

1996 RECONVENED SESSION

ENROLLED

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 54.1-1102, 54.1-1118, and 54.1-1128 through 54.1-1135 of the Code of Virginia, relating to the Board for Contractors; certification of backflow prevention device workers; penalty.

[S 412]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-1102, 54.1-1118, and 54.1-1128 through 54.1-1135 of the Code of Virginia are amended and reenacted 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 *and recertification* of tradesmen *and backflow prevention device workers*.

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.

§ 54.1-1118. 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 (i) declaring a claim against a regulant who is in bankruptcy to be a "Debt Nondischargeable in Bankruptcy" or (ii) extinguishing a claim against a regulant who is in bankruptcy and for which claim no distribution was made from the

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regulant's bankruptcy estate but excluding any such claim disallowed by order of the bankruptcy court.

"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 or backflow prevention device workers certified in accordance with Article 3 (§ 54.1-1128 et seq.) of this chapter.

Article 3.

Certification of Tradesmen and Backflow Prevention Device Workers.

§ 54.1-1128. Definitions.

"Backflow prevention device worker" means any individual who engages in, or offers to engage in, the maintenance, repair, testing, or periodic inspection of cross connection control devices, including but not limited to reduced pressure principle backflow preventors, double check-valve assemblies, double-detector check-valve assemblies, pressure type vacuum breaker assemblies, and other such devices designed, installed, and maintained in such a manner so as to prevent the contamination of the potable water supply by the introduction of nonpotable liquids, solids, or gases, thus ensuring that the potable water supply remains unaltered and free from impurities, odor, discoloration, bacteria, and other contaminants which would make the potable water supply unfit or unsafe for consumption and use.

"Board" means the Board for Contractors.

"Tradesman" means any individual who engages in, or offers to engage in, work for the general public for compensation in the trades of electrical, plumbing and heating, ventilation and air-conditioning.

§ 54.1-1129. Necessity for certification.

A. Beginning July 1, 1995, no individual shall engage in, or offer to engage in, work as a tradesman as defined in § 54.1-1128 unless he has been certified under the provisions of this article. Individuals shall not be subject to tradesman certification when working under the supervision of a tradesman who is certified in the specialty for which work is being performed. Individuals holding a certification in one specialty shall not be required to have a tradesman certification in another specialty when performing work which is incidental to work being performed under their own specialty certification.

B. Beginning July 1, 1998, no individual shall engage in, or offer to engage in, work as a backflow prevention device worker as defined in § 54.1-1128 unless he has been certified under the provisions of this article. Individuals certified as backflow prevention device workers shall not be required to hold any other professional or occupational license or certification; however, nothing in this subsection shall prohibit an individual from holding more than one professional or occupational license or certification.

§ 54.1-1130. Application for certification; fees; examinations; issuance.

Any individual desiring to be certified as a tradesman or backflow prevention device worker shall file 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 the applicant's name, place of employment, and business address; information on the knowledge, skills, abilities and education or training of the applicant; and an affidavit stating that the information on the application is correct.

If the application is satisfactory to the Board, the applicant shall be required by Board regulations to take an oral or written examination to determine his general knowledge of the trade in which he desires certification or of backflow prevention devices unless he is exempt pursuant to § 54.1-1131. If the applicant successfully completes the examination, tradesman certification as a tradesman or backflow prevention device worker shall be issued.

§ 54.1-1131. Exemptions.

A. An individual certified or licensed by any one of the following agencies shall not be required to fulfill the examination requirement specified in § 54.1-1130 for tradesman certification:

1. The Board of Housing and Community Development prior to July 1, 1995.
2. Any local governing body prior to July 1, 1978.
3. An apprenticeship program which is approved by the Virginia Apprenticeship Council.

Individuals applying for tradesman certification between July 1, 1995, and July 1, 1998, shall be deemed to have fulfilled the examination requirement if they are able to demonstrate the required number of years of discipline-free experience set forth in Board regulations.

B. Upon satisfactory evidence to the Board, the following individuals shall not be required to fulfill the examination requirement specified in § 54.1-1130 to be certified as a backflow prevention device worker:

1. Individuals approved, or recognized as having expertise, by a local governing body prior to July 1, 1998, to perform backflow prevention device work; or
2. Individuals applying for certification between July 1, 1998, and July 1, 1999, who are able to demonstrate that they have the required number of years of discipline-free experience and education or training set forth in Board regulations.

C. The provisions of this article shall not apply to any individual who is performing work on any

ship, boat, barge or other floating vessel.

§ 54.1-1132. Expiration and renewal of certification.

A ~~tradesman~~ certificate as a *tradesman or backflow prevention device worker* issued pursuant to this article shall expire as provided in Board regulations and shall become invalid on that date unless renewed, subject to approval of the Board. Application for renewal of a ~~tradesman~~ any certificate issued pursuant to this article shall be made as provided by Board regulations and shall be accompanied by a fee set by the Board pursuant to § 54.1-201.

§ 54.1-1133. Continuing education.

The Board may establish in the regulations, requirements for continuing education as a prerequisite to renewal of a ~~tradesman~~ any certification issued under this article.

§ 54.1-1134. Grounds for denial or revocation of certification; 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 ~~tradesman~~ certification of any individual who is found to be in violation of the statutes or regulations governing the practice of certified tradesmen or *backflow prevention device workers* in the Commonwealth.

Any building official who finds that an individual is practicing as a *tradesman or backflow prevention device worker* without a ~~tradesman~~ certification as required by this article shall file a report to such effect with the Board. Any water purveyor who finds that an individual is practicing as a *backflow prevention device worker* without certification as required by this article shall file a report to such effect with the Board.

Any building official who has reason to believe that (i) a tradesman is performing incompetently as demonstrated by an egregious or repeated violation of the Uniform Statewide Building Code (§ 36-97 et seq.) or (ii) a *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 *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.

§ 54.1-1135. Prohibited acts.

A. Practicing or attempting to practice as a *tradesman or backflow prevention device worker* in the Commonwealth, except as provided for in this article, is prohibited and shall constitute the commission of a Class 3 misdemeanor.

B. No person shall be entitled to assert the lack of ~~tradesman~~ certification as required by this article 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 certification requirements of this article.

2. That, pursuant to the Virginia Administrative Process Act (§ 9-6.14:1 et seq.), the Board for Contractors, with the assistance of an advisory committee comprised of at least three cross connection control inspectors and two plumbing contractors, shall adopt final regulations relating to the certification of backflow prevention device workers on or before April 1, 1998.

3. That the Board for Professional and Occupational Regulation shall conduct a study to determine the appropriate level of regulation of backflow prevention device workers. The Board shall also determine the approximate costs to individual regulants, affected businesses, and consumers of the various forms of regulation. The Board shall report its findings to the Governor and the 1997 Session of the General Assembly by December 1, 1996.