WEST VIRGINIA CODE CHAPTER 21

§21-1-1. Creation, control and management of department.

There shall be a state department of labor, which shall be under the control and management of a state commissioner of labor.

§21-1-2. Appointment of Commissioner of Labor; qualifications; term of office; salary.

The state Commissioner of Labor shall be appointed by the Governor, by and with the advice and consent of the Senate. He or she shall be a competent person, who is identified with and has knowledge and experience in employee issues and interests including employee-employer relations in this state. The commissioner shall receive an annual salary as provided in section two-a, article seven, chapter six of this code.

§21-1-3. Inspections by commissioner; duties and records of employers; commissioner may appoint assistants.

The commissioner of labor and his or her authorized representatives shall have the power and authority in the discharge of their duties, to enter any place of employment or public institution, for the purpose of collecting facts and statistics relating to the employment of workers and of making inspections for the proper enforcement of all labor laws of the state. No employer or owner shall refuse to admit the commissioner of labor or his or her authorized representative when they so seek admission to his place of employment, public building, or place of public assembly.

The commissioner or his or her authorized representative shall, at least once each year, visit and inspect the principal factories and workshops of the state, and shall, upon complaint and request of any three or more reputable citizens, visit and inspect any place where labor is employed and make true report of the result of his or her inspection.

Every employer and owner shall furnish to the division of labor all information which the commissioner of labor or his or her representative is authorized to require, and shall make true and specific answers to all questions submitted by the division of labor, orally or in writing as required by said division. Every employer shall keep a true and accurate record of the name, address, and occupation of each person employed by him or her and of the daily and weekly hours worked by each such person, and of the wages paid each pay period to each such person. Such records shall be kept on file for at least one year after the date of the record. No employer shall make or cause to be made any false entries in any such record.

In addition to such other powers and duties as may be conferred upon the commissioner of labor by law, the commissioner of labor shall have the power, duty, jurisdiction, and authority to employ, promote, and remove deputies, inspectors, clerks, and other assistants, as needed, and to fix their compensation, with regard to existing laws applicable to the employment and compensation of officers and employees of the State of West Virginia, and to assign to them their duties; to make or cause to be made all necessary inspections, including inspections relating to enforcing the West Virginia Contractor Licensing Act, §30-42-1 *et seq.*, of this code, to see that all laws and lawful orders which the department has the duty, power, and authority to enforce, are promptly and effectively carried out.

§21-1-4. Annual report to Governor; collection of statistical information.

It shall be the duty of the commissioner of labor to collect, compile and present to the Governor, on or before December 1, of each year, an annual report, with statistical details relating to all departments of labor and the industrial interests of the state, especially in relation to the financial, social, educational and sanitary condition of the laboring classes, and all other statistical information that may tend to increase the prosperity of the productive industries of the state. He shall also make such suggestions as he may deem advisable as to legislation tending to promote and increase the prosperity of the industrial establishments of the state, and to protect the lives and health and promote the prosperity of the persons employed therein. All state, county, district and city officers shall furnish the commissioner of labor, upon request, all statistical information relating to labor which may be in their possession as such officers.

§21-1-5. Continuation of division.

Pursuant to article ten, chapter four of this code, the Division of Labor shall continue to exist until July 1, 2004, unless sooner terminated, continued or reestablished pursuant to that article.

§21-1-6. Use of criminal records as disqualification from authorization to engage in licensed profession or occupation.

(a) The commissioner may not disqualify an applicant from initial licensure, as required in this chapter, because of a prior criminal conviction that remains unreversed unless that conviction is for a crime that bears a rational nexus to the activity requiring licensure. In determining whether a criminal conviction bears a rational nexus to a profession or occupation, the commissioner shall consider at a minimum:

(1) The nature and seriousness of the crime for which the individual was convicted;

(2) The passage of time since the commission of the crime;

(3) The relationship of the crime to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the profession or occupation; and

(4) Any evidence of rehabilitation or treatment undertaken by the individual.

(b) Notwithstanding any other provision of this code to the contrary, if an applicant is disqualified from licensure because of a prior criminal conviction, the commissioner shall permit the applicant to apply for initial licensure if:

(1) A period of five years has elapsed from the date of conviction or the date of release from incarceration, whichever is later;

(2) The individual has not been convicted of any other crime during the period of time following the disqualifying offense; and

(3) The conviction was not for an offense of a violent or sexual nature: *Provided*, That a conviction for an offense of a violent or sexual nature may subject an individual to a longer period of disqualification from licensure, to be determined by the commissioner.

(c) An individual with a criminal record who has not previously applied for licensure may petition the commissioner at any time for a determination of whether the individual's criminal record will disqualify the individual from obtaining a license. This petition shall include sufficient details about the individual's criminal record to enable the commissioner to identify the jurisdiction where the conviction occurred, the date of the conviction, and the specific nature of the conviction. The commissioner shall provide the determination within 60 days of receiving the petition from the applicant. The commissioner may charge a fee to recoup its costs for each petition.

§21-1A-1. Public policy and purposes of article; mediation; investigation and mediation by commissioner of certain labor disputes; arbitration; construction of article.

(a) It is hereby declared to be the public policy of this state and the purposes of this article to encourage the practice and procedure of collective bargaining by protecting the exercise by employees of full freedom of association, self-organization and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection; to prescribe the legitimate rights of both employees and employers in their relations; to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other; to protect the rights of individual employees in their relations with labor organizations; to define and prescribe practices on the part of labor and management which are inimical to the welfare, prosperity, health and peace of the people of this state; and to protect the rights of the public in connection with labor disputes. This article shall be deemed an exercise of the police power of the state for the protection of the welfare, prosperity, health and peace of the people of this state.

(b) The commissioner of labor or his designated representative may investigate and mediate labor disputes between an employer and a labor organization, whether or not a collective bargaining agreement exists between such parties providing both parties to such dispute request in writing such intervention or provided the commissioner offers such service to both parties and both parties to the dispute agree in writing to the investigation or mediation. The commissioner may arbitrate such disputes or arrange for the selection of boards of arbitration on such terms as all of the parties to such disputes may agree upon. Records of the department relating to labor disputes shall be confidential.

(c) This article is patterned after the provisions of the "National Labor Relations Act," as amended, and except insofar as the provisions of this article differ from the provisions of said act, as amended, the decisions of the national labor relations board and of the courts with respect to said act, as amended, shall be authoritative in the interpretation, administration and application of the provisions of this article.

§21-1A-2. Definitions; determination of agency.

(a) When used in this article:

(1) "Person" includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy or receivers.

(2) "Employer" includes any person acting as an agent of an employer, directly or indirectly, who employs fifteen or more persons, but shall not include the United States or any wholly owned United States government corporation, or any federal reserve bank, or any person subject to the provisions of the "National Labor Relations Act," as amended, unless the national labor relations board has declined to assert jurisdiction over such person, or any person subject to the "Railway Labor Act," as amended from time to time, or any labor organization, other than when acting as an employer, or the State of West Virginia or any political subdivision or agency thereof, or any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholder or individual.

