

VIRGINIA ACTS OF ASSEMBLY -- 2009 SESSION

CHAPTER 184

An Act to amend and reenact §§ 36-105, 54.1-1102, 54.1-1134, 54.1-1140, 54.1-1142, 54.1-1142.1, and 54.1-1143 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 54.1-1142.2, relating to the Board for Contractors; elevator mechanics.

[H 1708]

Approved March 27, 2009

Be it enacted by the General Assembly of Virginia:

1. That §§ 36-105, 54.1-1102, 54.1-1134, 54.1-1140, 54.1-1142, 54.1-1142.1, and 54.1-1143 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 54.1-1142.2 as follows:

§ 36-105. Enforcement of Code; appeals from decisions of local department; inspection of buildings; inspection warrants; inspection of elevators.

A. Enforcement generally. Enforcement of the provisions of the Building Code for construction and rehabilitation shall be the responsibility of the local building department. There shall be established within each local building department a local board of Building Code appeals whose composition, duties and responsibilities shall be prescribed in the Building Code. Appeals from the local building department concerning application of the Building Code or refusal to grant a modification to the provisions of the Building Code shall first lie to the local board of Building Code appeals. No appeal to the State Building Code Technical Review Board shall lie prior to a final determination by the local board of Building Code appeals. Whenever a county or a municipality does not have such a building department or board of Building Code appeals, the local governing body shall enter into an agreement with the local governing body of another county or municipality or with some other agency, or a state agency approved by the Department for such enforcement and appeals resulting therefrom. For the purposes of this section, towns with a population of less than 3,500 may elect to administer and enforce the Building Code; however, where the town does not elect to administer and enforce the Building Code, the county in which the town is situated shall administer and enforce the Building Code for the town. In the event such town is situated in two or more counties, those counties shall administer and enforce the Building Code for that portion of the town which is situated within their respective boundaries. Fees may be levied by the local governing body in order to defray the cost of such enforcement and appeals.

B. New construction. Any building or structure may be inspected at any time before completion, and shall not be deemed in compliance until approved by the inspecting authority. Where the construction cost is less than \$2,500, however, the inspection may, in the discretion of the inspecting authority, be waived. A building official may issue an annual permit for any construction regulated by the Building Code. The building official shall coordinate all reports of inspections for compliance with the Building Code, with inspections of fire and health officials delegated such authority, prior to issuance of an occupancy permit.

C. Existing buildings and structures.

1. Inspections and enforcement of the Building Code. The local governing body may also inspect and enforce the provisions of the Building Code for existing buildings and structures, whether occupied or not. Such inspection and enforcement shall be carried out by an agency or department designated by the local governing body.

2. Complaints by tenants. However, upon a finding by the local building department, following a complaint by a tenant of a residential dwelling unit that is the subject of such complaint, that there may be a violation of the unsafe structures provisions of the Building Code, the local building department shall enforce such provisions.

3. Inspection warrants. If the local building department receives a complaint that a violation of the Building Code exists that is an immediate and imminent threat to the health or safety of the owner or tenant of a residential dwelling unit or a nearby residential dwelling unit, and the owner or tenant of the residential dwelling unit that is the subject of the complaint has refused to allow the local building official or his agent to have access to the subject dwelling, the local building official or his agent may present sworn testimony to a magistrate or a court of competent jurisdiction and request that the magistrate or court grant the local building official or his agent an inspection warrant to enable the building official or his agent to enter the subject dwelling for the purpose of determining whether violations of the Building Code exist. The local building official or his agent shall make a reasonable effort to obtain consent from the owner or tenant of the subject dwelling prior to seeking the issuance of an inspection warrant under this section.

4. Transfer of ownership. If the local building department has initiated an enforcement action against the owner of a building or structure and such owner subsequently transfers the ownership of the building

or structure to an entity in which the owner holds an ownership interest greater than 50%, the pending enforcement action shall continue to be enforced against the owner.

D. 5. Elevator, *escalator*, or *related conveyance* inspections. The local governing body shall, however, inspect and enforce the Building Code for elevators, *escalators*, or *related conveyances*, except for elevators in single- and two-family homes and townhouses. Such inspection shall be carried out by an agency or department designated by the local governing body.

§ 54.1-1102. Board for Contractors membership; offices; meetings; seal; record.

A. The Board for Contractors shall be composed of ~~thirteen~~ 14 members as follows: one member shall be a licensed Class A general contractor; the larger part of the business of one member shall be the construction of utilities; the larger part of the business of one member shall be the construction of commercial and industrial buildings; the larger part of the business of one member shall be the construction of single-family residences; the larger part of the business of one member shall be the construction of home improvements; one member shall be a subcontractor as generally regarded in the construction industry; one member shall be in the business of sales of construction materials and supplies; one member shall be a local building official; one member shall be a licensed plumbing contractor; one member shall be a licensed electrical contractor; one member shall be a licensed heating, ventilation and air conditioning contractor; *one member shall be a certified elevator mechanic or a licensed elevator contractor*; and two members shall be citizen members. The terms of the Board members shall be four years.

