WEST VIRGINIA CODE CHAPTER 21 ARTICLE 16

WV Legislature

§21-16-1. Declaration of purpose.

The provisions of this article are intended to protect the health, safety and welfare of the public as well as public and private property by assuring the competence of those who perform work on a heating, ventilating and cooling system through licensure by the Commissioner of Labor.

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§21-16-2. Definitions.

As used in this article and the legislative rules promulgated pursuant to this article:

(a) "Perform work on a heating, ventilating, and cooling system" means to install, maintain, alter, remodel, or repair one or more components of a heating, ventilating, and cooling system.

(b) "Heating, ventilating, and cooling system" means equipment to heat, cool, or ventilate residential or commercial structures, comprised of one or more of the following components:

(1) "Heating system" means a system in which heat is transmitted by radiation, conduction, or convection, or a combination of any of these methods, to the air, surrounding surfaces, or both, and includes a forced air system that uses air being moved by mechanical means to transmit heat, but does not include a fireplace or wood-burning stove not incorporated into or used as a primary heating system;

(2) "Ventilating system" means the natural or mechanical process of supplying air to, or removing air from, any space whether the air is conditioned or not conditioned, at a rate of airflow of more than 250 cubic feet per minute; and

(3) "Cooling system" means a system in which heat is removed from air, surrounding surfaces, or both, and includes an air-conditioning system.

(c) "HVAC Technician" means a person with at least 2,000 hours of HVAC-related work, training, and experience and is licensed to install, test, maintain, and repair both residential and nonresidential heating, ventilating, and cooling systems.

(d) "HVAC Residential Technician" means a person licensed to install, test, maintain, and repair residential heating, ventilating, and cooling systems: *Provided*, That such persons may perform work on nonresidential heating, ventilating, and cooling systems subject to rules promulgated by the commissioner pursuant to §21-16-3 of this code.

(e) "Residential heating, ventilating, and cooling system" means a system of no more than four separate heating, ventilating, and cooling units each with a combined capacity of five tons – 130,000 BTUs for: (1) A single or dual family structure; or (2) a commercial location of no more than 5,000 square feet in size where no fire damper is required. Such term shall not apply to heating, ventilating, and cooling systems that include any packaged rooftop units.

(f) "HVAC technician in training" means a person with less than 2,000 hours of HVAC-related work, training, and experience: *Provided*, That the fee for an HVAC technician in training license may not be higher than $25.00.

(g) "HVAC residential technician license" means a valid and current license issued by the Commissioner of Labor in accordance with the provisions of this article to perform work as an HVAC residential technician.

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(h) “HVAC technician license” means a valid and current license issued by the Commissioner of Labor in accordance with the provisions of this article to perform work as an HVAC technician.

(i) “Routine maintenance” means work performed on a routine schedule that includes cleaning and/or replacing filters, greasing or lubricating motor bearings, adjusting and/or replacing belts, checking system temperature, checking gas temperature, adjusting gas pressure as required, and checking voltage and amperage draw on heating, ventilating, and cooling systems.

(j) “Single family dwelling” means a building that is occupied as, or designed or intended for occupancy as, a single residence for one or more persons.

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§21-16-3. License required; exemptions.

(a) On and after January 1, 2016, a person performing or offering to perform work on a heating, ventilating, and cooling system in this state shall have a license issued by the Commissioner of Labor, in accordance with the provisions of this article and the legislative rules promulgated pursuant hereto: *Provided*, That the commissioner shall issue HVAC residential technician licenses to qualified applicants without examination who present satisfactory evidence no later than December 31, 2019, of having at least 2,000 hours of experience and/or training working on heating, ventilating, and cooling systems: *Provided, however*, That if a license issued under the authority of this subsection subsequently lapses, the applicant is subject to all licensure requirements, including the examination.

(b) Notwithstanding any other provision of this article to the contrary, the commissioner shall credit verified military service, training, or education toward the licensing requirements, including examination requirements pursuant to §21-16-11 of this code, for a license issued under this article. The commissioner shall expedite the issuance of a provisional license or a license by endorsement or reciprocity under this article to an applicant who has verified military experience or holds a current license issued by another jurisdiction that has license requirements that are substantially equivalent to the license requirements of this state.