(3) "Employee" includes any employee, and shall not be limited to the employees of a particular employer, unless otherwise explicitly provided in this article, and among others shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed in the production of agricultural products or the processing or marketing of agricultural products by the producer thereof, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by any person who is not an employer as herein defined.

(4) "Representative" includes any individual or labor organization.

(5) "Labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(6) "Unfair labor practice" means any unfair labor practice specified in section four of this article.

(7) "Labor dispute" or "dispute" includes any controversy concerning terms, tenure or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of

employer and employee.

(8) "Supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

(9) "Professional employee" means (a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or (b) any employee, who (i) has completed the courses of specialized intellectual instruction and study described in (iv) of (a) of this subdivision (9), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in (a) of this subdivision (9).

(b) In determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, for any purpose under this article including suits by or against labor organizations, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

§21-1A-3. Rights of employees.

Employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities, including the right to refrain from paying any dues, fees, assessments or other similar charges however denominated of any kind or amount to a labor organization or to any third party including, but not limited to, a charity in lieu of a payment to a labor organization.

§21-1A-4. Unfair labor practices.

(a) It shall be an unfair labor practice for an employer:

(1) To interfere with, restrain or coerce employees in the exercise of the rights guaranteed in section three of this article;

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: Provided, That an employer shall not be prohibited from permitting employees to confer with him or her during working hours without loss of time or pay;

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment, to encourage or discourage membership in any labor organization;

(4) To discharge or otherwise discriminate against an employee because he or she has filed charges or given testimony under this article; and

(5) To refuse to bargain collectively with the representatives of his or her employees, subject to the provisions of subsection (a), section five of this article.

(b) It shall be an unfair labor practice for a labor organization or its agents:

(1) To restrain or coerce: (A) Employees in the exercise of the rights guaranteed in section three of this article: Provided, That this subdivision shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his or her representatives for the purposes of collective bargaining or the adjustment of grievances;

(2) To cause or attempt to cause an employer to discriminate against an employee in violation of subdivision (3), subsection (a) of this section or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his or her failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(3) To refuse to bargain collectively with an employer, provided it is the representative of his or her employees subject to the provisions of subsection (a), section five of this article;

(4) (i) To engage in, or induce or encourage any individual employed by any person to engage in, a strike or a refusal in the course of employment to use, manufacture, process, transport or otherwise handle or work on any goods, articles, materials or commodities or to perform any services; or (ii) to threaten, coerce or restrain any person, where in either case an object thereof is:

(A) Forcing or requiring any employer or self-employed person to join any labor or employer organization or to enter into any agreement which is prohibited by subsection (e) of this

section;

(B) Forcing or requiring any person to cease using, selling, handling, transporting or otherwise dealing in the products of any other producer, processor or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his or her employees unless such labor organization has been certified as the representative of such employees under the provisions of section five of this article: Provided, That nothing contained in this paragraph may be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;

(C) Forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his or her employees if another labor organization has been certified as the representative of such employees under the provisions of section five of this article;

(D) Forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft or class rather than to employees in another labor organization or in another trade, craft or class, unless such employer is failing to conform to an order of certification of the board determining the bargaining representative for employees performing such work: Provided, That nothing contained in this subsection shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his or her own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required by law to recognize;

(5) To require of employees covered by an agreement authorized under subdivision (3), subsection (a) of this section, the payment, as a condition precedent to becoming a member of such organization, of a fee in an amount which the board finds excessive or discriminatory under all the circumstances. In making such a finding, the board shall consider, among other relevant factors, the practices and customs of labor organizations in the particular industry, and the wages currently paid to the employees affected;

(6) To cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed; and

(7) To picket or cause to be picketed, or threaten to picket or cause to be picketed, any employer where an object thereof is forcing or requiring an employer to recognize or bargain with a labor organization as the representative of his or her employees, or forcing or requiring the employees of an employer to accept or select such labor organization as their collective bargaining representative, unless such labor organization is currently certified as the representative of such employees:

(A) Where the employer has lawfully recognized in accordance with this article any other

labor organization and a question concerning representation may not appropriately be raised under subsection (c), section five of this article;

(B) Where within the preceding twelve months a valid election under subsection (c), section five of this article has been conducted; or

(C) Where such picketing has been conducted without a petition under subsection (c), section five of this article being filed within a reasonable period of time not to exceed fifteen days from the commencement of such picketing: Provided, That when such a petition has been filed the board shall forthwith, without regard to the provisions of said subsection or the absence of a showing of a substantial interest on the part of the labor organization, direct an election in such unit as the board finds to be appropriate and shall certify the results thereof. Nothing in this subdivision shall be construed to permit any act which would otherwise be an unfair labor practice under this subsection.

(c) The expressing of any views, argument or opinion, or the dissemination thereof, whether in written, printed, graphic or visual form, shall not constitute or be evidence of an unfair labor practice, or be prohibited under this article, if such expression contains no threat of reprisal or force or promise of benefit.

(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making a concession: Provided, That where there is in effect a collective bargaining contract covering employees, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification:

(1) Gives a written notice to the other party of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

(2) Offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

(3) Notifies the Commissioner of Labor of the existence of a dispute;

(4) Continues in full force and effect, without resorting to strike or lockout, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later. The duties imposed upon employers, employees and labor organizations by this subdivision and subdivisions (2) and (3) of this subsection shall become inapplicable upon an intervening certification of the

board, under which the labor organization or individual, which is a party to the contract, has been superseded as or ceased to be the representative of the employees subject to the provisions of subsection (a), section five of this article, and the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract. Any employee who engages in a strike within the sixty-day period specified in this subsection shall lose his or her status as an employee of the employer engaged in the particular labor dispute, for the purposes of this section and sections three and five of this article, but such loss of status for such employee shall terminate if and when he or she is reemployed by such employer.

(e) It shall be an unfair labor practice for any labor organization and any employer to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person and any such contract or agreement entered into heretofore or hereafter shall be to such extent unenforceable and void.

§21-1A-5. Representatives and elections.

(a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment or other conditions of employment.

(b) The board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this article, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof: Provided, That the board shall not (1) decide that any unit is appropriate for such purposes if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit; or (2) decide that any craft unit is inappropriate for such purposes on the ground that a different unit has been established by a prior board determination, unless a majority of the employees in the proposed craft unit vote against separate representation; or (3) decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises; but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.

(c) (1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the board:

(A) By an employee or group of employees or any individual or labor organization acting in their behalf alleging that employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in subsection (a) of this section, or (ii) assert that the individual or labor organization, which has been certified or is being currently recognized by their employer as the bargaining representative, is no longer a representative as defined in subsection (a) of this section; or

(B) By an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in subsection (a) of this section; the board shall investigate such petition and if it has reasonable cause to believe that a question of representation exists shall provide for an appropriate hearing upon due notice. If the board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof.

(2) Any labor organization may intervene in the procedures provided for in this subsection upon the filing with the board of a petition alleging that it represents one or more employees in the unit with respect to which a question of representation exists. If the board finds the

allegation to be valid and the unit to be appropriate, it shall order an election and shall order that the name of such intervening labor organization be included among the choices on the secret ballot to be used in such election. If the board finds that the petition is invalid, the board may dismiss the petition or permit such petition to be amended in accordance with the procedures established by such board.

