

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 1030

Short Title: Chimney Sweep Act.

(Public)

Sponsors: Representative Fletcher.

Referred to: State Government.

April 19, 1991

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH THE CHIMNEY SWEEP ACT.

3 The General Assembly of North Carolina enacts:

4 Section 1. Chapter 93A of the General Statutes is amended by adding a new
5 Article to read:

6 **"ARTICLE 6.**
7 **"CHIMNEY SWEEP ACT.**

8 **"§ 93A-90. Purpose.**

9 The General Assembly finds that licensure or certification of those who engage in
10 the practice of chimney sweeping is important to ensure minimum standards of
11 competency and to provide for the public's health, safety and welfare.

12 **"§ 93A-91. Short Title.**

13 This Article shall be known and may be cited as the 'North Carolina Chimney Sweep
14 Act'.

15 **"§ 93A-92. Chimney Sweep licensure and certification use.**

16 (a) From and after January 1, 1992, it shall be unlawful for any person in this
17 State to assume or use the title 'State-licensed' or 'State-certified chimney sweep', or any
18 title, designation, or abbreviation likely to create the impression of licensure or
19 certification by the State as a chimney sweep, unless the person has first been licensed
20 or certified by the North Carolina Chimney Sweep Certification Board under the
21 provisions of this Article. The Board may adopt for the exclusive use of persons
22 licensed or certified under the provisions of this Article, a seal, symbol, or other mark
23 identifying the user as a State-licensed or State-certified chimney sweep.

1 (b) Any person licensed or certified as a chimney sweep by a sweep trade
2 organization shall retain the right to use the term 'licensed' or 'certified' or any similar
3 term in identifying himself to the public, provided that in each instance wherein such
4 term is used, the name of the licensing or certifying organization or body is prominently
5 and conspicuously displayed immediately adjacent to such term, and provided further
6 that the use of such term does not create the impression of licensure or certification by
7 the State of North Carolina.

8 (c) No licensure or certification shall be issued under the provisions of this
9 Article to a partnership, association, corporation, firm or group, nor shall the term
10 'State-licensed' or 'State-certified chimney sweep' or any similar term be used following
11 or immediately in connection with the name of a partnership, association, corporation,
12 or other firm or group or in such manner that it might create the impression of licensure
13 or certification by the State of North Carolina as a chimney sweep.

14 (d) Any person who is not certified under this Article may assist a State-licensed
15 or State-certified chimney sweep in the performance of his duties, provided that he is
16 actively and personally supervised by the State-licensed or State-certified chimney
17 sweep.

18 **"§ 93A-92.1. Definitions.**

19 When used in this Article, unless the context otherwise requires, the term:

20 (1) Chimney sweep means

21 **"§ 93A-93. Qualification for State licensure and certification; applications;**
22 **application fees; examinations.**

23 (a) Any person desiring to obtain licensure or certification as a State-licensed or
24 State-certified chimney sweep shall make written application to the Board on such
25 forms as are prescribed by the Board setting forth the applicant's qualifications for
26 licensure or certification. Each applicant shall satisfy the following qualification
27 requirements:

28 (1) Each applicant for licensure or certification as a State-licensed or
29 State-certified chimney sweep shall have demonstrated to the
30 satisfaction of the Board that he possesses the knowledge and
31 competence necessary to perform any and all duties of a chimney
32 sweep by having satisfactorily completed, within the -year period
33 immediately preceding the date application is made, a course of
34 instruction in

35 (2) Each application for State licensure or State certification as a chimney
36 sweep shall be accompanied by a fee fixed by the board but not to
37 exceed

38 (3) Any person who files with the Board an application for State licensure
39 or State certification as a chimney sweep shall be required to take an
40 oral or written examination to demonstrate his competence. The Board
41 may also make such investigation as it deems necessary into the ethical
42 background of the applicant to determine his qualifications with due
43 regard to the paramount interests of the public as to his honesty,
44 truthfulness and integrity. If the results of the examination and

1 investigation shall be satisfactory to the Board, then the Board shall
2 issue to such person a license or certificate authorizing such person to
3 act as a State-licensed or State-certified chimney sweep in this State.

4 **"§ 93A-94. License or certificate renewal; renewal fees; continuing education;**
5 **reinstatement; replacement certificates; licensure or certification history.**

6 (a) Licenses or certificates issued under this Article shall expire on the 30th day
7 of June of every year and shall become invalid after that date unless renewed prior to
8 the expiration date by filing an application with and paying to the Executive Director of
9 the Board the fee required by the Board, which may not exceed . Prerequisite to
10 the renewal of a chimney sweep license or certificate, the license or certificate holder
11 must satisfy any continuing education requirements which may be prescribed by the
12 Board under G.S. 93A-93(b). The Board may adopt rules establishing a system of
13 license or certificate renewal in which licenses or certificates expire annually with
14 varying expiration dates.

15 (b) The Board may by rule require, as a prerequisite to license or certificate
16 renewal, the completion of education courses approved by the Board or courses
17 determined by the Board to be equivalent to such instruction, provided that such
18 continuing education requirements do not exceed hours of instruction during any
19 two-year period.

20 (c) All licenses or certificates reinstated after the expiration date shall be subject
21 to a late filing fee of ten dollars (\$10.00) per month for each month or part thereof that
22 such license or certificate is lapsed, not to exceed one hundred twenty dollars (\$120.00).
23 Such late filing fee shall be in addition to the required renewal fee. In the event a
24 license or certificate holder fails to reinstate his license or certificate within 12 months
25 after the expiration date thereof, the Board may, in its discretion, consider such person
26 as not having been previously licensed or certified, and thereby subject to the provisions
27 of this Article relating to the issuance of an original license or certificate, including the
28 examination requirements set forth herein. Applications to reinstate licenses or
29 certificates expired for 12 or more months shall be accompanied by the fee required for
30 an original license or certificate and the accrued one hundred twenty dollar (\$120.00)
31 late filing fee.

