

VIRGINIA ACTS OF ASSEMBLY -- 1995 RECONVENED SESSION

CHAPTER 771

An Act to amend and reenact §§ 54.1-1102, 54.1-1103, 54.1-1109, 54.1-1110, 54.1-1111, 54.1-1112, 54.1-1114, 54.1-1115, 54.1-1118, 54.1-1119, and 54.1-1126 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 54.1-1108.2, relating to Board for Contractors; certification of Class C contractors.

[H 2458]

Approved April 6, 1995

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-1102, 54.1-1103, 54.1-1109, 54.1-1110, 54.1-1111, 54.1-1112, 54.1-1114, 54.1-1115, 54.1-1118, 54.1-1119, and 54.1-1126 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 54.1-1108.2 as follows:

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

A. The Board for Contractors shall be composed of thirteen 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; 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 *or certification* of contractors and the certification of tradesmen.

The Board may adopt regulations requiring all Class A ~~and~~, 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 registration~~ *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.

§ 54.1-1103. Necessity for license or certificate; requirements for water well drillers and landscape irrigation contractors; requirements for electrical, plumbing, and HVAC contractors.

A. No person shall engage in, or offer to engage in, contracting work or operate as an owner-developer in ~~this~~ *the* Commonwealth unless he has been licensed *or certified* under the provisions of this chapter. Prior to a joint venture engaging in, or offering to engage in, contracting work or operating as an owner-developer in ~~this~~ *the* Commonwealth, (i) each contracting party of the joint venture ~~must~~ *shall* be licensed *or certified* under the provisions of this chapter or (ii) a license ~~must~~ *or certificate* shall be obtained in the name of the joint venture under the provisions of this chapter.

B. Except as provided in § 54.1-1117, the issuance of a license *or certificate* under the provisions of this chapter shall not entitle the holder to engage in any activity for which a special license is required by law.

C. When the contracting work is for the purpose of landscape irrigation or the construction of a water well as defined in § 62.1-255, the contractor shall be licensed *or certified*, regardless of the contract amount, as follows:

1. A Class C certificate is required when the total value referred to in a single contract or project is no more than \$7,500, or the total value of all such water well or landscape irrigation contracts undertaken within any twelve-month period is no more than \$150,000;

2. A Class B license is required when the total value referred to in a single contract is \$7,500 or more, but less than \$70,000, or the total value of all such water well or landscape irrigation contracts undertaken within any twelve-month period is \$150,000 or more, but less than \$500,000; and

3. A Class A license is required when the total value referred to in a single contract or project is \$70,000 or more, or when the total value of all such water well or landscape irrigation contracts undertaken within any twelve-month period is \$500,000 or more.

D. When the contracting work is performed by an electrical, plumbing, or heating, ventilation and air conditioning (HVAC) contractor, the contractor shall be licensed, regardless of the contract amount, as follows:

1. A Class B license is required when the total value referred to in a single contract is \$1,000 or more, but less than \$70,000, or the total value of all such electrical, plumbing, or heating, ventilation and air conditioning (HVAC) contracts undertaken within any twelve-month period is \$150,000 or more, but less than \$500,000; and

2. A Class A license is required when the total value referred to in a single contract is \$70,000 or more, or when the total value of all such electrical, plumbing, or heating, ventilation and air conditioning (HVAC) contracts undertaken within any twelve-month period is \$500,000 or more.

§ 54.1-1108.2. Application for Class C certification; fees; issuance.

A. Any person desiring to be certified as a Class C contractor shall file with the Department a written application on a form prescribed by the Board. The application shall be accompanied by a fee set by the Board pursuant to § 54.1-201. The application shall contain information concerning the name, location, nature, and operation of the business, as well as information demonstrating that the applicant possesses the character and minimum skills to properly engage in the occupation of contracting, and an affidavit stating that the information on the application is correct.

B. The Board may grant a Class C certificate in any of the following classifications: (i) building contractor, (ii) highway/heavy contractor, and (iii) specialty contractor.

§ 54.1-1109. Expiration and renewal of license or certificate.

A license or certificate issued pursuant to this chapter shall expire as provided in Board regulations and shall become invalid on that date unless renewed, subject to the approval of the Board. Application for renewal of a license or certificate may be made as provided by Board regulations. The application shall be accompanied by a fee set by the Board pursuant to § 54.1-201.