(3) No election shall be directed in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held. Employees engaged in an economic strike who are not entitled to reinstatement shall be eligible to vote under such regulations as the board shall find consistent with the purposes and provisions of this article in any election conducted within twelve months after the commencement of the strike. In any election where none of the choices on the ballot receives a majority, a runoff shall be conducted, the ballot providing for a selection between the two choices receiving the largest and second largest number of valid votes cast in the election.

(4) Nothing contained in this section shall be construed as prohibiting the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations of the board.

(5) In determining whether a unit is appropriate for the purposes specified in subsection (b) of this section the extent to which the employees have organized shall not be controlling.

(d) Upon the filing with the board, by thirty per centum or more of the employees in a bargaining unit covered by an agreement between their employer and a labor organization made pursuant to subdivision (3), subsection (a), section four of this article, of a petition alleging that they desire that such authority be rescinded, the board shall take a secret ballot of the employees in such unit and certify the results thereof. No election shall be conducted pursuant to this subsection in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held.

§21-1A-6. Prevention of unfair labor practices.

(a) The board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice specified in section four of this article. The authority and power to prevent unfair labor practices prescribed in this article is exclusively vested in the board, and shall be limited to the procedures provided in this section, except for the rights of action explicitly granted to and against employers and labor organizations by section seven of this article: Provided, That nothing contained in this article shall be deemed to preempt, limit or restrict any person in the enforcement or prosecution of any action now or at any time in the future in any court of this state to enforce any legal right or cause of action heretofore or otherwise existing under law, including, but not limited to, any right to injunctive relief against violence, threats of violence, mass picketing, obstruction, or injury or threatened injury to property or person, in connection with labor disputes.

(b) Whenever it is charged by a charge filed with the board that any person has engaged in or is engaging in any such unfair labor practice, the board's executive secretary, provided for in article one-b of this chapter, shall have power to investigate such charge and if he concludes that there is probable cause to believe that such person has engaged in or is engaging in such unfair labor practice, to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the board, at a place therein fixed, not less than ten days after the serving of said complaint: Provided, That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the board and the service of a copy thereof upon the person against whom the charge is made, unless the person aggrieved thereby was prevented from filing such charge by reason of service in the Armed Forces, in which event the six months' period shall be computed from the day of his discharge. Any such complaint may be amended by the board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise at a hearing scheduled thereon and give testimony. Any such hearing may be conducted by the board, any member thereof or any agent of the board designated by the board for such purpose. In the discretion of the board, member or agent conducting the hearing, any other person may be allowed to intervene in the said proceeding and present testimony. Any scheduled hearing may be continued by the board, member or agent conducting the hearing upon its or his own motion or for good cause shown by any person thereto.

(c) All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern the hearing and the administrative procedures in connection with and following such hearing, with like effect as if the provisions of said article five were set forth in this subsection, with the following modifications or exceptions:

(1) Any such proceeding shall, so far as is practicable, be conducted in accordance with the rules of evidence as applied in civil cases in the circuit courts of this state; and

(2) The testimony taken by the board, member or agent conducting the hearing shall in

every case be reduced to writing and filed with the board.

(d) For the purpose of conducting any such hearing any member of the board or agent designated to conduct such hearing shall have the power and authority to issue subpoenas and subpoenas duces tecum which shall be issued and served within the time, for the fees and shall be enforced, as specified in section one, article five of said chapter twenty-nine-a, and all of the said section one provisions dealing with subpoenas and subpoenas duces tecum shall apply to subpoenas and subpoenas duces tecum issued for the purpose of a hearing hereunder.

(e) Subsequent to the conclusion of the hearing, the board, in its discretion, may upon notice take further testimony or hear argument.

(f) If upon consideration of the record by the board, and upon a preponderance of the evidence, the board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the board shall state its findings of fact and conclusions of law and shall issue and cause to be served upon such person, by certified mail, return receipt requested, an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees, with or without back pay, as will effectuate the purposes of this article. Such order may further require such person to make reports from time to time showing the extent to which such person has complied with the order. If upon the preponderance of the evidence the board shall not be of opinion that the person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the board shall state its findings of fact and conclusions of law and shall issue an order dismissing the said complaint. No order of the board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause.

(g) The decision of the board shall be final unless reversed, vacated or modified upon judicial review thereof in accordance with the provisions of subsection (h) of this section.

(h) The board shall have power to petition the circuit court of any county wherein the unfair labor practice in question occurred, for the enforcement of such order and for appropriate temporary relief or a restraining order. Any person aggrieved by a final order of the board granting or denying in whole or in part the relief sought may obtain a review of such order in the circuit court of any county wherein the unfair labor practice in question was alleged to have occurred, and such review may be had only in such court notwithstanding the provisions of section four, article five, chapter twenty-nine-a of this code. Upon the filing of any such petition for enforcement or review, the court shall have jurisdiction and power to grant such temporary relief or restraining order as it deems just and to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part, the order of the board. Except as provided above in this subsection any petition for review shall be governed by the provisions of section four, article five, chapter twenty-nine-a of this code with like effect as if the provisions of said section four were set forth in this

subsection (h).

(i) The board shall have the power, upon issuance of a complaint as provided in subsection (b) of this section charging that any person has engaged in or is engaging in an unfair labor practice, to petition the circuit court of the county wherein the unfair labor practice in question is alleged to have occurred or to be occurring for appropriate temporary injunction or a restraining order. Upon the filing of any such petition, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the board such temporary injunction or restraining order as it deems just and proper.

(j) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of subparagraphs (A), (B) or (C), subdivision (4), subsection (b), section four of this article, or subsection (e) of said section four or subdivision (7), subsection (b) of said section four, the preliminary investigation of such charge shall be made forthwith and given priority over all cases except cases of like character. If, after such investigation, the executive secretary of the board has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the board, petition the circuit court of any county wherein the unfair labor practice in question has occurred or is occurring, for appropriate temporary injunctive relief pending the final adjudication of the board with respect to such matter. Upon the filing of any such petition the circuit court shall have jurisdiction to grant such temporary injunctive relief or temporary restraining order as it deems just and proper.

(k) An appeal from any decision of a circuit court pursuant to this article may be had, notwithstanding the provisions of section one, article six, chapter twenty-nine-a of this code, by filing a petition for a writ of certiorari with the Supreme Court of Appeals of West Virginia within sixty days of the date of entry of final order by the circuit court.

§21-1A-7. Suits by or against labor organizations.

(a) Suits for violation of contracts between an employer and a labor organization, or between labor organizations, may be brought in any circuit court of this state having jurisdiction of the parties.

(b) It shall be unlawful for any labor organization to engage in any activity or conduct defined as an unfair labor practice in subdivision (4), subsection (b), section four of this article; and whoever shall be injured in his business or property by reason of any such violation may sue therefor in the circuit court of any county wherein such unfair labor practice occurred, and shall recover the damages by him sustained and the cost of the suit.

