

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1790 Session of 2021

INTRODUCED BY SILVIS, HAMM, HEFFLEY, MILLARD, RADER, STAMBAUGH, KAIL, TWARDZIK AND WARNER, AUGUST 12, 2021

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, MARCH 29, 2022

AN ACT

1 Amending the act of November 10, 1999 (P.L.491, No.45), entitled
2 "An act establishing a uniform construction code; imposing
3 powers and duties on municipalities and the Department of
4 Labor and Industry; providing for enforcement; imposing
5 penalties; and making repeals," in adoption and enforcement
6 by municipalities, further providing for consideration of
7 applications and inspections; and, in training and
8 certification of inspectors, providing for corrective action.

9 The General Assembly of the Commonwealth of Pennsylvania
10 hereby enacts as follows:

11 Section 1. Section 502(a)(2) of the act of November 10, 1999
12 (P.L.491, No.45), known as the Pennsylvania Construction Code
13 Act, is amended and the subsection is amended by adding
14 paragraphs to read:

15 Section 502. Consideration of applications and inspections.

16 (a) Applications for permits and inspections.--

17 * * *

18 (2) If an application is denied in whole or in part, the
19 code administrator shall set forth the reasons in writing,
20 identifying the elements of the application which are not in

1 compliance with the relevant provisions of the Uniform
2 Construction Code and ordinance as appropriate and providing
3 a citation to the relevant provisions of the Uniform
4 Construction Code and ordinance as appropriate. The written
5 notification shall provide specific references to the
6 sections of the applicable ICC codes with which the code
7 administrator requires the application to be in compliance
8 before the application can be approved.

9 * * *

10 (4) A construction code official shall perform the
11 required inspections of construction to ensure that the
12 construction complies with a permit approved under this
13 subsection and the Uniform Construction Code. The following
14 apply:

15 (i) Inspections shall only be conducted during
16 normal business hours at the construction site unless the
17 permit holder or agent requests or agrees to another
18 time.

19 (ii) The construction code official shall provide
20 the permit holder with a written description of items
21 that are not in compliance. The written description shall
22 include specific references to the sections of the
23 applicable ICC codes that require remedial action. THE <--
24 WRITTEN DESCRIPTION SHALL BE PROVIDED WITHIN ONE BUSINESS
25 DAY OF THE INSPECTION, EXCEPT THAT, IF THE PERMIT HOLDER
26 AGREES IN WRITING TO WAIVE THE INCLUSION OF SPECIFIC
27 REFERENCES TO THE SECTIONS OF THE APPLICABLE ICC CODES
28 THAT REQUIRE REMEDIAL ACTION, THE WRITTEN DESCRIPTION
29 SHALL BE PROVIDED WITHIN TWO HOURS FOLLOWING THE
30 INSPECTION.

1 (5) A municipality shall ensure that the form utilized
2 for a permit application notifies an applicant of all of the
3 following:

4 (i) The department investigates complaints about
5 code administrators and can take corrective action for
6 just cause section 701.1. The notice provided shall
7 include a list of the infractions that constitute just
8 cause under section 701.1 and department regulations.

9 (ii) The department has a publicly accessible
10 Internet website that includes the form for filing a
11 complaint under subparagraph (i).

12 (iii) An applicant may file a complaint with the
13 department about a violation that would constitute just
14 cause for the department to initiate corrective action
15 under section 701.1 OR DEPARTMENT REGULATIONS.

<--

16 * * *

17 Section 2. The act is amended by adding a section to read:
18 Section 701.1. Corrective action.

19 (a) Decertification or refusal to certify.--The department
20 may initiate action against a code administrator or refuse to
21 issue certification for just cause, which includes the
22 following:

23 (1) Failure to remedy an error or omission specified in
24 a formal warning or comply with an order issued by the
25 department under this section.

26 (2) Fraud or deceit or making untrue representations in
27 obtaining a certification.

28 (3) Failure to remit the required certification fee.

29 (4) Violation of this act or department regulations
30 related to the training and certification of code

1 administrators.

2 (5) Incompetence or gross negligence.

3 (6) Acting in a manner presenting a danger to the public
4 health and safety.

5 (7) Pleading guilty, entering a plea of nolo contendere,
6 being found guilty, receiving probation without verdict,
7 disposition in lieu of trial or an Accelerated Rehabilitative
8 Disposition to a felony or any crime relating to the business
9 of code administrator in a Federal court, the courts of this
10 Commonwealth or a court of any other state, territory or
11 insular possession of the United States.

12 (8) Having a certification or an authorization to engage
13 in the business of code administrator revoked or suspended,
14 having other disciplinary action taken or having an
15 application for certification or authorization to engage in
16 the business of code administrator refused or denied by the
17 proper authority of another state or Federal district,
18 territory or insular possession of the United States, the
19 Federal Government or Canada.

20 (9) Failing to complete continuing education
21 requirements of this act or engaging in deceit or
22 misrepresentation in the reporting of continuing education
23 requirements.

24 (10) Engaging in fraud, deceit or an act of moral
25 turpitude while acting as code administrator.

26 (11) Failing to enforce this act or the Uniform
27 Construction Code.

28 (12) Knowingly aiding and abetting a person engaging in
29 code administrator activity who is not currently certified or
30 registered.