§ 54.1-1110. Grounds for denial or revocation of license or certificate.

The Board shall have the power to require remedial education, suspend, revoke, or deny renewal of the license or certificate of any contractor who is found to be in violation of the statutes or regulations governing the practice of licensed or certified contractors in the Commonwealth.

The Board may suspend, revoke, or deny renewal of an existing license or certificate, or refuse to issue a license or certificate, to any contractor who is shown to have a substantial identity of interest with a contractor whose license or certificate has been revoked or not renewed by the Board. A substantial identity of interest includes but is not limited to (i) a controlling financial interest by the individual or corporate principals of the contractor whose license or certificate has been revoked or nonrenewed, (ii) substantially identical principals or officers, or (iii) the same designated employee as the contractor whose license or certificate has been revoked or not renewed by the Board.

Additionally, the Board may suspend, revoke or deny renewal of an existing license or certificate, or refuse to issue a license or certificate to any contractor who violates the provisions of Chapter 5 (§ 60.2-500 et seq.) of Title 60.2 and Chapter 8 (§ 65.2-800 et seq.) of Title 65.2.

§ 54.1-1111. Prerequisites to obtaining building, etc., permit.

Any person applying to the building inspector or any other authority of a county, city, or town in this Commonwealth, charged with the duty of issuing building or other permits for the construction of any building, highway, sewer, or structure, or any removal, grading or improvement shall furnish prior to the issuance of the permit, either (i) satisfactory proof to such inspector or authority that he is duly licensed or certified under the terms of this chapter to carry out or superintend the same, or (ii) file a written statement, supported by an affidavit, that he is not subject to licensure or certification as a contractor, subcontractor, or owner-developer pursuant to this chapter. The applicant shall also furnish satisfactory proof that the taxes or license fees required by any county, city, or town have been paid so as to be qualified to bid upon or contract for the work for which the permit has been applied.

It shall be unlawful for the building inspector or other authority to issue or allow the issuance of such permits unless the applicant has furnished his license or certificate number issued pursuant to this chapter or evidence of being exempt from the provisions of this chapter.

The building inspector, or other such authority, violating the terms of this section shall be guilty of a Class 3 misdemeanor.

§ 54.1-1112. Invitations to bid and specifications to refer to law.

All architects and engineers preparing plans and specifications for work to be contracted in Virginia

shall include in their invitations to the bidder and in their specifications a reference to this chapter so as to convey to the invited bidder prior to the consideration of the bid (i) whether such person is a resident or nonresident of ~~this~~ *the Commonwealth*, (ii) whether the proper license *or certificate* has been issued to the bidder, and (iii) the information required of the bidder to show evidence of proper licensure *or certification* under the provisions of this chapter.

§ 54.1-1114. Filing and hearing of charges.

Any person may file complaints against any contractor licensed *or certified* pursuant to this chapter. The Director shall investigate complaints and the Board may take appropriate disciplinary action if warranted. Disciplinary proceedings shall be conducted in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.). The Board shall immediately notify the Director and the clerk and building official of each city, county or town in the Commonwealth of its findings in the case of the revocation of a license *or certificate*, or of the reissuance of a revoked license *or certificate*.

§ 54.1-1115. Prohibited acts.

A. The following acts are prohibited and shall constitute the commission of a Class 1 misdemeanor:

1. Contracting for, or bidding upon the construction, removal, repair or improvements to or upon real property owned, controlled or leased by another person without a license *or certificate*.
2. Attempting to practice contracting in ~~this~~ *the Commonwealth*, except as provided for in this chapter.

3. Presenting or attempting to use the license *or certificate* of another.

4. Giving false or forged evidence of any kind to the Board or any member thereof in an application for the issuance or renewal of a license *or certificate*.

5. Impersonating another or using an expired or revoked license *or certificate*.

6. Receiving or considering as the awarding authority a bid from anyone not properly licensed *or certified* under this chapter.

B. Any person who undertakes work without a valid license *or certificate* when a license *or certificate* is required by this chapter may be fined an amount not to exceed \$200 per day for each day that such person is in violation, in addition to the authorized penalties for the commission of a Class 1 misdemeanor.