(c) Any labor organization and any employer shall be bound by the acts of its agents. Notwithstanding any other provision of law or rule to the contrary, any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents. Any money judgment against a labor organization in a suit under this section shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

(d) For the purposes of actions and proceedings by or against labor organizations, the circuit courts of this state shall be deemed to have jurisdiction of a labor organization in the county in which such organization maintains its principal offices, or in any county in which its duly authorized officers or agents are engaged in representing or acting for employee members.

(e) The service of summons, subpoena, or other legal process of any circuit court of this state upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

§21-1A-8. Severability.

If any provision of this article, or the application of any provision to any person or circumstance, shall be held invalid, the remainder of this article, or the application of any such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

§21-1B-1. Findings; policy.

The Legislature finds that employers have the responsibility to verify the legal employment status of all persons who come into their employ and to report their employment to the appropriate governmental agencies. Employers are precluded from hiring unauthorized workers and can be penalized for doing so. Additionally, employers owe a duty to the residents of the state to uphold the intent and integrity of the general workforce due to the potential loss of revenue to the state by loss of taxes, unemployment premiums and workers' compensation premiums.

§21-1B-2. Definitions.

(a) "Employer" means any individual, person, corporation, department, board, bureau, agency, commission, division, office, company, firm, partnership, council or committee of the state government, public benefit corporation, public authority or political subdivision of the state or other business entity which employs or seeks to employ an individual or individuals.

(b) "Commissioner" means the labor commissioner or his or her designated agent.

(c) "Unauthorized worker" means a person who does not have the legal right to be employed or is employed in violation of law.

(d) "Records" means records that may be required by the commissioner of labor for the purposes of compliance with the provisions of this article.

(e) "Knowingly" means, with respect to conduct or to a circumstance described by a statute defining an offense, that a person is aware by documentation or action that the person's conduct is of that nature or that the circumstance exists. Failure to request or review documentation of an employee's legal status or authorization to work is deemed to be "knowingly".

(f) "License" means any permit, certificate, approval, registration, charter or similar form of authorization that is required by law and that is issued for the purpose of operating a business in this state.

§21-1B-3. Unauthorized workers; employment prohibited.

(a) It is unlawful for any employer to knowingly employ, hire, recruit or refer, either for him or herself or on behalf of another, for private or public employment within the state, an unauthorized worker who is not duly authorized to be employed by law.

(b) Employers shall be required to verify a prospective employee's legal status or authorization to work prior to employing the individual or contracting with the individual for employment services.

(c) For purposes of this article, proof of legal status or authorization to work includes, but is not limited to, a valid social security card, a valid immigration or nonimmigration visa, including photo identification, a valid birth certificate, a valid passport, a valid photo identification card issued by a government agency, a valid work permit or supervision permit authorized by the Division of Labor, a valid permit issued by the Department of Justice or other valid document providing evidence of legal residence or authorization to work in the United States.

(d) For purposes of enforcing the provisions of this article, and notwithstanding any other provision of this code to the contrary, the commissioner or his or her authorized representative may access information maintained by any other state agency, including, but not limited to, the Bureau of Employment Programs and the Division of Motor Vehicles, for the limited purpose of confirming the validity of a worker's legal status or authorization to work. The commissioner shall promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code to safeguard against the release of any confidential or identifying information that is not necessary for the limited purpose of enforcing the provisions of this article.

§21-1B-4. Record-keeping requirements; employer compliance.

Every employer, firm and corporation shall make such records of the persons he or she employs including records of proof of the legal status or authorization to work of all employees. Such records shall be preserved pursuant to the provisions of section five, article five-c of this chapter and shall be maintained at the place of employment. Pursuant to section three, article one of this chapter, such records shall be made available to the commissioner or his or her authorized representative for inspection and investigation as the commissioner deems necessary and appropriate for the purposes of determining whether any employer, firm or corporation has violated any provision of this article which may aid in the enforcement of the provisions of this article.

§21-1B-5. Penalties.

(a) Any employer who knowingly and willfully fails to maintain records as required by section four of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined $100 for each offense. Failure to keep records on each employee constitutes a separate offense.

(b) Any employer who knowingly violates the provisions of section three of this article by employing, hiring, recruiting or referring an unauthorized worker is guilty of a misdemeanor and, upon conviction thereof, is subject to the following penalties:

(1) For a first offense, a fine of not less than $100 nor more than $1,000 for each violation;

(2) For a second offense, a fine of not less than $500 nor more than $5,000 for each violation;

(3) For a third or subsequent offense, a fine of not less than $1,000 nor more than $10,000, or confinement in jail for not less than thirty days nor more than one year, or both.

(c) Any employer who knowingly and willfully provides false records as to the legal status or authorization to work of any employee to the commissioner or his or her authorized representative is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not more than one year or fined not more than $2,500, or both.

(d) Any employer who knowingly and willfully and with fraudulent intent sells, transfers or otherwise disposes of substantially all of the employer's assets for the purpose of evading the record-keeping requirements of section four of this article is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not more than one year or fined not more than $10,000, or both.

§21-1B-6. Denial of deductible business expense.

On or after January 1, 2008, no wages or remuneration for services paid to an unauthorized worker of $600 or more per annum may be claimed and allowed as a deductible business expense for state income tax purposes by a taxpayer if the employer has been convicted under this article of employing, hiring, recruiting or referring the unauthorized worker. The commissioner shall notify the Department of Revenue of any conviction of an employer under this article and the department is to take the appropriate action against the taxpayer.

§21-1B-7. Suspension or revocation of license.

(a) If, upon examination of the record or records of conviction, the commissioner determines that an employer has been convicted of a third or subsequent offense under subsection (b), section five of this article or has been convicted of the offenses described in subsection (c) or (d) of said section, the commissioner may enter an order imposing the following disciplinary actions:

(1) Permanently revoke or file an action to revoke any license held by the employer; or

(2) Suspend a license or move for a suspension of any license held by the employer for a specified period;

(b) The order shall contain the reasons for the revocation or suspension and the revocation or suspension periods. Further, the order shall give the procedures for requesting a hearing. The person shall be advised in the order that because of the receipt of the record of conviction by the commissioner a presumption exists that the person named in the record of conviction is the person named in the commissioner's order and this constitutes sufficient evidence to support a revocation or suspension and that the sole purpose for the hearing held under this section is for the person requesting the hearing to present evidence that he or she is not the person named in the record of conviction. A copy of the order shall be forwarded to the person by registered or certified mail, return receipt requested. No revocation or suspension shall become effective until ten days after receipt of a copy of the order.

§21-1B-8. Citation for violation.

(a) If, upon inspection or investigation, the commissioner believes that an employer has violated a provision of this article, the commissioner shall issue a notice to produce records or documents to the employer. Each notice shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of this article alleged to have been violated. The employer shall have up to seventy-two hours, or for good cause shown to the commissioner, a greater period of time, to produce employment status verification records.

(b) If after the time period allowed under subsection (a) of this section the employer is unable to produce the required documents to satisfy the commissioner that there is no violation of this article, the commissioner may issue a citation to the employer. Each citation shall be in writing on a standard form as prescribed by the commissioner and shall describe with particularity the nature of the violation, including a reference to the provision of this article alleged to have been violated. Each citation issued under this section or a copy or copies thereof shall be prominently presented to a magistrate or circuit judge in the county where the violation occurred.

