

**REPORT OF THE
DEPARTMENT FOR PROFESSIONAL AND
OCCUPATIONAL REGULATION**

**BACKFLOW PREVENTION
DEVICE WORKERS**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



SENATE DOCUMENT NO. 11

**COMMONWEALTH OF VIRGINIA
RICHMOND
1997**



COMMONWEALTH of VIRGINIA

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**TO: The Honorable George Allen, Governor of Virginia
Members of the Virginia General Assembly**

SUBJECT: Backflow Prevention Device Workers

The Board for Professional and Occupational Regulation submits the following report pursuant to Senate Bill 412 and House Bill 1019 (1996 session) which requested the Board to study the appropriate level of regulation of backflow prevention device workers.

Based on a public hearing and lengthy deliberations, the Board determined that backflow prevention device workers, as currently regulated by some localities, do not pose a threat to public health, safety or welfare. While the Board believes that standardization of requirements for backflow prevention device testers may be desirable, the statutory requirements for establishing a state regulatory program for this occupation were not met.

Based on its findings and conclusions, the Board recommends that the General Assembly repeal the certification program for backflow prevention device workers. If such action is not taken, the Board recommends that the current statute be amended to 1) provide that the backflow prevention device worker program become a voluntary certification program, 2) eliminate the waiver of examination for individuals who have met certain requirements, and 3) create an exemption from certification for personnel who conduct backflow prevention device testing exclusively at their employer's location provided that they attain certification from the manufacturer of the device installed at that location.

The enclosed report outlines the Board's findings, conclusions, and recommendations. Members of the Board for Professional and Occupational Regulation would be pleased to answer any questions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Donald E. Sours".

Donald E. Sours
Chairman of the Board for Professional
and Occupational Regulation

PREFACE

During the 1996 session, the General Assembly passed Senate Bill 412 and House Bill 1019 (Appendix A and B) which were signed by Governor Allen establishing a state certification program for backflow prevention device workers [Chapter 934 and Chapter 1006]. The program, effective July 1, 1998, is to be administered by the Board for Contractors at the Department of Professional and Occupational Regulation (DPOR). In addition, the legislation requested the Board for Professional and Occupational Regulation to conduct a study to determine the appropriate level of regulation of backflow prevention device workers. The General Assembly also asked that the Board determine the approximate costs to individual regulants, affected businesses, and consumers of the various forms of regulation.

The Board for Professional and Occupational Regulation studied the practice of this occupation, and whether state regulation is necessary to protect the public health, safety and welfare. The Board conducted a public hearing to gather information, received and reviewed numerous written comments, and surveyed localities and other states regarding the necessary level of regulation.

This report is respectfully submitted by the Board for Professional and Occupational Regulation:

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TABLE OF CONTENTS

I.	INTRODUCTION	
	A.	Statutory Criteria for Regulation 1
II.	FINDINGS	
	A.	Profile of the Occupation 2
	B.	Training Requirements 4
	C.	Impetus for State Certification 4
	D.	Mandatory Program 5
	E.	Grandfather Provisions 5
	F.	Regulation by Other States 6
	G.	Costs of State Regulatory Program 6
III.	CONCLUSIONS 6
IV.	RECOMMENDATIONS 7
V.	SUPPORTING DATA	
	A.	Public Hearing 8
	B.	Written Comments 8
	C.	Surveys 9
VI.	APPENDIX A (Senate Bill 412) 12
	APPENDIX B (House Bill 1019) 16

I. INTRODUCTION

A. Statutory Criteria for Regulation

Section 54.1-311 of the *Code of Virginia* sets forth the criteria for the Board for Professional and Occupational Regulation to use in studying the need for regulation of an occupation. The statute states:

Degrees of regulation. - A. Whenever the Board determines that a particular profession or occupation should be regulated, or that a different degree of regulation should be imposed on a regulated profession or occupation, it shall consider the following degrees of regulation in the order provided in subdivisions 1 through 5. The Board shall regulate only to the degree necessary to fulfill the need for regulation and only upon approval by the General Assembly.

1. Private civil actions and criminal prosecutions. - Whenever existing common law and statutory causes of civil action or criminal prohibitions are not sufficient to eradicate existing harm or prevent potential harm, the Board may first consider the recommendation of statutory change to provide more strict causes for civil action and criminal prosecution.