32 (d) Replacement licenses or certificates may be issued by the Board upon
33 payment of five dollars (\$5.00) by the license or certificate holder. Verification by the
34 Board of the licensure or certification history of a person licensed or certified under the
35 Article shall be made only after the payment of a fee of ten dollars (\$10.00) to the
36 Board.

37 **"§ 93A-95. Education program approval and fees.**

38 **"§ 93A-96. Nonresident licensure or certification.**

39 (a) An applicant from another state which offers chimney sweep certification or
40 licensing privileges to residents of North Carolina may become State-licensed or State-
41 certified by conforming to all of the provisions of this Article, and, in the discretion of
42 the Board, such other terms and conditions as are required of North Carolina residents
43 applying for certification or licensure in such other state; provided that the Board may
44 exempt from the examination prescribed in G.S. 93-94(a) a chimney sweep duly

1 certified or licensed in another state if a similar exemption is extended to a State-
2 licensed or State-certified chimney sweep from North Carolina.

3 (b) Every applicant for State licensure or certification under this Article who is
4 not a resident of this State shall submit with his application an irrevocable consent that
5 service of process in any action against the applicant arising out of the applicant's
6 activities as a State-licensed or State-certified chimney sweep may be made by delivery
7 of the process on the Executive Director of the Board.

8 **"§ 93A-97. Rule-making authority.**

9 The Board shall have the authority to adopt rules and regulations not inconsistent
10 with the provisions of this Article and the General Statutes of North Carolina which
11 may be reasonably necessary to implement, administer and enforce the provisions of
12 this Article, including, but not limited to, the authority to:

13 (1) Prescribe forms and procedures for submitting information to the
14 Board;

15 (2) Prescribe standards for the development of _____ by persons certified
16 under this Article.

17 **"§ 93A-98. Register of applicants; roster of State-licensed or State-certified**
18 **chimney sweeps; financial report to Secretary of State; administrative**
19 **expenses.**

20 (a) The Executive Director of the Board shall keep a register of all applicants for
21 State licensure or certification as chimney sweeps showing for each the date of
22 application, name, business or residence address, and whether the license or certificate
23 was granted or refused.

24 (b) The Executive Director of the Board shall also keep a current roster showing
25 the names and places of business of all State-licensed or State-certified chimney
26 sweeps, which roster shall be kept on file in the office of the Board and be opened to
27 public inspection.

28 (c) On or before the first day of September of each year, the Board shall file with
29 the Secretary of State a copy of the roster of chimney sweeps licensed or certified by the
30 Board and a report containing a complete statement of income received by the Board in
31 connection with the licensure or certification of chimney sweeps for the preceding fiscal
32 year ending June 30, attested by the Affidavit of the Executive Director of the Board.
33 The report shall be made a part of those annual reports required under the provisions of
34 G.S. _____.

35 (d) All fees collected by the Commission under this Article shall be deposited
36 into the operating account of the Board. None of the expenses incurred by the Board in
37 administering this Article, including the compensation of any officer or employee of the
38 Board, may be paid or payable out of the Treasury of the State of North Carolina, and
39 the Board may not make or incur any expense, debt, or other financial

40 **"§ 93A-99. Disciplinary action by Board.**

41 (a) The Board may take disciplinary action against State-licensed or State-
42 certified chimney sweeps. Upon its own motion, or on the verified complaint of any
43 person, the Board may investigate the actions of any person licensed or certified under
44 this Article or any other person who shall assume to act in such capacity. If the Board

1 finds probable cause that a person licensed or certified under this Article has violated
2 any of the provisions of this Chapter, the Board may hold a hearing on the allegations of
3 misconduct.

4 The Board shall have power to suspend or revoke at any time licensure or
5 certification privileges granted under the provision of this Article or to reprimand or
6 censure any certificate holder if, following a hearing, the Commission finds the license
7 or certificate holder to have:

8 (1) Procured licensure or certification pursuant to this Article by making a
9 false or fraudulent representation;

10 (2) Made any willful or negligent misrepresentation or any willful or
11 negligent omission of material fact;

12 (3) Acted or held oneself out as a State-licensed or State-certified chimney
13 sweep when not so licensed or certified;

14 (4) Failed as a State-licensed or State-certified chimney sweep to actively
15 and personally supervise any person not licensed or certified under this
16 Article who assists the State-licensed or State-certified chimney sweep
17 in performing chimney sweep duties;

18 (5) Acted as a chimney sweep in such an unworthy or incompetent manner
19 as to endanger the interest of the public;

20 (6) Performed any other act which constitutes improper, fraudulent, or
21 dishonest conduct; or

22 (7) Violated any of the provisions of this Chapter.

23 (b) Following a hearing, the Board shall also have power to suspend or revoke
24 any license or certificate issued under the provisions of this Article or to reprimand or
25 censure any certificate holder when:

26 (1) A final civil judgment has been entered against the license or
27 certificate holder on grounds of fraud, misrepresentation, or deceit in
28 the performance of his duties.

29 (c) When a person licensed or certified under this Article is accused of any act,
30 omission, or misconduct which would subject him to disciplinary action, the license or
31 certificate holder, with the consent and approval of the Board, may surrender his license
32 or certificate and all the rights and privileges pertaining to it for a period of time
33 established by the Board. A person who surrenders his license or certificate shall not
34 thereafter be eligible for or submit any application for licensure or certification as a
35 chimney sweep during the period that the license or certificate is surrendered.

36 **"§ 93A-100. Penalty for violation of this Article."**

37 Sec. 2. This act is effective upon ratification.