WEST VIRGINIA CODE CHAPTER 15A ARTICLE 10

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§15A-10-1. State Fire Marshal and Office of the State Fire Marshal transferred to Department of Homeland Security; appointment of State Fire Marshal; removal; salary; qualifications; responsibilities; employees; equipment.

(a) The State Fire Marshal and the Office of the State Fire Marshal, heretofore existing in this code, are hereby continued in all respects except that all powers and duties exercised by the State Fire Commission with respect to the State Fire Marshal and the Office of the State Fire Marshal are terminated and all such powers and duties are hereby transferred to and vested in the Department of Homeland Security except as provided otherwise in this article.

(b) When a vacancy occurs in the position of State Fire Marshal, the Fire Commission, at the request of the Governor, shall submit a list of not more than three names to the Governor from which the Governor shall make the appointment. The Governor shall appoint a State Fire Marshal, from a list of names submitted by the Fire Commission. The State Fire Marshal serves at the will and pleasure of the Governor and is exempt from coverage under the classified civil service system.

(c) The State Fire Marshal shall have a baccalaureate degree from an accredited four-year college or university, or equivalent experience, and six years of full-time or part-time equivalent paid or volunteer experience in fire prevention or fire safety including two years in a supervisory capacity in fire prevention and fire safety.

(d) The State Fire Marshal, shall have full responsibility for the enforcement of fire and life safety programs in this state designated to minimize fire hazards and disaster and loss of life and property from these causes. These responsibilities include, but are not limited to, the establishment and enforcement of fire safety practices throughout the state, preventive inspection and correction activities, coordination of fire safety programs with volunteer and paid fire departments, and critical analysis and evaluation of West Virginia’s fire loss statistics for determination of problems and solutions.

(e) The State Fire Marshal may employ such technical, clerical, stenographic, and other personnel and fix their compensation and may incur such expenses as may be necessary in the performance of the duties of his or her office within the appropriation therefor. Employees of the Fire Marshal’s office shall be members of the state civil service system and all appointments of the office shall be a part of the classified service under the civil service system.

(f) The State Fire Marshal may employ a chief deputy fire marshal, who shall be classified exempt. The deputy shall have a baccalaureate degree from an accredited four-year college or university, or equivalent experience, and six years of full-time or part-time equivalent paid or volunteer experience in fire prevention or fire safety including two years in a supervisory capacity in fire prevention and fire safety.

(g) Any individual who is employed by the State Fire Marshal to conduct criminal investigations or who may become actively involved in matters of a criminal nature shall first

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be required to pass a civil service examination testing his or her competency and proficiency in the law of arrest, search and seizure, and other criminal procedures relating to the powers granted to the State Fire Marshal pursuant to the provisions of this article: *Provided,* That all new hires to sworn positions of Fire Marshal 1, 2, or 3 and deputy fire marshal, excluding the chief deputy as described in subdivision (f) of this section, shall comply with the law enforcement certification requirements set forth in §30-29-1 *et seq.*

(h) The State Fire Marshal and other personnel of the State Fire Marshal's Office shall be provided with appropriate office space, furniture, equipment, supplies, stationery, and printing in the same manner as provided for other state agencies.

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§15A-10-2. Powers, duties, and authority of State Fire Marshal.

(a) The State Fire Marshal may employ personnel, fix their compensation and, within funds available to do so, incur expenses as necessary in the performance of the duties of his or her office.

(b) The State Fire Marshal is responsible for the enforcement of fire programs within this state, training, uniform standards and certification, finance, and planning, and fire prevention.

(c) The State Fire Marshal shall ensure that state and area training and education in fire service are operated throughout the state at a level consistent with needs identified by the State Fire Commission.

(d) The State Fire Marshal shall perform any such duties as necessary to assist the State Fire Commission in performing its duties and responsibilities as provided in §15A-11-1 *et seq.* of this code. This shall include, but not be limited to, performing inspections on fire departments, making recommendations on fire department boundary lines, making recommendations on applications for new fire departments, making recommendations on closures or suspensions of fire departments, and any other act or assistance to the State Fire Commission as may be necessary. The Fire Marshal may, in the case of imminent danger, issue immediate cease and desist orders on behalf of the State Fire Commission without their prior approval. In that case, the State Fire Commission shall act further upon said order at their next regular meeting.

(e) The State Fire Marshal may accept, on behalf of the Office of the State Fire Marshal, or on behalf of the State Fire Commission, gifts, grants, court ordered civil forfeiture proceedings and bequests of funds or property from individuals, foundations, corporations, the federal government, governmental agencies and other organizations or institutions. Moneys from gifts, grants, civil forfeiture proceedings and bequests received by the State Fire Marshal shall be deposited into the special account set forth in §15A-10-7 of this code, and the State Fire Marshal, has the authority to make expenditures of, or use of any tangible property, in order to effectuate the purposes of this article.

(f) Beginning July 1, 2020, applicants for certification or licensure in accordance with the education and training programs under the respective jurisdictions of State Fire Marshal shall be permitted to apply training hours earned via career technical education provided by West Virginia public schools or an apprenticeship program or employer-sponsored training program towards the requirements for certification and/or licensure by the State Fire Marshal as applicable. The State Fire Marshal shall, after consultation with the State Superintendent of Schools, propose rules for legislative approval, in accordance with the provisions of §29A-3-1 *et seq.* of this code, for the implementation and enforcement of these provisions. The rules shall provide at least the following:

(1) Standards and procedures for recognizing training hours acquired through career

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technical education provided by West Virginia public schools and applying those hours to requirements for testing and/or certification and/or licensure; and

(2) Standards and procedures for recognizing training hours acquired through apprenticeship programs and employer-sponsored training programs and applying those hours to requirements for testing and/or certification and/or licensure.

As used in this subsection:

(A) "Apprentice" means someone who is enrolled in an apprenticeship program.

(B) "Apprenticeship program" means a program offered by an employer to provide supervised on-the-job training to employees approved by the United States Department of Labor.