2. Inspection and injunction. - Whenever current inspection and injunction procedures are not sufficient to eradicate existing harm, the Board may promulgate regulations consistent with the intent of this chapter to provide more adequate inspection procedures and to specify procedures whereby the appropriate regulatory board may enjoin an activity which is detrimental to the public well-being. The Board may recommend to the appropriate agency of the Commonwealth that such procedures be strengthened or it may recommend statutory changes in order to grant to the appropriate state agency the power to provide sufficient inspection and injunction procedures.

3. Registration. - Whenever it is necessary to determine the impact of the operation of a profession or occupation on the public, the Board may implement a system of registration.

4. Certification. - When the public requires a substantial basis for relying on the professional services of a practitioner, the Board may implement a system of certification.

5. Licensing. - Whenever adequate regulation cannot be achieved by means other than licensing, the Board may establish licensing procedures for any particular profession or occupation.

B. In determining the proper degree of regulation, if any, the Board shall determine the following:

1. Whether the practitioner, if unregulated, performs a service for individuals involving a hazard to public health, safety or welfare.

2. The opinion of a substantial portion of the people who do not practice the particular

profession, trade or occupation on the need for regulation.

3. The number of states which have regulatory provisions similar to those proposed.
4. Whether there is sufficient demand for the service for which there is no regulated substitute and this service is required of a substantial portion of the population.
5. Whether the profession or occupation requires high standards of public responsibility, character and performance of each individual engaged in the profession or occupation, as evidenced by established and published codes of ethics.
6. Whether the profession or occupation requires such skill that the public generally is not qualified to select a competent practitioner without some assurance that he has met minimum qualifications.
7. Whether the professional or occupational associations do not adequately protect the public from incompetent, unscrupulous or irresponsible members of the profession or occupation.
8. Whether current laws which pertain to public health, safety and welfare generally are ineffective or inadequate.
9. Whether the characteristics of the profession or occupation make it impractical or impossible to prohibit those practices of the profession or occupation which are detrimental to the public health, safety and welfare.
10. Whether the practitioner performs a service for others which may have a detrimental effect on third parties relying on the expert knowledge of the practitioner.

II. FINDINGS

A. Profile of the Occupation

The following definition of a backflow prevention device worker was included in the legislation:

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.

A backflow prevention device is a valve or system of valves which when operating properly

prevents the contamination of the potable water supply. Backflow is created whenever the downstream pressure exceeds the supply pressure. The backflow prevention device stops contaminated water from flowing back into the potable water supply. A cross connection is a direct arrangement of a piping line which allows the potable water supply to be connected to a line which contains a contaminant.

Section 2.28E of the Waterworks Regulations requires backflow prevention devices to be installed at each service connection of the water system to the following locations:

1. Hospitals, mortuaries, clinics, veterinary establishments, nursing homes, and medical buildings;
2. Laboratories;
3. Piers, docks, waterfront facilities;
4. Sewage treatment plants, sewage pumping stations, or storm water pumping stations;
5. Food and beverage processing plants;
6. Chemical plants, dyeing plants and pharmaceutical plants;
7. Metal plating industries;
8. Petroleum or natural gas processing or storage plants;
9. Radioactive materials processing plants or nuclear reactors;
10. Car washes and laundries;
11. Lawn sprinkler systems, irrigation systems;
12. Fire service systems;
13. Slaughter houses and poultry processing plants;
14. Farms where the water is used for other than household purposes;
15. Commercial greenhouses and nurseries;
16. Health clubs with swimming pools; therapeutic baths, hot tubs or saunas;
17. Paper and paper products plants and printing plants;
18. Pesticide or exterminating companies and their vehicles with storage or mixing tanks;

19. Schools or colleges with laboratory facilities;
20. Highrise buildings (4 or more stories);
21. Multiuse commercial, office, or warehouse facilities;
22. Others specified by the purveyor and/or the Department of Health when reasonable cause can be shown for a potential backflow or cross connection hazard.

Currently the Virginia Board for Contractors Regulations (18 Virginia Administrative Code 50-30-10) requires that the installation of backflow prevention devices must be done by a certified tradesman (plumber). The Virginia Department of Health requires backflow prevention devices to be tested annually. The Department of Health also requires each water purveyor in the Commonwealth to implement its own backflow prevention program.