The Board shall meet at least four times each year, once in January, April, July and October, and at such other times as may be deemed necessary. Annually, the Board shall elect from its membership a chairman and a vice-chairman to serve for a one-year term. Seven members of the Board shall constitute a quorum.

The Board shall promulgate regulations not inconsistent with statute necessary for the licensure of contractors and tradesmen and the certification of backflow prevention device workers, and for the relicensure of contractors and tradesmen and for the recertification of backflow prevention device workers, after license or certificate suspension or revocation. The Board shall include in its regulations a requirement that as a condition for initial licensure as a contractor, the designated employee or a member of the responsible management personnel of the contractor shall have successfully completed a Board-approved basic business course, which shall not exceed eight hours of classroom instruction.

The Board may adopt regulations requiring all Class A, B, and C residential contractors, excluding subcontractors to the contracting parties and those who engage in routine maintenance or service contracts, to use legible written contracts including the following terms and conditions:

1. General description of the work to be performed;
2. Fixed price or an estimate of the total cost of the work, the amounts and schedule of progress payments, a listing of specific materials requested by the consumer and the amount of down payment;
3. Estimates of time of commencement and completion of the work; and
4. Contractor's name, address, office telephone number and license or certification number and class.

In transactions involving door-to-door solicitations, the Board may require that a statement of protections be provided by the contractor to the homeowner, consumer or buyer, as the case may be.

The Board shall adopt a seal with the words "Board for Contractors, Commonwealth of Virginia." The Director shall have charge, care and custody of the seal.

B. The Director shall maintain a record of the proceedings of the Board.

§ 54.1-1134. Grounds for denial or revocation of certification or license; reports of building officials and others.

The Board shall have the power to require remedial education and to suspend, revoke or deny renewal of the certification or license of any individual who is found to be in violation of the statutes or regulations governing the practice of licensed tradesmen, liquefied petroleum gas fitters or natural gas fitter providers or certified backflow prevention device workers in the Commonwealth.

Any building official who finds that an individual is practicing as a tradesman, *elevator mechanic*, liquefied petroleum gas fitter or natural gas fitter provider without a license as required by this article shall file a report to such effect with the Board. Any water purveyor or building official who finds that an individual is practicing as a backflow prevention device worker without a certificate, if a certificate is required by the locality in which an individual is engaging in backflow prevention device worker activities, shall file a report to such effect with the Board.

Any building official who has reason to believe that (i) a tradesman, liquefied petroleum gas fitter or natural gas fitter provider is performing incompetently as demonstrated by an egregious or repeated violation of the Uniform Statewide Building Code (§ 36-97 et seq.) or (ii) a certified backflow prevention device worker is performing incompetently as demonstrated by an egregious or repeated violation of the standards adopted by the American Society of Sanitary Engineering referenced in the plumbing code adopted by the Virginia Uniform Statewide Building Code shall file a report to such effect with the Board. Any water purveyor who has reason to believe that a certified backflow prevention device worker is performing incompetently as demonstrated by an egregious or repeated violation of the standards adopted by the American Society of Sanitary Engineering referenced in the

plumbing code adopted by the Virginia Uniform Statewide Building Code shall file a report to such effect with the Board and local building official.

§ 54.1-1140. Definition.

As used in this article, unless the context requires a different meaning:

"Certified elevator mechanic" means an individual who is certified by the Board in accordance with this article to engage in work as an elevator mechanic.

"Elevator mechanic" means an individual who is engaged certified by the Board in accordance with this article to engage in erecting, constructing, installing, altering, servicing, repairing, testing or maintaining elevators, escalators, or related conveyances in accordance with the Uniform Statewide Building Code.

§ 54.1-1142. Issuance of certification; emergency certification.

A. The Board shall issue a certificate to practice as a ~~certified~~ *an* elevator mechanic in the Commonwealth to any applicant who has submitted satisfactory evidence that he has successfully:

1. Completed the educational requirements as required by the Board, which shall at a minimum include such requirements as the Board determines will establish minimum competency on the part of the applicant;

2. Completed the experience requirements as required by the Board, which shall at a minimum consist of at least three years in the elevator industry; and

3. Passed an examination offered or approved by the Board.

B. The Board may issue a certificate to practice as a ~~certified~~ *an* elevator mechanic to any applicant who has a certification from an association approved by the Board that is equal to or exceeds the requirements established by the Board for all applicants.