1 (13) Being a third-party agency that does not comply
2 with department regulations relating to liability insurance
3 coverage.

4 (14) Engaging in the activities of a code administrator
5 or advertising as a code administrator without a current
6 certification required for the work performed or registration
7 issued by the department.

8 (15) A violation of this act related to any time frame
9 in which the code administrator is required to take a
10 specific action.

11 (16) ~~Unreasonably disparate~~ DISPARATE treatment of <--
12 similarly situated applicants or permit holders for any
13 reason.

14 (17) ~~Extremely rude or unprofessional behavior, if the~~ <--
15 ~~behavior~~ CONDUCT UNBECOMING AN AGENT OF GOVERNMENT, WHETHER <--
16 OR NOT THE CODE ADMINISTRATOR IS DIRECTLY EMPLOYED BY A
17 GOVERNMENT ENTITY, INCLUDING BEHAVIOR THAT would be likely to
18 cause a reasonable person to conclude that the code
19 administrator cannot enforce the provisions of this act and
20 the Uniform Construction Code in an unbiased manner.

21 (18) Any other reason, as may be provided in department
22 regulations related to the training and certification of code
23 administrators.

24 (b) Notice and hearing.--

25 (1) Actions of the department relating to
26 decertification under this section shall be taken subject to
27 the right of notice, hearing and adjudication in accordance
28 with 2 Pa.C.S. (relating to administrative law and
29 procedure).

30 (2) Decertification proceedings shall be conducted in

1 accordance with 1 Pa. Code Pt. II (relating to the general
2 rules of administrative practice and procedure).

3 (c) Procedure for decertification.--

4 (1) The department shall serve the code administrator
5 with an order to show cause in accordance with 1 Pa. Code §
6 35.14 (relating to orders to show cause). The following
7 apply:

8 (i) The order to show cause shall contain
9 notification that:

10 (A) The certification may be subject to action,
11 along with the grounds for the action.

12 (B) The code administrator is to respond in
13 writing within 30 days after the date of service of
14 the order.

15 (ii) The department shall also serve a copy of the
16 order to show cause upon:

17 (A) The supervising official in the municipality
18 where the alleged incidents occurred.

19 (B) The current employer of the code
20 administrator.

21 (2) The code administrator may respond in writing to the
22 allegations in the order to show cause in accordance with 1
23 Pa. Code § 35.37 (relating to answers to orders to show
24 cause). If made, the answer shall be filed with the
25 department within 30 days after the date of service of the
26 order to show cause.

27 (3) At the request of the code administrator, the
28 department shall hold a hearing on the matter that is the
29 subject of the order to show cause. The secretary shall
30 designate a presiding officer to conduct the hearing and

1 issue a proposed report. The following apply:

2 (i) The presiding officer shall:

3 (A) Conduct hearings in accordance with 1 Pa.
4 Code Ch. 35 Subch. E (relating to presiding
5 officers).

6 (B) Issue a proposed report that shall be served
7 upon counsel of record or to the parties in the
8 hearing.

9 (C) Transmit the proposed report and the
10 certified record to the secretary within 15 days
11 after issuance of the proposed report.

12 (ii) The report shall be prepared in accordance with
13 1 Pa. Code §§ 35.201 (relating to certification of record
14 without proposed report), 35.202 (relating to proceedings
15 in which proposed reports are prepared), 35.203 (relating
16 to unavailability of presiding officer), 35.204 (relating
17 to oral argument before presiding officer), 35.205
18 (relating to contents of proposed reports), 35.206
19 (relating to proposed report a part of the record) and
20 35.207 (relating to service of proposed reports).

21 (4) A participant desiring to appeal to the secretary
22 shall, within 30 days after the service of a copy of the
23 proposed report under paragraph (3), file exceptions to the
24 proposed report in accordance with 1 Pa. Code § 35.211
25 (relating to procedure to except to proposed report). A
26 response to the exceptions may be filed within 20 days after
27 the filing of exceptions.

28 (5) The secretary or a designee of the secretary shall
29 issue a final order in accordance with 1 Pa. Code § 35.226
30 (relating to final orders).

1 (d) Types of corrective action.--When the department is
2 authorized to take action against a code administrator, the
3 department may:

4 (1) Administer a formal warning.

5 (2) Require the code administrator to take remedial
6 educational courses under section 701(g).

7 (3) Decertify the code administrator under section
8 701(h) for a period set by the department. Following
9 decertification, the department shall order the code
10 administrator to surrender the certificate specifying that
11 the code administrator was so certified.

12 (4) Deny the application for certification.

13 (e) Conditions for reinstatement.--Unless ordered to do so
14 by a court of competent jurisdiction, the department may not
15 reinstate certification to a person who was decertified until
16 the following conditions are met:

17 (1) The full period of decertification ordered by the
18 department has elapsed.

19 (2) The person has complied with conditions imposed by
20 the department's order of decertification and recertification
21 would not be detrimental to the public health and safety.

22 (3) The person complies with departmental regulations
23 and procedures issued under section 701 relating to
24 application and identification.

25 Section 3. The amendment of section 502(a) of the act shall
26 apply to applications for construction permits submitted on or
27 after the effective date of this act.

28 Section 4. This act shall take effect in 180 days.