(c) A person licensed under this article shall carry a copy of the license on any job in which heating, ventilating, and cooling work is being performed.

(d) This article does not apply to:

(1) A person who personally performs work on a heating, ventilating, and cooling system in a single family dwelling owned by that person or by a member of that person’s immediate family;

(2) A person who performs work on a heating, ventilating, and cooling system at a manufacturing plant or other industrial establishment as an employee of the person, firm, or corporation operating the plant or establishment;

(3) A person who performs only electrical or plumbing work on a heating, ventilating, and cooling system, which includes, but is not limited to, thermostats, bathroom fans, and tankless water heater ventilation, so long as the work is within the scope of practice which the person is otherwise licensed or authorized to perform; or

(4) A person who performs routine maintenance on any heating, ventilating, and cooling system.

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§21-16-4. Scope of practice.

(a) An HVAC technician in training is authorized to assist in providing heating, ventilating, and cooling work only under the direction and control of a HVAC technician.

(b) An HVAC technician is authorized to provide heating, ventilating, and cooling work without supervision.

(c) Persons licensed under this article are subject to the applicable provisions of the Contractor Licensing Act in §30-42-1 *et seq.*, of this code in the performance of work authorized by this article.

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§21-16-5. Rule-making authority.

(a) The Commissioner of Labor shall propose rules for legislative approval, in accordance with the provisions of §21-16-5 *et seq*. of this code, for the implementation and enforcement of the provisions of this article, which shall provide:

(1) Standards and procedures for issuing and renewing licenses, applications, examinations, and qualifications: *Provided*, That an HVAC technician may not be required to provide documentation of more than 2,000 hours of total work, training, and experience as a requirement for licensure;

(2) Provisions for the granting of HVAC technician licenses, without examination, to applicants who present satisfactory evidence no later than July 1, 2016, of having at least 2,000 hours of experience and/or training working on heating, ventilating, and cooling systems and at least 6,000 hours of experience and/or training in heating, ventilating, and cooling, or related work, to include other sheet metal industry tasks: *Provided*, That if a license issued under the authority of this subsection subsequently lapses, the applicant is subject to all licensure requirements, including the examination;

(3) Reciprocity provisions;

(4) Procedures for investigating complaints and revoking or suspending licenses, including appeal procedures;

(5) Fees for issuance and renewal of licenses and other costs necessary to administer the provisions of this article;

(6) Enforcement procedures; and

(7) Any other rules necessary to effectuate the purposes of this article.

(b) The commissioner may promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code for the purpose of describing:

(1) Provisions for the granting of HVAC residential technician licenses without examination to qualified applicants who present satisfactory evidence no later than December 31, 2019, of having at least 2,000 hours of experience and/or training working on heating, ventilating, and cooling systems: *Provided*, That if a license issued under the authority of this subsection subsequently lapses, the applicant is subject to all licensure requirements, including the examination;

(2) Provisions for developing an examination required to obtain an HVAC residential technician license commensurate with the scope of practice for HVAC residential technicians as described in §21-16-2(d) of this code: *Provided*, That the rules proposed by the commissioner shall provide that the HVAC residential license examination will be developed in consultation with HVAC industry representatives; and

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(3) Provisions for allowing HVAC residential technicians to perform work on nonresidential heating, ventilating, and cooling systems subject to rules promulgated by the commissioner.

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§21-16-6. Enforcement; interagency agreements authorized.

(a) The Commissioner of Labor and his or her Deputy Commissioner or any compliance officer of the Division of Labor as authorized by the Commissioner of Labor may enforce the provisions of this article and may, at reasonable hours, enter any building or premises where heating, ventilating and cooling work is performed and issue cease and desist orders for noncompliance.

(b) The Commissioner of Labor may enter into an interagency agreement with the State Fire Marshal for the mutual purpose of enforcing the provisions of this article and the provisions of article three-e, chapter twenty-nine of this code.

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§21-16-7. Denial, suspension, and revocation of license.