(C) "Employer sponsored training program" means a program approved in accordance with a rule promulgated by the State Fire Commission or the State Fire Marshal under their respective authorities established in this code.

(D) "License" means a valid and current certification or license issued by State Fire Commission or the State Fire Marshal for satisfactory completion of education and training programs under their respective jurisdictions.

(E) "Career technical education" means programs of study, clusters, and pathways approved by the West Virginia Board of Education pursuant to state board policy.

(g) Notwithstanding any other provisions of this code, beginning on July 1, 2020, the State Fire Commission has no enforcement authority for violations of the fire code, or the building code, all enforcement authority previously held by the Fire Commission regarding these two rules is hereby transferred and solely vests in the Office of the State Fire Marshal.

(h) Notwithstanding any provision of this code to the contrary, on July 1, 2020, all power and authority for the licensing or certifications programs of "home inspectors", and "municipal, county, and other public sector building code officials, building code inspectors, and plans examiners", are hereby transferred to the Office of the State Fire Marshal, and the State Fire Marshal shall have full authority over said programs, licenses, certifications, and all responsibilities thereof. Whenever in this code a reference is made to the State Fire Commission in relation to these Licensing or Certification Programs, it shall be construed to mean the State Fire Marshal.

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§15A-10-3. Additional powers, duties and authority of State Fire Marshal relating to law enforcement; statewide contracts; penalties; authority to carry firearms.

(a) *Enforcement of laws.* — The State Fire Marshal, and any of his or her assistant fire marshals or deputy fire marshals, are fully authorized to enforce the fire code, the building code, this article, §15A-11-1 *et seq*. of this code, and any laws over of the state having to do with:

(1) Prevention of fire;

(2) The storage, sale, and use of any explosive, combustible, or other dangerous article or articles in solid, flammable liquid, or gas form;

(3) The installation and maintenance of equipment of all sorts intended to extinguish, detect, and control fires;

(4) The means and adequacy of exit, in case of fire, from buildings and all other places in which persons work, live, or congregate, from time to time, for any purpose, except buildings used wholly as dwelling houses for no more than two families;

(5) The suppression of arson; and

(6) Any other thing necessary to carry into effect the provisions of this article and §15A-11-1 *et seq*. of this code including, but not limited to, confiscating any materials, chemicals, items, or personal property owned, possessed, or used in direct violation of the State Fire Code.

(b) *Assistance upon request.* — Upon request, the State Fire Marshal shall assist any chief of any recognized fire company or department. Upon the request of any federal law-enforcement officer, State Police officer, Natural Resources police officer, or any county or municipal law-enforcement officer, the State Fire Marshal, any deputy state fire marshal, or assistant state fire marshal employed pursuant to the provisions of this article and any person deputized pursuant to subsection (j) of this section may assist in the lawful execution of the requesting officer's official duties: *Provided*, That the State Fire Marshal, or other person authorized to act under this subsection, shall at all times work under the direct supervision of the requesting officer.

(c) *Enforcement of rules.* — The State Fire Marshal shall enforce the rules promulgated by the State Fire Commission as authorized by this article and §15A-11-1 *et seq*. of this code.

(d) *Inspections generally.* — The State Fire Marshal shall inspect all structures and facilities, other than one- and two-family dwelling houses, subject to the State Fire Code and this article, including, but not limited to, state, county, and municipally owned institutions, all public and private schools, health care facilities, theaters, churches, and other places of public assembly to determine whether the structures or facilities are in compliance with the State Fire Code.

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(e) *Right of entry.* — The State Fire Marshal may, at any hour necessary, enter any building or premises, other than dwelling houses, for the purpose of making an inspection which he or she may consider necessary under the provisions of this article. The State Fire Marshal and any deputy state fire marshal or assistant state fire marshal approved by the State Fire Marshal may enter upon any property, or enter any building, structure, or premises, including dwelling houses during construction and prior to occupancy, for the purpose of ascertaining compliance with the conditions set forth in any permit or license issued by the office of the State Fire Marshal pursuant to §15A-10-7 or §29-3B-1 *et seq.* of this code.

(f) *Investigations.* — The State Fire Marshal may, at any time, investigate as to the origin or circumstances of any fire or explosion or attempt to cause fire or explosion occurring in the state. The State Fire Marshal has the authority at all times of the day or night, in performance of the duties imposed by the provisions of this article, to investigate where any fires or explosions or attempt to cause fires or explosions may have occurred, or which at the time may be burning. Notwithstanding the above provisions of this subsection, prior to entering any building or premises for the purposes of the investigation, the State Fire Marshal shall obtain a proper search warrant: *Provided*, That a search warrant is not necessary where there is permissive waiver or the State Fire Marshal is an invitee of the individual having legal custody and control of the property, building or premises to be searched.

(g) *Testimony.* — The State Fire Marshal, in making an inspection or investigation when in his or her judgment the proceedings are necessary, may take the statements or testimony under oath of all persons who may be cognizant of any facts or have any knowledge about the matter to be examined and inquired into and may have the statements or testimony reduced to writing; and shall transmit a copy of the statements or testimony so taken to the prosecuting attorney for the county wherein the fire or explosion or attempt to cause a fire or explosion occurred. Notwithstanding the above, no person may be compelled to testify or give any statement under this subsection.

(h) *Arrests; warrants*. — The State Fire Marshal, any full-time deputy fire marshal, or any full-time assistant fire marshal employed by the State Fire Marshal pursuant to this article is hereby authorized and empowered and any person deputized pursuant to this article may be authorized and empowered by the State Fire Marshal:

(1) To arrest any person anywhere within the confines of the State of West Virginia, or have him or her arrested, for any violation of the arson-related offenses of §61-3-1 *et seq.* of this code or of the explosives-related offenses of §61-3E-1 *et seq.* of said code: *Provided,* That any and all persons so arrested shall be forthwith brought before the magistrate or circuit court: *Provided, however*, That the State Fire Marshal, any full-time deputy fire marshal or any full-time assistant fire marshal is authorized to arrest persons for violations of §61-5-17 of this code.