B. Training Requirements

The Board for Professional and Occupational Regulation received various opinions on the level of training necessary to perform backflow prevention device testing. Concerns were raised that only licensed plumbers are qualified to repair backflow prevention devices. If a backflow prevention device worker, not licensed as a plumber, finds a problem with the device, a licensed plumber must be hired to replace the device. Some localities therefore require all testers to be licensed plumbers. In other localities, there are very few licensed plumbers. Requiring all devices to be tested by a licensed plumber could adversely affect such localities and could result in the failure to meet annual testing requirements. Maintenance personnel who conduct backflow prevention device testing exclusively at their place of employment may only need the manufacturer's training for the specific device installed at their location.

Training to become a backflow prevention device worker is offered by a number of schools throughout Virginia. The Virginia Cross Connection Control Association sponsors backflow prevention device worker training as well. Training for backflow prevention device testers is usually a two day course consisting of lecture and hands-on training followed by an examination. Some localities require a 40-hour course and certification in the American Society of Sanitary Engineering Standards.

C. Impetus for State Certification

Backflow prevention device workers trained and certified to work in one locality sometimes find such certification not honored in other localities with different requirements. These varying requirements among localities served as the momentum for creating a state certification program. The Virginia Cross Connection Control Association (VCCCA), the Virginia Plumbing Mechanical Inspectors Association (VPMIA) and the Virginia Association of Plumbing, Heating and Cooling Contractors (PHCC) joined forces to seek state certification of backflow prevention device workers. The proponents stated at the public hearing that state certification was being sought to allow workers to obtain one certification which would be accepted by all localities in the Commonwealth.

D. Mandatory Program

The Board for Professional and Occupational Regulation notes that although the intent may have been to create a voluntary certification program, the statutory language mandates individuals who engage in this occupation to obtain a certification. Section 54.1-300 of the *Code of Virginia* defines certification as:

the process whereby the Department or any regulatory board issues a certificate on behalf of the Commonwealth to a person certifying that he possesses the character and minimum skills to engage properly in his profession or occupation.

The Code further defines licensure as:

a method of regulation whereby the Commonwealth, through the issuance of license, authorizes a person possessing the character and minimum skills to engage in the practice of profession or occupation which is unlawful to practice without a license.

Although the legislation uses "certification," the results are a mandatory versus voluntary program.

E. Grandfather Provisions

In determining the need for regulation of any occupation or profession, the Board refers to Section 54.1-100 of the *Code of Virginia* which states:

No regulation shall be imposed upon any profession or occupation except for the exclusive purpose of protecting the public interest when:

1. The unregulated practice of the professional or occupation can harm or endanger the health, safety or welfare of the public, and the potential for harm is recognizable and not remote or dependent upon tenuous argument;
2. The practice of the profession or occupation has inherent qualities peculiar to it that distinguish it from ordinary work and labor;
3. The practice of the profession or occupation requires specialized skill or training and the public needs, and will benefit by, assurances of initial and continuing professional and occupational ability; and
4. The public is not effectively protected by other means.

If the intent of a new regulatory program is to protect the public, the Board notes that minimum competency must be determined through an examination. The backflow prevention device testers legislation included grandfather provisions which exempt from a state examination for certification any individual who has been approved or recognized as having expertise by a local governing body prior to July 1, 1998, or who is able to demonstrate the required number of years of discipline-free experience and education and training.

Liberal grandfather provisions substantially dilute the effectiveness of protecting the public if

testers would be grandfathered into the program regardless of their ability to successfully pass an examination.

F. Regulation by Other States

The Board for Professional and Occupational Regulation surveyed 49 states to determine the number of states which regulate this occupation and the level of regulation. Thirty states responded to the survey and 17 currently regulate backflow prevention device workers through a state certification or licensure program.

G. Costs of State Regulatory Program

All boards within the Department of Professional and Occupational Regulation must operate within the provisions of the *Code of Virginia* (§ 54.1-113). As such, each program's revenues (through fees) must support both its direct and a proportionate share of its indirect costs. To ensure that the provisions of the *Code of Virginia* are met, the Department allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies. Based on a projection of 2,000 regulants, the Department estimates that backflow prevention device worker fees for a new applicant would be \$240. Actual fees may vary after education and training requirements are established in the regulations. While not a fee to the state, candidates would also incur costs ranging from \$75 to \$300 to attend the required training course.