(a) The Commissioner of Labor may deny a license to any applicant who fails to comply with the provisions of this article or the rules established by the Commissioner of Labor, or who lacks the necessary qualifications: *Provided*, That the commissioner shall apply §21-1-6 of this code to determine whether the prior criminal conviction directly and specifically relates to the license being sought.

(b) The Commissioner of Labor may, upon complaint or upon his or her own inquiry, and after notice to the licensee, suspend, or revoke a licensee's license if:

(1) The license was granted upon an application or documents supporting the application which materially misstated the terms of the applicant's qualifications or experience;

(2) The licensee subscribed or vouched for a material misstatement in his or her application for licensure;

(3) The licensee incompetently or unsafely performs heating, ventilating, and cooling work; or

(4) The licensee violated any statute of this state, any legislative rule, or any ordinance of any municipality or county of this state which protects the consumer or public against unfair, unsafe, unlawful, or improper business practices.

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§21-16-8. Penalties.

(a) On and after January 1, 2016, a person performing or offering to perform, or an employer authorizing a person not exempt by the provisions of section three of this article, to perform, heating, ventilating, and cooling work without a license issued by the Commissioner of Labor, is subject to a cease and desist order.

(b) A person continuing to perform, or an employer continuing to authorize a person not exempt by the provisions of §21-16-3 of this code, to perform, heating, ventilating, and cooling work after the issuance of a cease and desist order is subject to the following penalties:

(1) For the first offense, a fine of not less than $200 nor more than $1,000;

(2) For the second offense, a fine of not less than $500 nor more than $2,000;

(3) For the third and subsequent offenses, a fine of not less than $1,000 nor more than $5,000.

(c) Each day after official notice is given, a person continues to perform, or an employer continues to authorize a person to perform, and which is not exempt by the provisions of section three of this article, heating, ventilating, and cooling work, is a separate offense and punishable accordingly.

(d)(1) The Commissioner of Labor may institute proceedings in the circuit court of Kanawha County or of the county where the alleged violation of the provisions of this article occurred or are occurring to enjoin any violation of any provision of this article.

(2) A circuit court may by injunction compel compliance with this article, with the lawful orders of the Commissioner of Labor, and with any final decision of the Commissioner of Labor.

(3) The Commissioner of Labor shall be represented in all such proceedings by the Attorney General or his or her assistants.

(e) Any person adversely affected by an action of the Commissioner of Labor may appeal the action pursuant to chapter 29A of this code.

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§21-16-9. Inapplicability of local ordinances.

On and after January 1, 2016, a political subdivision of this state may not require, as a condition precedent to the performance of work on heating, ventilating and cooling in the political subdivision, a person who holds a valid and current license issued under this article, to have any other license or other evidence of competence beyond those required by the Commissioner of Labor to perform work on heating, ventilating and cooling systems.

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§21-16-10. Disposition of fees.

All fees paid pursuant to this article shall be paid to the Commissioner of Labor and deposited in an appropriated special revenue account hereby created in the State Treasury to be known as the HVAC Fund and expended for the implementation and enforcement of this article. Through June 30, 2019, amounts collected which are found from time to time to exceed funds needed for the purposes set forth in this article may be utilized by the commissioner as needed to meet the division's funding obligations: Provided, That beginning July 1, 2019, amounts collected may not be utilized by the commissioner as needed to meet the division's funding obligations.

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§21-16-11. Veteran qualifications for license as HVAC Technician.

(a) Any person who has served as a member of any branch of the United States Armed Forces, the National Guard, or armed forces reserve, may apply for licensure, if:

(1) He or she has successfully completed a course of instruction required to qualify him or her for rating as an HVAC technician's mate or other equivalent rating in his or her particular branch of the armed forces;

(2) He or she meets the requirements of this article;

(3) He or she has been honorably discharged from service and submits, to the Commissioner of Labor, a photostatic copy of the honorable discharge;

(4) He or she submits a completed application to the Commissioner of Labor; and

(5) He or she pays the prescribed licensing fees.

(b) A veteran who has allowed more than 30 years to pass from the date of his or her successful completion of a course of instruction and the date of application for licensure in this state may be required to attend additional training courses.

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