(2) To make complaint in writing before any court or officer having jurisdiction and obtain, serve, and execute an arrest warrant when knowing or having reason to believe that anyone

has committed an offense under any provision of this article, of the arson-related offenses of §61-3-1 *et seq.* of this code or of the explosives-related offenses of §61-3E-1 *et seq.* of this code. Proper return shall be made on all arrest warrants before the tribunal having jurisdiction over the violation.

(3) To make a complaint in writing before any court or officer having jurisdiction and obtain, serve, and execute a warrant for the search of any premises that may possess evidence or unlawful contraband relating to violations of this article, of the arson-related offenses of §61-3-1 *et seq.* of this code or of the explosives-related offenses of §61-3E-1 *et seq.* of said code. Proper return shall be made on all search warrants before the tribunal having jurisdiction over the violation.

(4) Any member of the West Virginia State Police, Natural Resources police officer, or any county or municipal law-enforcement officer may assist, upon request, the State Fire Marshal or any of his or her employees authorized to enforce the provisions of this section in any duties for which the State Fire Marshal has jurisdiction.

(i) *Witnesses and oaths.* — The State Fire Marshal may issue subpoenas and subpoenas duces tecum to compel the attendance of persons before him or her to testify in relation to any matter which is, by the provision of this article, a subject of inquiry and investigation by the State Fire Marshal and cause to be produced before him or her such papers as he or she may require in making the examination. The State Fire Marshal may administer oaths and affirmations to persons appearing as witnesses before him or her. False swearing in any matter or proceeding is considered perjury and is punishable as perjury.

(j) *Deputizing members of fire departments in this state.* — The State Fire Marshal may deputize a member of any fire department, duly organized and operating in this state, who is approved by the chief of his or her department and who is properly qualified to act as his or her assistant for the purpose of making inspections with the consent of the property owner or the person in control of the property and the investigations as may be directed by the State Fire Marshal, and the carrying out of orders as may be prescribed by him or her, to enforce and make effective the provisions of this article and any and all rules promulgated by the State Fire Commission under authority of this article: *Provided*, That in the case of a volunteer fire department, only the chief thereof or his or her single designated assistant may be so deputized.

(k) *Written report of examinations.* — The State Fire Marshal shall, at the request of the county commission of any county or the municipal authorities of any incorporated municipality in this state, make to them a written report of the examination made by him or her regarding any fire happening within their respective jurisdictions.

(l) *Report of losses by insurance companies.* — Each fire insurance company or association doing business in this state, within 10 days after the adjustment of any loss sustained by it that exceeds $1,500, shall report to the State Fire Marshal information regarding the amount of insurance, the value of the property insured, and the amount of claim as adjusted.

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This report is in addition to any information required by the State Insurance Commissioner. Upon the request of the owner or insurer of any property destroyed or injured by fire or explosion, or in which an attempt to cause a fire or explosion may have occurred, the State Fire Marshal shall report in writing to the owner or insurer the result of the examination regarding the property.

(m) *Issuance of permits and licenses.* — The State Fire Marshal may issue permits, documents, and licenses in accordance with the provisions of this article or §29-3B-1 *et seq.* of this code: *Provided*, That unless otherwise provided, the State Fire Marshall shall take final action upon any completed permit applications within 30 days of receipt if the application is uncontested, or within 90 days if the application is contested. The State Fire Marshal may require any person who applies for a permit to use explosives, other than an applicant for a license to be a pyrotechnic operator under §29-3E-6 of this code, to be fingerprinted and to authorize the State Fire Marshal to conduct a criminal records check through the Criminal Identification Bureau of the West Virginia State Police and a national criminal history check through the Federal Bureau of Investigation. The results of any criminal records or criminal history check shall be sent to the State Fire Marshal.

(n) *Issuance of citations for fire and life safety violations*. — The State Fire Marshal, any deputy fire marshal, and any assistant fire marshal employed pursuant to this article, and any person deputized pursuant to subsection (j) of this section may be authorized by the State Fire Marshal to issue citations, in his or her jurisdiction, for fire and life safety violations of the State Fire Code and as provided for by the rules promulgated by the State Fire Commission in accordance with §15A-11-1 *et seq.* of this code: *Provided*, That a summary report of all citations issued pursuant to this section by persons deputized under subsection (j) of this section shall be forwarded monthly to the State Fire Marshal in the form and containing information as he or she may by rule require, including the violation for which the citation was issued, the date of issuance, the name of the person issuing the citation, and the person to whom the citation was issued. The State Fire Marshal may at any time revoke the authorization of a person deputized pursuant to subsection (j) of this section to issue citations, if in the opinion of the State Fire Marshal, the exercise of authority by the person is inappropriate.

Violations for which citations may be issued include, but are not limited to:

(1) Overcrowding places of public assembly;

(2) Locked or blocked exits in public areas;

(3) Failure to abate a fire hazard;

(4) Blocking of fire lanes or fire department connections; and

(5) Tampering with, or rendering inoperable, except during necessary maintenance or repairs, on-premise firefighting equipment, fire detection equipment, and fire alarm systems.

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(o) *Required training; liability coverage.* – No person deputized pursuant to subsection (j) of this section may be authorized to issue a citation unless that person has satisfactorily completed the mandatory training as described in §15A-10-1 of this code, or a law-enforcement officer training course designed specifically for fire marshals. The course shall be approved by the Law-enforcement Training Subcommittee of the Governor's Committee on Criminal Justice and Highway Safety and the State Fire Commission. In addition, no person deputized pursuant to subsection (j) of this section may be authorized to issue a citation until evidence of liability coverage of the person has been provided, in the case of a paid municipal fire department, by the municipality wherein the fire department is located, or in the case of a volunteer fire department, by the county commission of the county wherein the fire department is located, or by the municipality served by the volunteer fire department and that evidence of liability coverage has been filed with the State Fire Marshal.

(p) *Statewide contracts.* — The State Fire Marshal may cooperate with the Department of Administration, Purchasing Division, to establish one or more statewide contracts for equipment and supplies utilized by fire companies and departments in accordance with §5A-3-1 *et seq.* of this code.