§ 54.1-1142.1. Certifications in event of declared emergency.

A. Whenever the Governor declares a state of emergency in accordance with § 44-146.17 or in the event of a work stoppage by elevator mechanics and the Board determines that the number of ~~certified~~ elevator mechanics is insufficient to meet the demands of the emergency or work stoppage, the Board shall issue a *an emergency* certificate to practice as a ~~certified~~ *an* elevator mechanic under the following conditions:

1. A contractor licensed under the provisions of this chapter (a) ~~certifies attests~~ to the Board, in a form prescribed by the Board, that an applicant has an acceptable combination of documented experience and education to perform work as an elevator mechanic without direct and immediate supervision of *an elevator mechanic* and (b) provides such proof thereof as required by the Board; and

2. The applicant ~~certified attested~~ to the Board by the licensed contractor applies to the Board for emergency certification as an ~~emergency certified~~ elevator mechanic.

As used in this subsection, "direct and immediate supervision" means proper supervision but does not include line of sight supervision.

B. Each such certification shall be valid for a period of ~~30~~ 45 days from the date of issuance and for such geographic areas or such elevators, escalators, or related conveyances as the Board may designate. Such certification shall entitle the certificate holder to engage in work as a certified elevator mechanic. The Board shall renew such certification as often as necessary to ensure that there is a sufficient number of certified elevator mechanics to meet the demands of the emergency. No fee shall be charged for application for such certification or any renewal thereof.

C. ~~In addition, when notified by a contractor licensed under the provisions of this section that there is a shortage of certified personnel to perform elevator work, the Board may issue temporary elevator mechanic certifications under the following conditions:~~

1. ~~The licensed contractor certifies to the Board, in a form prescribed by the Board, that an applicant has an acceptable combination of documented experience and education to perform work as an elevator mechanic without direct and immediate supervision and provide such proof thereof as required by the Board;~~

2. ~~The applicant certified to the Board by the licensed contractor applies to the Board for such temporary certification as an elevator mechanic; and~~

3. ~~The applicant pays an application fee as set by the Board.~~

D. ~~Each such certification shall be valid for a period of 30 days from the date of issuance provided the applicant is employed by the licensed contractor. The Board shall renew such certification as often as necessary to ensure that there is a sufficient number of certified elevator mechanics to meet the shortage. The Board may delegate to the Director of the Department the authority to issue such emergency certifications. The Director shall inform the Board of the issuance of any certifications.~~

§ 54.1-1142.2. Certifications in event of shortage of elevator mechanics.

A. ~~Whenever a contractor licensed under the provisions of this chapter demonstrates to the satisfaction of the Board that there is a shortage of elevator mechanics, the Board shall issue temporary certifications under the following conditions:~~

1. ~~The licensed contractor attests to the Board, in a form prescribed by the Board, that after due diligence, the licensed contractor is unable to find an elevator mechanic from the list of elevator mechanics maintained by the Board to perform elevator work;~~

2. *The applicant has an acceptable combination of documented experience and education to perform work as an elevator mechanic without direct and immediate supervision of an elevator mechanic and provides such proof thereof as required by the Board;*

3. *The applicant applies for such temporary certification as an elevator mechanic; and*

4. *The applicant pays an application fee as set by the Board.*

As used in this subsection, "direct and immediate supervision" means proper supervision but does not include line of sight supervision.

B. Each such temporary certification shall be valid for a period of up to 45 days from the date of issuance, provided the applicant continues at all times to be employed by the licensed contractor. The Board shall renew such certification as often as necessary to ensure that there is a sufficient number of elevator mechanics to meet the shortage.

C. The Board may delegate to the Director of the Department the authority to issue such temporary certifications or renewals thereof. The Director shall inform the Board of the issuance of any such certifications or renewals.

§ 54.1-1143. Continuing education.

A. The Board shall establish in the regulations requirements for continuing education as a prerequisite to renewal of any certificate issued under this article. The Board shall require evidence of knowledge of the Uniform Statewide Building Code changes as a prerequisite to renewal of any certificate issued under this article. In addition, the Board may require continuing education for any individual who is found to be in violation of law or regulations governing the practice of an elevator mechanic certified under this article.

B. ~~A certified~~ *An elevator mechanic, as a condition of recertification and as part of the recertification application, shall ~~certify~~ attest to the Board that he has completed at least eight hours of continuing education, approved by the Board, in the specialty of elevator/escalator contracting. The Board may establish such requirements for approval of training instructors, the criteria for the continuing education and such other regulations to ensure the protection of the public interest. Such criteria shall include approval of curriculum sponsored by national or state professional elevator industry associations approved by the Board.*

C. The provisions of this section shall not apply to certifications issued by the Board under § 54.1-1142.1 or 54.1-1142.2.