§21-1C-1. Short title.

This article shall be called the "West Virginia Jobs Act".

§21-1C-2. Definitions.

As used in this article:

(1) The term “commissioner” means the Commissioner of the West Virginia Division of Labor, or his or her authorized representatives.

(2) The term "construction project" means any construction, reconstruction, improvement, enlargement, painting, decorating or repair of any public improvement let to contract in an amount equal to or greater than $500,000. The term "construction project" does not include temporary or emergency repairs;

(3) The term “domicile” or “primary residence” means an individual’s true, fixed, principal, and permanent home, to which he or she returns or intends to return, even though currently residing elsewhere. Presentation of a valid, government-issued identification card shall be conclusive proof of domicile.

(4) (A) The term "employee" means any person hired or permitted to perform hourly work for wages by a person, firm or corporation in the construction industry;

(B) The term "employee" does not include:

(i) Bona fide employees of a public authority or individuals engaged in making temporary or emergency repairs;

(ii) Bona fide independent contractors; or

(iii) Salaried supervisory personnel necessary to assure efficient execution of the employee's work;

(5) The term "employer" means any person, firm or corporation employing one or more employees on any public improvement and includes all contractors and subcontractors;

(6) The term "local labor market" means every county in West Virginia, and any county outside of West Virginia if any portion of that county is within fifty miles of the border of West Virginia;

(7) The term "public authority" means any officer, board, commission or agency of the State of West Virginia and its subdivisions, including counties and municipalities. Further, the economic grant committee, economic development authority, infrastructure and jobs development council and School Building Authority shall be required to comply with the provisions of this article for loans, grants or bonds provided for public improvement construction projects;

(8) The term "public improvement" includes, the construction of all buildings, roads, highways, bridges, streets, alleys, sewers, ditches, sewage disposal plants, waterworks,

airports and all other structures that may be let to contract by a public authority, excluding improvements funded, in whole or in part, by federal funds.

§21-1C-3. Legislative findings; statement of policy.

The Legislature finds that the rate of unemployment in this state is significantly higher than that of most other states and that a majority of West Virginia counties are designated as labor surplus areas by the United States department of labor.

The Legislature finds that the employment of persons from outside the local labor market on public improvement construction projects contracted for and subsidized by the taxpayers of the state contributes significantly to the rate of unemployment and the low per capita income among qualified state residents who would otherwise be hired for these jobs.

Therefore, the Legislature declares that residents of local labor markets should be employed for the construction of public improvement projects which directly utilize taxpayer funding, in whole or in part.

§21-1C-4. Local labor market utilization on public improvement construction projects; waiver certificates.

(a) Employers shall hire at least seventy-five percent of employees for public improvement construction projects domiciled in the local labor market, to be rounded off, with at least two employees from outside the local labor market permissible for each employer per project.

(b) Any employer unable to employ the minimum number of employees from the local labor market shall inform the nearest office of Workforce West Virginia of the number of qualified employees needed and provide a job description of the positions to be filled.

(c) If, within three business days following the placing of a job order, Workforce West Virginia is unable to refer any qualified job applicants to the employer or refers less qualified job applicants than the number requested, then Workforce West Virginia shall issue a waiver to the employer stating the unavailability of applicants and shall permit the employer to fill any positions covered by the waiver from outside the local labor market. The waiver shall be in writing and shall be issued within the prescribed three days. A waiver certificate shall be sent to both the employer for its permanent project records and to the public authority.

§21-1C-5. Applicability and scope of article; reporting requirements.

(a) This article applies to expenditures for construction projects by any public authority for public improvements as defined by this article.

(b) For public improvement projects let pursuant to this article, the public authority shall file, or require an employer as defined in section two of this article to file, with the Division of Labor copies of the waiver certificates and certified payrolls, pursuant to article five-a of this chapter, or other comparable documents that include the number of employees, the county and state wherein the employees reside and their occupation.

(c) The Division of Labor shall compile the information required by this section and submit it annually to the Joint Committee on Government and Finance by October 15, . The joint committee may forward these reports to the Legislative Auditor to review and make comments regarding the usefulness of the information collected and to suggest changes to the division's method of reporting to ensure the information collected will prove useful in evaluating the effectiveness of the provisions of this article.

(d) Each public authority has the duty to implement the reporting requirements of this article. Every public improvement contract or subcontract let by a public authority shall contain provisions conforming to the requirements of this article.

(e) The Division of Labor is authorized to establish procedures for the efficient collection of data, collection of civil penalties prescribed in section six of this article and transmittal of data to the Joint Committee on Government and Finance.

§21-1C-6. Penalties for violation of article, notice of violations; administrative remedies.

(a) If, after inspection or investigation, the commissioner determines that an employer has violated any provision of this article, the commissioner shall provide a written notice of violation to the employer and the public authority, setting forth the number of violations, a description of every violation and the amount of the penalty that will be imposed if the employer continues to violate any provision of this article after receipt of the notice of violation, and shall direct the public authority to withhold final payment to the employer until the employer has paid the penalty or the matter has been otherwise resolved.

(b) Any employer who violates any provision of this article is subject to a civil penalty of $250 per each employee less than the required threshold of seventy-five percent per day of violation after receipt of a notice of violation issued by the commissioner. This civil penalty terminates upon compliance or upon issuance of a waiver by Workforce West Virginia.

(c) Any employer that continues to violate any provision of this article more than fourteen calendar days after receipt of a notice of violation is subject to a civil penalty of $500 per each employee less than the required threshold of seventy-five percent per day of violation. This civil penalty terminates upon compliance or upon issuance of a waiver by Workforce West Virginia.

(d) All civil penalties paid pursuant to this section shall be paid to the commissioner and deposited in an appropriated special revenue account hereby created in the State Treasury to be known as the “West Virginia Jobs Act Fund” and expended for the implementation and enforcement of this article.

§21-1C-7.

Repealed.

Acts, 2006 Reg. Sess., Ch. 131.

§21-1D-1. Short Title.

This article shall be called the West Virginia Alcohol and Drug-Free Workplace Act.

§21-1D-2. Definitions.

(a) The term "alcohol test" means a procedure conducted to determine if an individual is under the influence of alcohol.

(b) The term "construction", as used in this article, means any construction, reconstruction, improvement, enlargement, painting, decorating or repair of any public improvement let to contract the value of which contract is over $100,000. The term "construction" does not include temporary or emergency repairs.

(c) The term "contractor" means any employer working on a public improvement without regard to whether they are serving as the prime or subcontractor to another.

(d) The term "drug test" means a procedure using at least a nine-panel drug screen in urine specimens that are collected from individuals for the purpose of scientifically analyzing the specimens to determine if the individual ingested, was injected or otherwise exposed to a drug of abuse.

(e) The term "drug of abuse" means any substance listed under subsection (h) of this section and any other substance the employer chooses to test for.

(f) The term "employee" means a laborer, mechanic or other worker. For the purposes of this article, employee does not include those persons as are employed or hired directly by a public authority on a regular or temporary basis engaged exclusively in making temporary or emergency repairs. Furthermore, employee does not include those persons employed by a contractor who does not work in public improvement construction.