(1) Any statewide contract established hereunder shall be made available to any fire company and department in this state, as well as any other state agency or political subdivision that has a need for the equipment or supplies included in those contracts.

(2) The State Fire Marshal may develop uniform standards for equipment and supplies used by fire companies and departments in accordance with §5A-3-1 *et seq.* of this code.

(3) The State Fire Commission shall propose legislative rules for promulgation in accordance with §29A-3-1 *et seq.* of this code to effectuate the provisions of this subsection.

(q) *Penalties for violations.* — Any person who violates any fire and life safety rule of the State Fire Code is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $1,000, or confined in jail not more than 90 days, or both fined and confined. Every day during which any violation of the provisions of this article continues after knowledge or official notice that it is illegal is a separate offense.

(r) The State Fire Marshal, any full-time deputy fire marshal, or any full-time assistant fire marshal employed by the State Fire Marshal, pursuant to this article may carry a firearm while acting in the course of his or her official duties, if he or she has successfully completed a firearms training and certification program equivalent to that provided to officers attending the entry level law-enforcement certification course provided at the West Virginia State Police Academy. The person shall thereafter successfully complete an annual firearms qualification course equivalent to that required of certified law-enforcement officers as established by legislative rule. The State Fire Marshal may reimburse the person for the cost of the training and requalification.

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§15A-10-4. Enforcement standards.

(a) In the enforcement of the State Building Code and State Fire Code, the State Fire Marshal shall provide compliance alternatives for historic structures as provided for in §29-1-5 of this code, which compliance alternatives shall take into account the historic integrity of the historic structures, and shall coordinate with the Director of the Archives and History Division the application of the rules of that division.

(b) In interpretation and application, the State Fire Code shall be held to be the minimum requirements for the safeguarding of life and property from the hazards of fire and explosion: *Provided,* That the State Fire Marshal shall provide compliance alternatives for historic structures and sites as provided in §29-1-5 of this code, which compliance alternatives shall take into account the historic integrity of the historic structures and sites. Whenever any other state law, county or municipal ordinance, or regulation of any agency thereof, is more stringent or imposes a higher standard than is required by the State Fire Code, the provisions of the state law, county or municipal ordinance, or regulation of any agency thereof governs, if they are not inconsistent with the laws of West Virginia and are not contrary to recognized standards and good engineering practices: *Provided*, *however,* That, on and after July 1, 2010, if a municipal or county fire ordinance or regulation of any agency thereof is more stringent or imposes a higher standard than is required by the State Fire Code, it must be presented for review and approval and sanctioned for use by the State Fire Commission. In any question, the decision of the State Fire Commission determines the relative priority of any such state law, county or municipal ordinance, or regulation of any agency thereof and determines compliance with state fire rules by officials of the state, counties, municipalities, and political subdivisions of the state.

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§15A-10-5. General rule-making authority; appointment of advisory boards.

(a) The State Fire Marshal may propose rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code, establishing state standards and fee schedules for the licensing, registration, certification, regulation and continuing education of persons which will conduct inspections relating to the State Building Code, which include, but are not limited to, building code officials, inspectors, plans examiners, and home inspectors.

(b) The State Fire Marshal shall propose rules for legislative approval requiring applicants for home inspector licensing, registration, or certification to submit to a state and national criminal history record check as set forth in this section and may deny licensing, registration, or certification based upon the results of the criminal history record check.

(c) The State Fire Marshal may establish advisory boards as it considers appropriate to encourage representative participation in subsequent rulemaking from groups or individuals with an interest in any aspect of the rules promulgated by the State Fire Marshal.

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§15A-10-6. Responsibilities of insurance companies in fire loss investigation.

(a) The State Fire Marshal or any deputy or assistant fire marshals under the authority of the fire marshal may request any insurance company investigating a fire loss of real or personal property to release any information in its possession relative to that loss. The company shall release the information and cooperate with any official authorized to request such information pursuant to this section. The information shall include, but not be limited to:

(1) Any policy in force;

(2) Any application for a policy;

(3) Premium payment records;

(4) History of previous claims; and

(5) Material relating to the investigation of the loss, including statements of any person, proof of loss, and any other relevant evidence.

(b) Any insurance company shall notify the State Fire Marshal if it has reason to believe, based on its investigation of a fire loss to real or personal property, that the fire was caused by other than accidental means. The company shall furnish the State Fire Marshal with pertinent information acquired during its investigation and cooperate with the courts and administrative agencies of the state, and any official mentioned, or referred to, in subsection (a) of this section.

(c) In the absence of fraud, no insurance company or person who furnishes information on its behalf, shall be liable for any oral or written statement or any other action necessary to supply information required pursuant to this section.

(d) Any information furnished pursuant to this section shall be held in confidence, and is exempt from the provisions of §29B-1-1 *et seq.* of this code, until such time as its release may be required pursuant to a criminal proceeding.

(e) Any official mentioned, or referred to, in subsection (a) of this section may be required to testify as to any information in his or her possession regarding the fire loss of real or personal property in any civil action in which any person seeks recovery under a policy against an insurance company for the fire loss.

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§15A-10-7. Fees.

(a) The State Fire Marshal is authorized to propose rules for legislative authorization pursuant to §29A-3-1 *et seq.* of this code to establish fees in accordance with the following:

(1) For blasting;

(2) For inspections of schools or day-care facilities;

(3) For inspections of hospitals or nursing homes;

(4) For inspections of personal care homes or board and care facilities;

(5) For inspections of residential occupancies;

(6) For inspections of mercantile occupancies;

(7) For business occupancies; and

(8) For inspections of assembly occupancies;

For purposes of this subdivision, an "assembly occupancy" includes, but is not limited to, all buildings or portions of buildings used for gathering together 50 or more persons for such purposes as deliberation, worship, entertainment, eating, drinking, amusement, or awaiting transportation. For purposes of this section, a "Class C assembly facility" is one that accommodates 50 to 300 persons, a "Class B facility" is one which accommodates more than 300 persons but less than 1,000 persons, and a "Class A facility" is one which accommodates more than 1,000 persons.