III. CONCLUSIONS

Section 54.1-310 of the *Code of Virginia* gives the Board for Professional and Occupational Regulation the authority to:

evaluate constantly each profession and occupation in the Commonwealth not otherwise regulated for consideration as to whether such profession or occupation should be regulated and if so, the degree that should be imposed.

Upon review of its findings, the Board concluded that the statutory requirements for establishing a state regulatory program for backflow prevention device workers were not met. The Board, however, supports continued educational efforts to ensure proper installation and annual testing of backflow prevention devices, for the devices are crucial in protecting the public. The Board also believes the current regulations requiring a certified plumber to install and repair such devices should not be altered.

The Board concludes that the current system through local enforcement has not failed to protect the public. Survey responses from 58 of the state's localities revealed that only 11 localities had received a complaint about backflow prevention device testers. The current system, however, has created some entry barriers for backflow prevention device testers who have met requirements in one locality, but who cannot perform the service in a neighboring locality because of different requirements. The Board maintains that the requirements for testers may vary among localities due to the variations in the complexity of the water supply systems throughout the Commonwealth. Localities therefore continue to be best equipped to establish programs, approved by the Department of Health, for monitoring backflow prevention devices. Localities likewise should determine the requirements for the

workers who test and maintain such systems.

While standardization of requirements for backflow prevention device testers may be desirable, it is not justification for creating a new state regulatory program. If the General Assembly continues to believe that such a regulatory program is necessary to remedy this entry problem, the Board believes that a voluntary certification program would be the least intrusive by allowing those individuals who wish to be certified to obtain such distinction which would be honored in any locality. Backflow prevention device testers who do not choose to be state certified could meet the existing requirements in their locality and receive local certification valid only in that locality. The Board also seriously questions the liberal grandfather provisions of the enacted legislation if the intent of the legislation is to protect the public through a state regulatory program which ensures minimum competency.

IV. RECOMMENDATIONS

Based on the above conclusions, the Board for Professional and Occupational Regulation recommends that:

- The General Assembly repeal the certification program for backflow prevention device workers in § 54.1-1128 et. seq. of the *Code of Virginia*.
- In the alternative, if the General Assembly does not repeal the program, the Board recommends that the current statute be amended to 1) provide that the backflow prevention device worker program is a voluntary certification program, 2) eliminate the waiver of examination for individuals who have met certain requirements, and 3) create an exemption from certification for personnel who conduct backflow prevention device testing exclusively at their employer's location provided that they attain certification from the manufacturer of the device installed at that location.

V. SUPPORTING DATA

A. Public Hearing

A public hearing was conducted on June 17, 1996, to allow interested parties to present testimony to the Board for Professional and Occupational Regulation on the regulation of backflow prevention device workers. Approximately 30 individuals attended including representatives from the Virginia Board for Contractors and the Virginia Waterworks and Wastewater Works Board.

Members of the Virginia Cross Connection Control Association and the Virginia Association of Plumbing, Heating and Cooling Contractors also presented testimony. Spokespersons for these organizations stressed that state regulation was necessary to ensure uniformity.

Representatives from the City of Newport News and the City of Virginia Beach expressed concern that the installation and repair of backflow preventors must be done by a licensed plumber. Conversely, an individual from a rural area testified that there was only one plumber listed in the yellow pages and questioned whether such a requirement would be unduly burdensome on smaller communities.

B. Written Comments

The public was encouraged to submit written comments in lieu of or in addition to public testimony.

The Board received seven written comments. The Department of Public Utilities for the City of Richmond urged the Board to clarify that the Virginia Waterworks Regulations and associated state and federal laws require the Commonwealth's water purveyors to implement cross connection control programs, and that the state certification of backflow prevention device workers is not intended to supersede the Virginia Waterworks Regulations or the existing legal authority of water purveyors to implement the regulations. The position of the City of Richmond is that only certified plumbers are qualified to repair or install backflow prevention devices and that backflow prevention device workers should provide customers with written notice of the types of work they are certified to perform. Finally, the City of Richmond supports continuing education requirements for backflow prevention device workers.

The Board for Contractors warned that the regulation of backflow prevention device workers will be the only inspector/tester type program administered by their Board. The Board for Contractors supported a voluntary certification program for backflow prevention device workers. Concerns were raised regarding funding, development of a qualifying process equivalent to the other "trades" and exploration of overlapping responsibilities with the Water Control Board.