(g) The term "medical review officer" means a physician who holds a certificate authorizing them to practice medicine and surgery or osteopathic medicine and surgery, has knowledge of substance abuse disorders, has the appropriate medical training to interpret and evaluate positive drug and alcohol test results together with a person's medical history and other relevant biomedical information, has successfully completed qualification training as outlined in the Code of Federal Regulations at 49 C. F. R. Part 40 §121 (c) and has passed an exam administered by a nationally recognized medical review officer certification board or subspecialty board for medical practitioners in the field of medical review of federally mandated drug testing.

(h) The term "nine-panel drug screen" means a drug-testing program that tests for marijuana, cocaine, opiates including hydromorphone, oxycodone, hydrocodone, phencyclidine, amphetamines, barbiturates, benzodiazepines, methadone and propoxyphene at the substance screening and confirmation limits where provided under federally mandated drug and alcohol testing programs or otherwise accepted as the industry standard.

(i) The term "preemployment drug test" means a drug test taken within the preceding twelve

months from employment or seven days after hire.

(j) The term "public authority", as used in this article, means any officer, board or commission or other agency of the State of West Virginia, its counties or municipalities or any political subdivision thereof, authorized by law to enter into a contract for the construction of a public improvement, including any institution supported, in whole or in part, by public funds of the State of West Virginia and this article applies to expenditures of these institutions made, in whole or in part, from public funds.

(k) The term "public improvement", as used in this article, includes all buildings, roads, highways, bridges, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, airports and all other structures upon which construction may be let to contract by the State of West Virginia, its counties or municipalities or any political subdivision thereof.

(l) The term "random drug testing" means a procedure in which employees who perform safety-sensitive tasks are selected to undergo a drug test by a statistically valid random selection method without prearrangement or planning.

(m) The term "reasonable cause" means a belief based on facts and inferences based primarily upon, but not limited to: (1) Observable phenomena, such as direct observation of use, possession or distribution of alcohol or a drug of abuse, or of the physical symptoms of being under the influence of alcohol or a drug of abuse, such as, but not limited to, slurred speech, dilated pupils, odor of an alcoholic beverage or a drug of abuse, changes in affect or dynamic mood swings; (2) a pattern of abnormal conduct, erratic or aberrant behavior or deteriorating work performance such as frequent absenteeism, excessive tardiness or recurrent accidents, that appears to be related to the use of alcohol or a drug of abuse and does not appear to be attributable to other factors; (3) the identification of an employee as the focus of a criminal investigation into unauthorized possession, use or trafficking of a drug of abuse; (4) a report of use of alcohol or a drug of abuse provided by a reliable and credible source; and (5) repeated or flagrant violations of the safety or work rules of the employee's employer, that are determined by the employee's supervisor to pose a substantial risk of physical injury or property damage and that appears to be related to the use of alcohol or a drug of abuse and that does not appear attributable to other factors.

(n) The term "safety-sensitive duty" means any task or duty fraught with such risks of injury to the employee or others that even a momentary lapse of attention or judgment, or both, can lead to serious bodily harm or death.

(o) The term "under the influence of alcohol" means a concentration of eight hundredths of one percent or more by weight of alcohol in an individual's blood or a concentration of eight hundredths of one gram or more by weight of alcohol per two hundred ten liters of an individual's breath.

§21-1D-3. Statement of policy.

It is hereby declared to be the policy of the State of West Virginia to require public improvement contractors to have and implement a drug-free workplace policy that requires drug and alcohol testing.

§21-1D-4. Drug-free workplace policy required for public improvement construction.

Except as provided in section eight of this article, no public authority may award a public improvement contract which is to be let to bid to a contractor unless the terms of the contract require the contractor and its subcontractors to implement and maintain a written drug-free workplace policy in compliance with this article and the contractor and its subcontractors provide a sworn statement in writing, under the penalties of perjury, that they maintain a valid drug-free workplace policy in compliance with this article.The public improvement contract shall provide for the following:

(1) That the contractor implements its drug-free workplace policy;

(2) Cancellation of the contract by the awarding public authority if the contractor:

(A) Fails to implement its drug-free workplace policy;

(B) Fails to provide information regarding implementation of the contractor's drug-free workplace policy at the request of the public authority; or

(C) Provides to the public authority false information regarding the contractor's drug-free workplace policy.

§21-1D-5. Employee drug-free workplace policy required to bid for a public improvement contract.

After July 1, 2008, any solicitation for a public improvement contract shall require each contractor that submits a bid for the work to submit an affidavit that the contractor has a written plan for a drug-free workplace policy prior to being awarded a contract. If the affidavit is not submitted with the bid submission, the public authority shall promptly request by telephone and electronic mail that the low bidder and second low bidder provide the affidavit within one business day of the request. Failure to submit the affidavit within one business day of receiving the request shall result in disqualification of the bid. A public improvement contract may not be awarded to a contractor who does not have a written plan for a drug-free workplace policy and who has not submitted that plan to the appropriate contracting authority in timely fashion.

For subcontractors, compliance with this section may take place before their work on the public improvement is begun.

A drug-free workplace policy shall include the following:

(1) Establish drug testing and alcohol testing protocols that at a minimum require a contractor to:

(A) Conduct preemployment drug tests of all employees;

(B) Conduct random drug testing that annually tests at least ten percent of the contractor's employees who perform safety-sensitive duties;

(C) Conduct a drug test or alcohol test of any employee who may have caused or contributed to an accident while conducting job duties where reasonable cause exists to suspect that the employee may be intoxicated or under the influence of a controlled substance not prescribed by the employee's physician when, but not limited to, the employer has evidence that an employee is or was using alcohol or a controlled substance drawn from specific documented, objective facts and reasonable inferences drawn from these facts in light of experience and training.

The drug or alcohol test shall be conducted as soon as possible after the accident occurred and after any necessary medical attention has been administered to the employee.

(D) Conduct a drug test or alcohol test of any employee when a trained supervisor has reasonable cause to believe that the employee has reported to work or is working under the influence of a drug of abuse or alcohol. Written documentation as to the nature of a supervisor's reasonable cause shall be created.

In order to ascertain and justify implementation of a reasonable cause test, all supervisors will be trained to recognize drug- and alcohol-related signs and symptoms.

(2) Require that all drug tests performed pursuant to this section be conducted by a laboratory certified by the United States Department of Health and Human Services or its successor;

(3) Establish standards governing the performance of drug tests by such a laboratory that include, but are not limited to, the following:

(A) The collection of urine specimens of individuals in a scientifically or medically approved manner and under reasonable and sanitary conditions;

(B) The collection and testing of urine specimens with due regard for the privacy of the individual being tested and in a manner reasonably calculated to prevent substitutions or interference with the collection and testing of specimens;

(C) The documentation of urine specimens through procedures that reasonably preclude the possibility of erroneous identification of test results and that provide the individual being tested a reasonable opportunity to furnish information identifying any prescription or nonprescription drugs used by the individual in connection with a medical condition to the medical review officer;

(D) The collection, maintenance, storage and transportation of urine specimens in a manner that reasonably precludes the possibility of contamination or adulteration of the specimens;

(E) The testing of a urine specimen of an individual to determine if the individual ingested, was injected or otherwise introduced with a drug of abuse in a manner that conforms to scientifically accepted analytical methods and procedures that include verification and confirmation of any positive test result by gas chromatography or mass spectrometry.