(b) The State Fire Marshal may collect fees for the fire safety review of plans and specifications for new and existing construction. Fees shall be paid by the party or parties receiving the review.

(1) Structural barriers and fire safety plans review;

(2) Sprinkler system review;

(3) Fire alarm systems review;

(4) Range hood extinguishment system review;

(5) Carpet specifications;

(c) All fees authorized and collected pursuant to this article, §29-3B-1 *et seq.*, §29-3C-1 *et seq.,* and §29-3D-1 *et seq.* of this code shall be paid to the State Fire Marshal and thereafter deposited into the special account in the State Treasury known as the Fire Marshal Fees Fund. Expenditures from the fund shall be for the purposes set forth in this article and

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§29-3B-1 *et seq.*, §29-3C-1 *et seq.,* and §29-3D-1 *et seq.* of this code and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of §12-3-1 et seq. of this code and upon fulfillment of the provisions of §5A-2-1 *et seq.* of this code. Any balance remaining in the special account at the end of any fiscal year shall be reappropriated to the next fiscal year.

(d) If the owner or occupant of any occupancy arranges a time and place for an inspection with the State Fire Marshal and is not ready for the occupancy to be inspected at the appointed time and place, the owner or occupant thereof shall be charged the inspection fee provided in this section unless at least 48 hours prior to the scheduled inspection the owner or occupant requests the State Fire Marshal to reschedule the inspection. In the event a second inspection is required by the State Fire Marshal as a result of the owner or occupant failing to be ready for the inspection when the State Fire Marshal arrives, the State Fire Marshal shall charge the owner or occupant of the occupancy the inspection fees set forth above for each inspection trip required.

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§15A-10-8. Annual reports.

The State Fire Marshal shall transmit annually to the Governor an annual report, pursuant to §5-1-20 of this code. Said annual report shall include the activities of the State Fire Commission which are reportable pursuant to §5-1-20 of this code.

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§15A-10-9. Maintenance of fire hazard; order for repair or demolition; order to contain notice to comply; right to appeal.

(a) No person shall erect, construct, reconstruct, alter, maintain, or use any building, structure, or equipment, or use any land in such a way to endanger life or property from the hazards of fire or explosion, or in violation of any regulation, rule, or any provision or any change thereof promulgated by the State Fire Marshal or State Fire Commission.

(b) Whenever the State Fire Marshal determines that any building or structure has been constructed, altered, or repaired in a manner violating the State Building Code, or State Fire Code, prior to the commencement of such construction, alteration, or repairs; or whenever he or she may determine that any building or structure constitutes a fire hazard by reason of want of repair, age, or dilapidated or abandoned condition, or otherwise, and is so situated as to endanger other buildings and property; or whenever he or she may find in any building or upon any premises any combustible, flammable, or explosive substance or material, or other conditions dangerous to the safety of persons occupying the building or premises and adjacent premises or property, he or she may make reasonable orders in writing, directed to the owner of such building, structure, or premises, for the repair or demolition of such building or structure, or the removal of the combustible, flammable, or explosive substance or material, as the case may be, and the remedying of any conditions found to be in violation of a regulation promulgated as aforesaid or to be dangerous to the safety of persons or property.

A true copy of every order of the State Fire Marshal as provided for in this section shall be filed in the county where the premises are totally or partially located, with the county clerk who shall index and record the order in the general lien book. Upon filing, the order constitutes notice of such proceedings to all persons or parties thereafter having dealings involving said property.

A statement of the expenses and administrative charges shall also be filed with the county clerk, recorded, and indexed in the general lien book and upon filing, shall become a lien against the property. Thereafter, a court supervised sale of the property to enforce the collection of the expenses and administrative charges may be prosecuted at the request of the State Fire Marshal, or the Attorney General.

Every order provided for in this section shall contain a notice that compliance therewith shall be required within a period of 30 days from the date of issuance thereof and also that any person desiring to contest the validity of any such order may enter an appeal from such order to the Office of Administrative Hearings established in §15-9-1 *et. seq*. of this code, and then to the circuit court in the county where the premises are totally or partially located as provided in this article.

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§15A-10-10. Service of repair or demolition order.

The written order of the State Fire Marshal made pursuant to §15A-10-9 of this code shall be served by delivering a true copy thereof to such owner or, if the owner is absent from the state or his or her whereabouts be unknown to the State Fire Marshal, by mailing a true copy thereof by certified mail to the said owner's last known post-office address, or if no such address be known, then by certified mail to said owner in care of general delivery at the post office serving the community in which said premises lie. Delivering or mailing such order shall be accomplished within five days of the date of issuance of such order. In the event it is necessary to mail a copy of such order as aforesaid, the officer mailing the same shall also, within five days of the date of issuance of such order, post a true copy thereof in a conspicuous place on the door or other prominent entrance to said premises.

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§15A-10-11. Work to be done at expense of owner or occupant upon failure to comply with repair or demolition order; action to recover.

In the event any owner of any building or premises served with a copy of an order as provided in §15A-10-9 and §15A-10-10 of this code shall fail substantially to comply with such order within 30 days from the date of issuance thereof, or within 30 days after any appeal from such order has been affirmed by the State Fire Marshal or by the court, the State Fire Marshal, or his or her designee, may enter into and upon the premises affected by such order and cause the building, structure, or premises to be repaired, torn down, materials removed, and all dangerous conditions to be remedied, as the case may be, at the expense of the owner and with any administrative charges as established by the State Fire Marshal also being borne by the owner, and if such person shall fail or neglect to repay the State Fire Marshal the expense and administrative charge thereby incurred by him or her within 30 days after written demand shall have been delivered or mailed to the said owner as provided in §15A-10-10 of this code, the State Fire Marshal is hereby authorized to bring an action in the name of the state to recover such expenses, with interest, and any administrative charge as established by the commission, in any court of competent jurisdiction.

