notice of the final order or decision of the board.

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

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

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

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

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

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

55 (6) Willful or deliberate misrepresentation of a material fact by an applicant or licensee in
56 obtaining a license or in connection with official licensing matters;

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

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

62 (9) Willfully or deliberately acting with the intent to evade the provisions of this article by:

63 (A) Aiding or abetting an unlicensed person to evade the provisions of this article;

64 (B) Combining or conspiring with an unlicensed person to perform an unauthorized act;

65 (C) Allowing a license to be used by an unlicensed person; or

66 (D) Attempting to assign, transfer or otherwise dispose of a license or permitting the
67 unauthorized use thereof;

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

70 (11) Performing work which is not commensurate with a general standard of the specific

71 classification of contractor or which is below a building or construction code adopted by the
72 municipality or county in which the work is performed;

73 (12) Knowingly employing a person who does not have the legal right to be employed in
74 the United States;

75 (13) Failing to execute written contracts prior to performing contracting work in accordance
76 with §30-41-10 of this code;

77 (14) Failing to abide by an order of the board; or

78 (15) Failing to satisfy a judgment or execution ordered by a magistrate court, circuit court
79 or arbitration board.

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

§30-41-16. Administrative duties of board.

1 (a) The board shall perform the following administrative duties:

2 (1) Collect and record all fees;

3 (2) Maintain records and files;

4 (3) Issue and receive application forms;

5 (4) Notify applicants of the results of the board examination;

6 (5) Arrange space for holding examinations and other proceedings;

7 (6) Issue licenses and temporary licenses as authorized by this article;

8 (7) Issue duplicate licenses upon submission of a written request by the licensee attesting
9 to loss of or the failure to receive the original and payment by the licensee of a fee established by
10 regulation adopted by the division;

11 (8) Notify licensees of renewal dates at least 30 days before the expiration date of their
12 license;

- 13 (9) Answer routine inquiries;
14 (10) Maintain files relating to individual licensees;
15 (11) Arrange for printing and advertising;
16 (12) Purchase supplies;
17 (13) Employ additional help when needed;
18 (14) Perform other services that may be requested by the board;
19 (15) Provide inspection, enforcement and investigative services to the board; and
20 (16) Issue cease and desist orders to persons engaging in contracting within the state
21 without a valid license.
- 22 (b) Any authority not specifically delegated is the responsibility of the board.
- 23 (c) Following successful completion of the examination, and prior to the issuance of the
24 license, the applicant shall certify by affidavit that the applicant:
- 25 (1) Is in compliance with the business franchise tax provisions of chapter 11 of this code;
26 (2) Has registered, and is in compliance, with the Workers' Compensation Fund and the
27 Employment Security Fund, as required by chapter 23 and chapter 21A of this code; and
28 (3) Is in compliance with the applicable wage bond requirements of §21-5-14 of this code;
29 Provided, That in the case of an out-of-state contractor not doing business in this state and
30 seeking licensure for bidding purposes only, the applicant may be granted a conditional license
31 for bid purposes only.

§30-41-17. Rules.

1 The board may propose rules for legislative approval in accordance with §29A-3-1 et seq.
2 of this code that are necessary to carry out the provisions of this article. The board may
3 disseminate educational or any other material designed to improve performance standards of any
4 contractor group to contractors within the state. The board may adopt and use a seal with the
5 words "State Contractor Licensing Board of West Virginia".

§30-41-18. Record keeping.

1 (a) The board shall keep a record of all actions taken and account for moneys received.
2 All moneys shall be deposited in a special account in the State Treasury to be known as the “West
3 Virginia Contractor Licensing Board Fund.” Expenditures from this fund shall be for the purposes
4 set forth in this article and are not authorized from collections but are to be made only in
5 accordance with appropriation by the Legislature and in accordance with the provisions of §12-3-
6 1 et seq. of this code and upon the fulfillment of the provisions set forth in §5A-2-1 et seq. of this
7 code. Amounts collected which are found from time to time to exceed the funds needed for
8 purposes set forth in this article may be transferred to other accounts or funds and redesignated
9 for other purposes by appropriation of the Legislature.

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

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

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

26 (B) Any subsequent hearing held in the matter for the purpose of receiving evidence or

27 the arguments of the parties or their representatives shall be open to the public and all reports,
28 records and nondeliberative materials introduced into evidence at the subsequent hearing, as well
29 as the board's orders, are not confidential.

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

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

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

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

44 (d) If any person violates the provisions of §30-41-18(c) of this code by knowingly and
45 willfully disclosing any information made confidential by this section or by the board, that person
46 is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$500 nor
47 more than \$5,000, or confined in jail not more than one month, or both fined and confined.

48 (e) The board shall certify to the State Auditor a detailed statement of all moneys received
49 and spent during the preceding fiscal year.

§30-41-19. Reciprocity.

1 To the extent that other states which provide for the licensing of contractors provide for
2 similar action, the board may grant licenses of the same or equivalent classification to contractors

3 licensed by other states, without written examination upon satisfactory proof furnished to the
4 board that the qualifications of the applicants are equal to the qualifications of holders of similar
5 licenses in this state, and upon certification to the board as required by §30-41-15(c) of this code,
6 and upon payment of the required fee.

§30-41-20. Board authorized to provide training.

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

6 (b) For the purposes of this section, the board may expend funds from its special revenue
7 account, known as the Contractor Licensing Fund, to support this activity.

NOTE: The purpose of this bill is to transfer the West Virginia Contractor Act from administration and regulation by the Division of Labor to regulation under the provisions of professions and occupations in chapter 30 of this code. The bill retains the short title and declaration of policy with definitions of the existing act. It continues the West Virginia Contractor Licensing Board, composition, terms, qualifications and appointment, together with administrative duties of board and legislative rules, without the Division of Labor. The bill retains the necessity for contractor license and exemptions, procedure for licensing, expiration date, fees and renewal of license. It continues procedure for revocation for unlawful use, assignment or transfer of license. Also the prerequisites to obtaining building permit and mandatory written contracts. The requirement of informational list for basic universal design features is retained, as is the provision for injunction and criminal penalties for violation of article. Specific administrative duties of board and record keeping by the board are provided without the Division of Labor. The board is authorized to grant reciprocity and to provide training to students who desire to obtain a West Virginia contractor license. Misdemeanor criminal penalties for violations of article are retained.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.