(4) Establish standards and procedures governing the performance of alcohol tests;

(5) Require that a medical review officer review all drug tests that yield a positive result;

(6) Establish procedures by which an individual who undergoes a drug test or alcohol test may contest a positive test result;

(7) Require that when an employee of a contractor tests positive for a drug of abuse or alcohol, or if an employee is caught adulterating a drug or alcohol test, as defined in section four hundred twelve, article four, chapter sixty-a of this code, the employee is subject to appropriate disciplinary measures up to and including termination from employment, in accordance with the contractor’s written drug-free workplace policy. If not terminated, the employee is subject to random drug or alcohol tests at any time for one year after the positive test;

(8) Require that when a supervisor has reasonable cause to believe an employee is under the influence of a drug of abuse or alcohol at work and requires the employee to take a drug or alcohol test, the employee shall immediately be suspended from performing safety-sensitive

tasks by the contractor until such time as a drug or alcohol test is performed and results of that test are available;

(9) Require a contractor to provide to any employee testing positive for a drug of abuse or alcohol the list of community resources where employees may seek assistance for themselves or their families as identified in paragraph (D), subdivision (12) of this section;

(10) Require that a contractor assist an employee who voluntarily acknowledges that the employee may have a substance abuse problem by providing the list of community resources where employees may seek assistance for themselves or their families as identified in paragraph (D), subdivision (12) of this section;

(11) Require that a contractor establish a written drug-free workplace policy regarding substance abuse and provide a copy of the written policy to each of its employees and to each applicant for employment. The written policy shall contain, at a minimum, all of the following:

(A) A summary of all the elements of the drug-free workplace policy established in accordance with this article;

(B) A statement that it is the contractor's intention to create a drug-free workplace environment;

(C) Identification of an employee who has been designated the contractor's drug-free workplace representative;

(D) Shall list the types of tests an employee may be subject to, which may include, but are not limited to, the following:

(i) Preemployment;

(ii) Post-accident;

(iii) Random; and

(iv) Reasonable cause.

(12) Require that a contractor provide within six weeks of new employment at least two hours of drug-free workplace employee education for all employees unless that employee has already received such training anytime within a prior two-year period. The employee shall participate in drug-free workplace employee education at least biannually thereafter. The employee education shall include all of the following:

(A) Detailed information about the content of the contractor's specific drug-free workplace policy and an opportunity for employees to ask questions regarding the policy;

(B) The distribution of a hard copy of the written drug-free workplace policy, including collecting an employee-signed acknowledgment receipt from each employee;

(C) Specific explanation of the basics of drugs and alcohol abuse, including, but not limited to, the disease model, signs and symptoms associated with substance abuse, and the effects and dangers of drugs or alcohol in the workplace; and

(D) A list of community resources where employees may seek assistance for themselves or their families.

(13) Require that a contractor provide at least two hours of drug-free workplace supervisor training for all supervisory employees and annually thereafter. The supervisor training shall include all of the following:

(A) How to recognize a possible drug or alcohol problem;

(B) How to document behaviors that demonstrate a drug or alcohol problem;

(C) How to confront employees with the problem from observed behaviors;

(D) How to initiate reasonable suspicion and post-accident testing;

(E) How to handle the procedures associated with random testing;

(F) How to make an appropriate referral for assessment and assistance;

(G) How to follow up with employees returning to work after a positive test; and

(H) How to handle drug-free workplace responsibilities in a manner that is consistent with the applicable sections of any pertinent collective bargaining agreements.

§21-1D-5a. Drug-free workplace policy not applicable to workers required to follow federal Department of Transportation drug testing guidelines.

In instances where a worker is required by law to follow United States Department of Transportation drug testing guidelines, no additional drug tests are required under this article.

§21-1D-6. Drug-free workplace written policy to be kept posted.

A clearly legible copy of the contractor's written drug-free workplace policy shall be kept posted in a prominent and easily accessible place at the public improvement construction site thereof by each contractor subject to the provisions of this article.

§21-1D-7. Drug-free workplace records and contents open for inspection.

Every contractor shall keep an accurate record showing the names, occupation and safety-sensitive status of all employees, in connection with the construction on the public improvement, and showing any drug tests or alcohol tests performed and employee education and supervisor training received, which record shall be open at all reasonable hours for inspection by the public authority which let the contract and its officers and agents. It is not necessary to preserve the record for a period longer than three years after the termination of the contract.

§21-1D-7a. Confidentiality; test results not to be used in criminal and administrative proceedings.

All drug testing information specifically related to individual employees is confidential and should be treated as such by anyone authorized to review or compile program records. Drug test results may not be used in a criminal proceeding without the employee's consent.

§21-1D-7b. Contractor to provide certified drug-free workplace report.

No less than once per year, or upon completion of the project, every contractor shall provide a certified report to the public authority which let the contract. The report shall include:

(1) Information to show that the education and training service to the requirements of section five of this article was provided;

(2) The name of the laboratory certified by the United States Department of Health and Human Services or its successor that performs the drug tests pursuant to this article;

(3) The average number of employees in connection with the construction on the public improvement;

(4) Drug test results for the following categories including the number of positive tests and the number of negative tests:

(A) Preemployment and new hires;

(B) Reasonable suspicion;

(C) Post-accident;

(D) Random.

§21-1D-8. Penalties for violation of this article.

(a) Any contractor who violates any provision of this article is, for the first offense, guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000; for the second offense, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $1,000 nor more than $5,000; for the third or any subsequent offense within the preceding five years , the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $5,000 nor more than $25,000 and the contractor shall be excluded from bidding any additional new public improvement projects for a period of one year.

(b) Any person who directly or indirectly aids, requests or authorizes any other person to violate any of the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $50 nor more than $250.

§21-1D-9. Existing contracts.

This article applies only to contracts for construction on public improvements awarded after the effective date of this article.

§21-1E-1. Declaration of purpose.

The provisions of this article are intended to facilitate certification and/or licensure for workers who acquire training via career technical education provided by West Virginia public schools or an employer-sponsored apprenticeship and employer-sponsored training programs.

§21-1E-2. Definitions.

As used in this article and the legislative rules promulgated pursuant to this article:
"Apprentice" means someone who is enrolled in an apprenticeship program.

"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.

"Employer sponsored training program" means a program approved in accordance with a rule promulgated pursuant to authority established in §21-1E-4 of this code.

"License" means a valid and current certification or license issued by the Commissioner of Labor in accordance with the provisions of this article.

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

"Youth Apprenticeship Program" means the program created in §18-2-7g of this code and is subject to the definition of “apprentice” set forth in this section.

§21-1E-3. Recognition of training and apprenticeships; maintenance of current list of apprenticeships.

(a) Beginning July 1, 2019, applicants for certification or licensure 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 in the same occupation in accordance with the standards and procedures authorized in accordance with this article. The training hours accumulated by a student's participation in the "Youth Apprenticeship Program" created in §18-2-7g of this code shall count towards the student's certifications or licensures, if appropriate.