Upon a determination by the State Fire Marshal that the provisions of §15A-10-9 and §15A-10-10 of this code have not been met, and that such property constitutes a hazard to health or public safety, in lieu of initiating an order as therein provided, the State Fire Marshal may notify the county commission or the county health officer in order that they may perform their duties pursuant to section §7-1-3ff of this code. The State Fire Marshal may also, in lieu thereof, notify the municipality where the property is located so that the municipality may perform its duties pursuant to §8-12-14 of this code.

The State Fire Marshal may designate, pursuant to this section, a designee to accomplish the building, structure, or premises to be repaired, torn down, materials removed, and all dangerous conditions to be remedied, as the case may be. The designee may include an employee of the Fire Marshal, an agent of the Fire Marshal, a vendor, a Fire Department and its employees or agents, or a governmental entity and its employees or agents. Any contract entered into, pursuant to this section is exempt from the requirements of § 5A-3 -1 *et seq.* of this code.

WV Legislature

§15A-10-12. Smoke detectors in one- and two-family dwellings; carbon monoxide detectors in residential units, schools, and daycare facilities; penalty.

(a) An operational smoke detector shall be installed in the immediate vicinity of each sleeping area within all one- and two-family dwellings, including any "manufactured home" as that term is defined in §21-9-2(j) of this code. The smoke detector shall be capable of sensing visible or invisible particles of combustion and shall meet the specifications and be installed as provided in the current edition of the State Fire Code, and in the manufacturer's specifications. When activated, the smoke detector shall provide an alarm suitable to warn the occupants of the danger of fire.

(b) The owner of each dwelling described in subsection (a) of this section shall provide, install, and replace the operational smoke detectors required by this section. To assure that the smoke detector continues to be operational in each dwelling described in subsection (a) of this section which is not occupied by the owner of the dwelling, the tenant in any dwelling shall perform routine maintenance on the smoke detectors within the dwelling.

(c) Where a dwelling is not occupied by the owner and is occupied by an individual who is deaf or hard of hearing, the owner shall, upon written request by or on behalf of the individual, provide and install a smoke detector with a light signal sufficient to warn the deaf or hard of hearing individual of the danger of fire.

(d) An automatic fire sprinkler system installed in accordance with the current edition of the State Fire Code and the State Building Code may be provided in lieu of smoke detectors.

(e) After investigating a fire in any dwelling described in subsection (a) of this section, the local investigating authority shall issue to the owner a smoke detector installation order in the absence of the required smoke detectors.

(f) An operational single station carbon monoxide detector with a suitable alarm or a combination smoke detector and carbon monoxide detector, which shall be alternating current (AC) powered, either plugged directly in to an electrical outlet that is not controlled by a switch or hardwired into an alternating current (AC) electrical source, with battery backup, shall be installed, maintained, tested, repaired, or replaced, if necessary, in accordance with the manufacturer's direction:

(1) In any newly constructed residential unit which has a fuel-burning heating or cooking source including, but not limited to, an oil or gas furnace or stove;

(2) In any residential unit which is connected to a newly constructed building, including, but not limited to, a garage, storage shed, or barn, which has a fuel-burning heating or cooking source, including, but not limited to, an oil or gas furnace or stove; and

(3) In either a common area where the general public has access or all rooms in which a person will be sleeping that are adjoining to and directly below and above all areas or rooms

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that contain permanently installed fuel-burning appliances and equipment that emit carbon monoxide as a byproduct of combustion located within all apartment buildings, boarding houses, dormitories, long-term care facilities, adult or child care facilities, assisted living facilities, one- and two-family dwellings intended to be rented or leased, hotels, and motels.

(g) All single station carbon monoxide detectors with a suitable alarm or a combination smoke detector and carbon monoxide detectors shall be hardwired into an alternating current (AC) electrical source, with battery backup, when installed in all newly constructed apartment buildings, boarding houses, dormitories, hospitals, long-term care facilities, adult or child care facilities, assisted living facilities, one- and two-family dwellings intended to be rented or leased, hotels, and motels.

(h) In any long-term care facility that is staffed on a 24-hour, seven day a week basis, the single station carbon monoxide detector with a suitable alarm or a combination smoke detector and carbon monoxide detector is only required to be installed in an area of the facility that permits the detector to be audible to the staff on duty.

(i) Carbon monoxide detectors shall be installed in every public or private school or daycare facility that uses a fuel-burning heating system or other fuel-burning device that produces combustion gases. A carbon monoxide detector shall be located in each area with a fuel-burning heating system or other fuel-burning device that produces combustion gases.

(j) Any person installing a carbon monoxide detector in a residential unit shall inform the owner, lessor, or the occupant or occupants of the residential unit of the dangers of carbon monoxide poisoning and instructions on the operation of the installed carbon monoxide detector.

(k) When repair or maintenance work is undertaken on a fuel-burning heating or cooking source or a venting system in an existing residential unit, the person making the repair or performing the maintenance shall inform the owner, lessor, or the occupant or occupants of the unit being served by the fuel-burning heating or cooking source or venting system of the dangers of carbon monoxide poisoning and recommend the installation of a carbon monoxide detector.

(l) Any person who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, for a first offense, shall be fined $250. For a second offense, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined $750. For a third and subsequent offenses, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined $2000.

(m) A violation of this section may not be considered to constitute evidence of negligence or contributory negligence or comparative negligence in any civil action or proceeding for damages.

(n) A violation of this section may not constitute a defense in any civil action or proceeding

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involving any insurance policy.

(o) Nothing in this section shall be construed to limit the rights of any political subdivision in this state to enact laws imposing upon owners of any dwelling or other building described in subsection (a) or (f) of this section a greater duty with regard to the installation, repair, and replacement of the smoke detectors or carbon monoxide detectors than is required by this section.

WV Legislature

§15A-10-13. Use of live trees in public buildings; exceptions.

Notwithstanding any other provision of law to the contrary, live trees may be displayed in public buildings if the trees are decorated with U/L approved miniature lights, or are not decorated with electrical lights. The provisions of this section do not apply to public buildings used for education, health care, nursing homes, or correctional facilities.

WV Legislature

§15A-10-14. Safety standards for bed and breakfast establishments; findings.