The Inspection Services Division of Arlington County did not believe that a convincing case can be made to require and mandate building owners statewide to have their maintenance workers or building engineers obtain a cross-connection certification. It was argued that the County has no documented cases of contamination of the potable water supply based on maintenance workers or building engineers performing routine maintenance or minor repairs on these devices.

C. Surveys

The Board for Professional and Occupational Regulation contacted 49 state agencies to determine the number of other states which regulated this occupation. Thirty completed surveys were returned. The following summarizes the responses:

1. Does your state require backflow prevention devices to be tested annually?

70.0% (21) Yes
30.0% (9) No
0.0% (0) No answer

2. Does your state regulate backflow prevention device workers?

56.7% (17) Yes
40.0% (12) No
3.3% (1) No answer

3. If no to question #2, are backflow prevention device workers regulated at the local government level?

23.3% (7) Yes
20.0% (6) No
56.7% (17) No answer

4. If yes to question #2, what category best describes the regulatory program for backflow prevention device workers?

43.3% (13) Licensure
23.3% (7) Certification
0.0% (0) Registration
33.3% (10) No answer

5. If these individuals are regulated, are they registered, certified, or licensed as part of a larger group such as plumbers, Health Department workers, water or wastewater workers?

33.3% (10) Yes
43.3% (13) No
23.3% (7) No answer

6. Does your state's regulatory program require passage of an examination specifically tailored to the backflow prevention device workers?

43.3% (13) Yes
43.3% (13) No
13.3% (4) No answer

The Board for Professional and Occupational Regulation also surveyed 166 localities regarding backflow prevention device testing. Fifty-eight completed responses were returned. The following summarizes the responses.

1. When did your localities begin requiring backflow prevention device testers to be certified?

24.1% (14) 1990
 17.2% (10) 1980
 10.3% (6) 1970
 48.3% (28) No answer

2. How many backflow prevention device workers are certified to work in your locality?

31.0% (18) 1 - 10 workers
 13.8% (8) 10 - 50 workers
 1.7% (1) 50 - 100 workers
 5.2% (3) over 100 workers
 48.3% (28) No answer

3. Who administers the certification process in your locality?

Answers varied greatly. Most localities responded that the certification process was administered by the city utilities department or health department.

4. How many hours of training are required for certification in your locality?

6.9% (4) 40 or more hours
 3.4% (2) 24 hours
 31.0%(18) 16 hours
 Other responses were varied.

5. Do you ever receive complaints about backflow prevent device workers?

19.0% (11) Yes
 77.6% (45) No
 3.4% (2) No answer

6. If yes, what do the majority of the complaints involve?

8.6%(5) Cost of installation
 5.2%(3) Improper installation
 1.7%(1) Improper testing
 1.7%(1) Cost of the test
 82.8%(48) No answer

7. How many complaints did you receive against backflow prevention device workers in the past year?

- 74.1%(43) no complaints
- 1.7% (1) more than 25 complaints
- 15.5% (9) less than 25 complaints
- 8.6% (5) no answer

8. How many complaints did you receive against backflow prevention device workers in the past five years?

- 58.6% (34) none
- 12.1% (7) less than 100 complaints
- 3.4% (2) more than 100 complaints
- 15.5% (9) no answer

9. In your locality, who conduct backflow prevention device testing?

- 60.3% (35) Independent contractors
- 13.8% (8) Government employees
- 10.3% (6) Property owners
- 15.5% (9) No answer

10. Do you believe there is a need for state regulation of backflow prevention device workers?

- 44.8% (26) Yes
- 48.3% (28) No
- 6.9% (4) No answer

11. If yes to question #10, what benefits would result from state regulation of this occupation?

Uniform certification would protect water systems; certification would ensure that water regulations are enforced; certification would relieve localities from burdensome program; it would improve work performed; state certification would allow testers to work in all localities without spending time and money on training.

VIRGINIA ACTS OF ASSEMBLY -- 1996 RECONVENED SESSION

REENROLLED

CHAPTER 934

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 April 17, 1996

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 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, in consultation with 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 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.

VIRGINIA ACTS OF ASSEMBLY -- 1996 RECONVENED SESSION

REENROLLED

CHAPTER 1006

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.

[H 1019]

Approved April 17, 1996

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 airconditioning 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 the 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 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 the 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.