C. No person shall be entitled to assert the lack of licensure *or certification* as required by this chapter as a defense to any action at law or suit in equity if the party who seeks to recover from such person gives substantial performance within the terms of the contract in good faith and without actual knowledge of the licensure *or certification* requirements of this chapter.

Failure to renew a license *or certificate* issued in accordance with this chapter shall create a rebuttable presumption of actual knowledge of such licensing *or certification* requirements.

§ 54.1-1118. Definitions.

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

"Act" means the Virginia Contractor Transaction Recovery Act.

"Biennium" means a two-year period beginning on July 1 of an even-numbered year and continuing through June 30 of the next even-numbered year.

"Claimant" means any person with an unsatisfied judgment against a regulant, who has filed a verified claim under this Act.

"Fund" means the Contractor Transaction Recovery Fund.

"Improper or dishonest conduct" includes only the wrongful taking or conversion of money, property or other things of value which involves fraud, material misrepresentation or conduct constituting gross negligence, continued incompetence, or intentional violation of the Uniform Statewide Building Code (§ 36-97 et seq.). The term "improper or dishonest conduct" does not include mere breach of contract.

"Judgment" includes an order of a United States Bankruptcy Court declaring a claim against a regulant who is in bankruptcy to be a "Debt Nondischargeable in Bankruptcy."

"Regulant" means any individual, person, firm, corporation, association, partnership, joint venture or any other legal entity licensed *or certified* by the Board for Contractors. "Regulant" shall not include tradesmen certified in accordance with Article 3 (§ 54.1-1128 et seq.) of this chapter.

§ 54.1-1119. Assessments by Director; assignment to fund; minimum balance; notice; penalties; costs of administration.

A. Each initial regulant, at the time of application, shall be assessed twenty-five dollars, which shall be specifically assigned to the fund. Initial payments may be incorporated in any application fee payment and transferred to the fund by the Director within thirty days.

All assessments, except initial assessments, for the fund shall be deposited within three work days after their receipt by the Director, in one or more federally insured banks, savings and loan associations or savings banks located in the Commonwealth. Funds deposited in banks, savings institutions or savings banks, to the extent in excess of insurance afforded by the Federal Deposit Insurance Corporation or other federal insurance agency, shall be secured under the Security for Public Deposits Act (§ 2.1-359 et seq.). The deposit of these funds in federally insured banks, savings and loan associations or savings banks located in the Commonwealth shall not be considered investment of such funds for purposes of this section. Funds maintained by the Director may be invested in securities that are legal investments

for fiduciaries under the provisions of § 26-40.01.

B. The minimum balance of the fund shall be \$400,000. Whenever the Director determines that the balance of the fund is or will be less than this minimum balance, the Director shall immediately inform the Board, which shall within thirty days of this determination assess each regulant a sum sufficient to bring the balance of the fund to an amount of not less than \$400,000, when combined with similar assessments of other regulants. No regulant shall be assessed a total amount of more than fifty dollars during any biennium.

Notice to regulants of these assessments shall be by first-class mail, and payment of such assessments shall be made by first-class mail addressed to the Director within forty-five days after the mailing of the notice to regulants.

C. If any regulant fails to remit the required assessment mailed in accordance with subsection B within forty-five days of such mailing, the Director shall notify such regulant by first-class mail at the latest address of record filed with the Board. If no payment has been received by the Director within thirty days after mailing the second notice, the license or certificate of the regulant shall be automatically suspended and shall be restored only upon the actual receipt by the Director of the delinquent assessment.

Interest earned on the deposits constituting the fund shall be used for administering the fund. The remainder of this interest may be used for the purposes of providing educational programs about the Uniform Statewide Building Code (§ 36-97 et seq.), for providing education on subjects of benefit to licensees or members of the public relating to contracting, or shall accrue to the fund.

§ 54.1-1126. Revocation of license or certificate upon payment from fund.

Upon payment by the Director to a claimant from the fund as provided in § 54.1-1125, the Board shall immediately revoke the license *or certificate* of the regulant whose improper or dishonest conduct resulted in this payment. Any regulant whose license *or certificate* is revoked shall not be eligible to apply for a license *or certificate* as a contractor until the regulant has repaid in full the amount paid from the fund on his account, plus interest at the judgment rate of interest from the date of payment.