(a) *Findings.* — Bed and breakfast establishments provide a unique and important contribution to the state, allowing visitors the opportunity to enjoy many of the aspects of our communities and state not available at hotels and motels, and often provide vacationers access to overnight accommodation in areas of this state that would not otherwise be available. These operations continue to grow in number and importance in our state's economy and must be promoted and encouraged by state and local government. Most of these facilities are older residences being converted to this use, and in many cases have architectural and historical significance; and, as with most small businesses, are begun with limited capital available for investment. Any fire safety code standards applicable to these facilities must be sensitive to this distinction and avoid placing a large financial burden on persons operating or planning to operate these facilities. Further, the personal safety of those who live in and visit these facilities is of paramount importance and requires that consideration be made to assure that adequate safety requirements are placed on these facilities to provide for the safety of visitors, residents, and, in an emergency, responding firefighters and rescue workers.

(b) *Definition.* — For the purposes of this section, the term "bed and breakfast establishment" means a building occupied as a one-family dwelling unit that provides sleeping accommodations and breakfast to transient guests for a single fee and does not offer more than six guest rooms to no more than 12 guests.

(c) *Fire code standards.* — Notwithstanding any provision of this code to the contrary, every bed and breakfast establishment shall be exempt from provisions of fire safety code requirements which are contrary to the following standards:

(1) Each bed and breakfast shall have operational smoke alarms in all common areas, guest rooms, and hallways, and heat detectors as otherwise required by this code or rule of the Fire Commission. Battery-powered smoke alarms shall be permitted where the establishment has demonstrated that the testing, maintenance, and battery replacement procedures will ensure reliable power to the smoke alarms. Notwithstanding any provision of this code to the contrary, no smoking will be allowed inside a bed and breakfast establishment.

(2) Each bed and breakfast shall have operational hard-wired, battery-powered, or plug-in emergency lighting that indicates available means of egress. Battery-powered or plug-in emergency lighting devices shall be permitted where the establishment has demonstrated that the testing, maintenance, and battery replacement procedures will ensure reliable power to the emergency lighting devices.

(3) The State Fire Marshal shall permit bed and breakfast establishments that cannot readily comply with the requirements of a legislative rule, which may mandate the installation of a secondary means of escape or a sprinkler system, one year per floor of the establishment to comply with the requirements.

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(4) All other provisions of the state fire safety code not inconsistent with this section and rules promulgated pursuant to subsection (d) of this section are applicable to bed and breakfast establishments.

(d) *Legislative rules*. — The State Fire Commission shall promulgate or amend an existing legislative rule, in accordance with the provisions of §29A-3-1 *et seq.* of this code, to effectuate the provisions of this section. The rule shall include a mechanism for the Fire Marshal to grant individual variances to bed and breakfast establishments which cannot otherwise meet provisions of the state fire safety code due to the historic and architectural significance of the establishment, with due consideration of the economic limitations inherent in the operation of this type of small business.

(e) *Historic preservation review*. — The owner of a bed and breakfast may request the historical preservation section of the Division of Culture and History, pursuant to §15A-1-8 of this code, to consult with the owner and provide a recommendation to the Fire Marshal regarding the historic character of the structures used or proposed to be used as a bed and breakfast and any objections or concerns regarding any renovations or other changes required by the Fire Marshal. If an appeal regarding a decision made by the Fire Marshal is made as provided by §15A-10-18 of this code, the Fire Marshal shall consider the recommendation of the historical preservation section when making a determination regarding the variance as provided for in subsection (d) of this section.

WV Legislature

§15A-10-15. Performance of installation of propane gas systems.

(a) Notwithstanding any statutory or regulatory provisions to the contrary, any person who installs, fuels, maintains, or services any fuel gas system to a one- or two-family dwelling shall comply with rules promulgated by the Fire Commission relating to fuel gas systems.

(b) This section does not apply to any person who performs this work on a single-family dwelling, owned or leased, and occupied by that person. The personal exemption provided in this subsection is the same as the personal exemption provided in §29-3D-1, *et seq*. of this code.

(c) Use of, refilling of, or work upon a liquefied petroleum gas container without the consent of the tank owner is prohibited.

(d) No person shall sell, install, fill, refill, deliver or permit to be delivered, or use in any manner any liquefied petroleum gas container unless the container is owned by the person, or its use is authorized by its owner.

(e) For purposes of this section "Liquefied petroleum gas" means propane and or predominantly a mixture of propane and butane.

WV Legislature

§15A-10-16. Additional remedies to abate, etc., fire hazards.

In case any building, structure, or equipment is, or is proposed to be, erected, constructed, reconstructed, altered, maintained, or used, or any land is or is proposed to be used in such a way to endanger life or property from the hazards of fire or explosion or in violation of this article, §15A-11-1 *et seq*. of this code, the fire code or the building code, the State Fire Marshal, or the Attorney General may, in addition to other remedies provided by law, institute injunction, mandamus, abatement, or any other appropriate action or actions, proceedings to prevent, enjoin, abate, or remove such unlawful erection, construction, reconstruction, alteration, maintenance, or use.

WV Legislature

§15A-10-17. License denial limitation, suspension, or revocation.

(a) The State Fire Marshal shall deny, limit, suspend, or revoke a license issued if the provisions of this article, or if the rules promulgated pursuant to this article or §15A-11-1 *et seq*. of this code are violated

(b) Before any such license is denied, limited, suspended, or revoked, however, written notice shall be given to the licensee stating the grounds for such denial, limitation, suspension, or revocation.

(c) An applicant or licensee has 10 working days after receipt of the order denying, limiting, suspending, or revoking a license to request a formal hearing contesting the denial, limitation, suspension, or revocation of a license under this article. If a formal hearing is requested, the applicant or licensee and the secretary shall proceed in accordance with the provisions of §29A-5-1 *et seq.* of this code.

(d) If the license is denied, limited, suspended, or revoked, the license or certification holder shall cease and desist practices of their profession as of the effective date of the denial, limitation, suspension, or revocation. Any administrative appeal of such denial, limitation, suspension, or revocation shall not stay the denial, limitation, suspension, or revocation.

(e) A party aggrieved by a decision by the State Fire Marshal may appeal such final decision to the Office of Administrative Hearings, pursuant to §15A-9-1 *et seq*. of this code, or may choose independent informal dispute resolution as set forth in this article.

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§15A-10-18. Independent informal dispute resolution.

(a) A license or certification holder adversely affected by an order or citation of a deficient practice issued pursuant to this article may request the independent informal dispute resolution process. A license or certificate holder may contest a cited deficiency as contrary to law or unwarranted by the facts or both.

(b) The State Fire Marshal has the authority to establish conference panels composed of three persons of the licensed or certified skill to decide the outcome of the independent informal dispute resolution process. One member shall be selected by the State Fire Marshal, one member shall be selected by the licensee or certificate holder, and one member shall be selected by agreement of both. If a vacancy occurs on the panel, the replacement for that member shall be made by the original individual who had selected such member. The members of the panel shall serve without compensation. This panel shall hear the matter and render a decision. The licensee or certificate holder may not be accompanied by counsel during the independent informal dispute resolution conference.

(c) Upon appeal of a decision rendered by the State Fire Marshal, the panel shall hold an informal conference affirming, modifying, or vacating an order of the State Fire Marshal, or issuing an order in the name of the State Fire Marshal. The panel shall forthwith notify the parties of its decision and as soon as practicable send written notices of its decision to the parties. The decision of the panel is final. The independent informal dispute resolution process is not a formal evidentiary proceeding.

(d) A party aggrieved by a decision of a panel may appeal pursuant to §29A-5-1 *et seq*. of this code.

(e) The State Fire Marshal shall promulgate a procedural rule to carry out the provisions of this section.

WV Legislature

§15A-10-19. Establishment of demonstration buildings and equipment for educational instruction in fire prevention and protection; payment therefor.

The State Fire Marshal is authorized to establish for educational purposes in public and private schools and state educational institutions, demonstration buildings and equipment for fire prevention and protection, and such expenditures therefor shall be made from the funds appropriated therefor to the office of the State Fire Marshal.

WV Legislature

§15A-10-20. False alarm of fire; penalties.

No person shall make, report, or disclose, by any means of written or verbal communication, aid or abet in such, any alarm of fire which he or she knows to be false at the time of making or turning in the alarm.

WV Legislature

§15A-10-21. Tax on insurance companies.

Every insurance company doing business in this state, except Farmers' Mutual Fire Insurance companies, shall pay to the State Insurance Commissioner annually on or before March 1, in addition to the taxes now required by law to be paid by the companies, one half of one percent of the taxable premiums of the companies on insurance against the hazard of fire and on that portion of all other taxable premiums reasonably applicable to insurance against the hazard of fire which are included in other coverages, and received by it for insurance on property or risks in this state during the calendar year next preceding as shown by their annual statement under oath to the insurance department. The money so received by the State Insurance Commissioner is paid by him or her into the treasury and credited to the Special Revenue Fund created in §15A-10-7 of this code.

WV Legislature

§15A-10-22. Penalties.

(a) Any person who violates any regulations promulgated by the State Fire Commission as provided in §15A-11-1 *et seq*. of this code, or by the State Fire Marshal as provided in this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $100 or confined in the county jail not more than 90 days, or both.

Each day during which any illegal erection, construction, reconstruction, alteration, maintenance or use continues after knowledge or official notice that it is illegal is a separate offense.

(b) Except as provided by the provisions of subsection (c) of this section, any person who violates the provisions of §15A-10-20 of this code shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined for a first offense not more than $100 or confined in jail for not more than 30 days, or both fined and confined; and for a second and each subsequent offense, fined not less than $100 nor more than $500, or confined in jail for not less than 90 days nor more than one year, or both.

(c) Any person who violates the provisions of §15A-10-20 of this code with the intent to cause injury to the person of another, to cause destruction of the property of another, or to divert the attention of law enforcement or fire personnel to help effectuate the commission of another crime shall be guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility for not less than one nor more than three years, or fined not more than $500, or both fined and confined.

(d) Any officer who knowingly and willfully fails to perform any duty required of him or her by this article or who violates any of its provisions is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $25 nor more than $50 for each failure or violation.

(e) Any person who violates any other provision of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $100 or confined in jail not more than 90 days, or both fined and confined.

WV Legislature

§15A-10-23. Construction.

Being in the interest of public safety, the provisions of this article shall be liberally construed.

WV Legislature

§15A-10-24. Severability.

If any section, subsection, subdivision, subparagraph, sentence, or clause of this article is adjudged to be unconstitutional or invalid, such invalidation shall not affect the validity of the remaining portions of this article and, to this end, the provisions of this article are hereby declared to be severable.

WV Legislature

§15A-10-25. Awarding service weapon upon retirement of fire marshal or service weapon.

(a) Upon the retirement of a State Fire Marshal, any full-time deputy fire marshal, or any full-time assistant fire marshal employed by the State Fire Marshal pursuant to this article shall award to the retiring member his or her service weapon, without charge, upon determining:

(1) That the retiring employee is retiring honorably with at least 10 years of service; or

(2) The retiring employee is retiring with less than 10 years of service based upon a determination that the employee is totally physically disabled as a result of his or her service with the State Fire Marshal.

(b) Notwithstanding the provisions of subsection (a) of this section, the State Fire Marshal shall not award a service weapon to any employee whom the State Fire Marshal: (1) Knows is prohibited from possessing a firearm by state of federal law; (2) has reason to believe such retiring employee to be mentally incapacitated; or (3) has reason to believe the retiring employee constitutes a danger to any person or the community.

(c) If a service weapon is taken out of service due to routine wear, the State Fire Marshal may offer the service weapon for sale to any active or retired State Fire Marshal, assistant state fire marshal, or deputy state fire marshal, at fair market value, with the proceeds from any sales used to offset the cost of new service weapons. The disposal of service weapons pursuant to this subsection does not fall within the jurisdiction of the Purchasing Division of the Department of Administration.

WV Legislature