(b) The State Board of Education, Higher Education Policy Commission, and Department of Commerce shall jointly maintain a list of current apprenticeships throughout the state along with free career exploration resources and planning materials for postsecondary opportunities in addition to credentials, certifications, and/or exams that reflect industry requirements or lead to postsecondary credit.

§21-1E-4. Rule-making authority.

The Commissioner of Labor 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 the provisions of this article. The rules shall provide at least the following:

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

STATE EMPLOYMENT AGENCY.

§21-2-1. Purpose of agency; no fees charged.

The commissioner of labor shall maintain in connection with his department a public agency to be known as the "state public employment agency," for the purpose of receiving and filing applications of persons seeking employment and of persons or firms seeking to employ labor. There shall be no fee or compensation charged or received, directly or indirectly, from persons applying for employment or from those desiring to employ labor through said agency.

§21-2-2. Cooperation from federal government.

The commissioner of labor may accept cooperation from the federal government in the establishment and maintenance within the state of such employment agency.

The state of West Virginia hereby accepts the provisions and requirements of federal act public number thirty, seventy-third Congress, known as the Wagner-Peyser Act, and the state department of labor is hereby designated as the state agency to cooperate with the United States employment service, in accordance with the terms and conditions expressed in the said act. The treasurer of West Virginia is hereby authorized and empowered to receive the grants of money appropriated under said act, and for the purpose of carrying out the provisions of this section the sum of $5,000, or so much thereof as may be necessary, is hereby appropriated for each of the fiscal years ending June 30, 1934, and June 30, 1935, out of any moneys in the treasury not otherwise appropriated.

§21-2-3. Duty and authority of commissioner.

It shall be the duty of the commissioner of labor to communicate with employers of labor, and said commissioner is authorized to advertise or use such other methods and means as he deems practicable to supply the demand of employers and to provide employment for those who have filed their applications with such employment agency.

PRIVATE EMPLOYMENT AGENCIES

§21-2-4."Employment agent" defined.

The term "employment agent" shall mean and include all persons, firms, corporations or associations, excepting municipal corporations, church and charitable associations, which furnish, to persons seeking employment, information enabling or tending to enable such persons to secure the same, or which furnish, to employers seeking laborers or help of any kind, information enabling or tending to enable such employers to secure such help, or shall keep a register of persons seeking employment or help as aforesaid, whether such agents conduct their operations in a fixed place of business, on the streets, or as transients, and also whether such operations constitute the principal business of such agents or only as a side line or incidental to other business.

§21-2-5. Rules and regulations prescribed by commissioner of labor.

The commissioner of labor shall prescribe such rules and regulations as may be necessary for the supervision of employment agents.

§21-2-6. False statements or withholding of information prohibited.

No employment agent or any employee or agent thereof, shall make any false statement to any person seeking employment knowing the same to be false, in regard to any employment, work or situation, its nature, location, duration, wages or salary attached thereto, or the circumstances surrounding such employment, work or situation. No employment agent shall falsely or fraudulently offer or represent himself as in a position to secure or furnish employment without having an order therefor from an employer; and no employment agent shall misrepresent any other material matter in connection with any employment, work or situation he may offer or represent himself in a position to secure, nor shall he withhold any information furnished by the employer concerning any work.

§21-2-7. License required; displaying license; annual tax.

No employment agent shall engage in the business for profit or receive any fee, charge commission or other compensation, directly or indirectly, for services as employment agent, without first having obtained a license therefor from the State Tax Commissioner. Such license shall not be issued until the commissioner of labor shall have approved in writing the application therefor, and, when issued, such license shall constitute a license from the state to operate as an employment agent for compensation and shall not be transferable. Such license shall at all times be kept posted in a conspicuous place at the place of business of such employment agent. Every employment agent shall pay the annual license tax provided for in article twelve, chapter eleven of this code.

In addition to any other information required, an application for a license under this section shall include the applicant's social security number.

§21-2-8. Licenses issuable only to citizens of United States.

License to operate as an employment agent shall be issued only to citizens of the United States.

§21-2-9. Refusal to issue license.

The State Tax Commissioner shall refuse to issue a license if, upon investigation, he or she finds that the applicant is unfit to engage in the business or has had a license previously revoked, or that the business is to be conducted on or immediately adjoining what is considered by him or her to be unsuitable premises, or that any other good reason exists within the meaning of the law: *Provided*, That the commissioner shall apply §21-1-6 of this code when determining to refuse a license.

§21-2-10. Revocation of license.

The State Tax Commissioner may revoke any license issued under the provisions of this article, with or without hearing, and may order such license to be returned for cancellation, if the employment agent has violated any of the provisions of this article or the rules and regulations issued thereunder, or if any cause appears for which a license might have been refused, or if the commissioner of labor shall, in writing, report to the Tax Commissioner any such violation or cause.

§21-2-11. Records to be kept; reports to commissioner of labor.

A record of all persons directed to employment shall be kept by every employment agent; such records shall set forth the name, age, nationality and material state of each applicant, and also the name of the employer, kind of work and pay. A copy of this record for each month shall be sent to the commissioner of labor on or before the tenth day of the month immediately succeeding the month covered by such record. Every employment agent shall file with the commissioner of labor a copy of the schedule of all fees and such other notices or information as the commissioner may require and in such form and manner as he may prescribe.

§21-2-12. Commissioner of labor may enter offices and examine records.

For the purpose of enforcing this article and the rules and regulations issued thereunder, the commissioner of labor, or his duly authorized agent, may at any time enter any employment office, or place of business of an employment agent or any premises occupied as an employment office, and may inspect the registers, cards or other records of such employment agent.

§21-2-13. No employment in violation of child labor or compulsory school attendance laws.

No employment agent shall furnish employment to any child in violation of the law regulating the labor of children or their compulsory attendance at school.

§21-2-14. Offenses; penalties; jurisdiction.

Any employment agent, as defined in this article, carrying on the business of an employment agency, without first fully complying with the provisions thereof, shall be deemed guilty of a misdemeanor and, shall, upon conviction thereof, be fined not less than one hundred nor more than $500 for each offense, or the person, or any member of a firm, or the officer or agent of any corporation, so acting as employment agent may be imprisoned not less than thirty days nor more than six months, or both, at the discretion of the court; and any such employment agent violating any other provision of this article or any rule or regulation prescribed by the commissioner of labor pursuant to the provisions of this article, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty nor more than $200, or the person or any member of a firm or the officer or agent of any corporation so violating, may be imprisoned for not more than thirty days, or both fined and imprisoned. A justice of the peace shall have concurrent jurisdiction with the circuit court and other courts having criminal jurisdiction for the trial of offenses under this article.

§21-2-15. Employers exempt from provisions of article.

Nothing contained in this article shall apply to, nor prevent or interfere with, any person, firm, corporation or association employing labor for his their or its business carried on in this state.

§21-3-1. Employers to safeguard life, etc., of employees; reports and investigations of accidents; orders of commissioner.

Every employer shall furnish employment which shall be reasonably safe for the employees therein engaged and shall furnish and use safety devices and safeguards, and shall adopt and use methods and processes reasonably adequate to render employment and the place of employment safe, and shall do every other thing reasonably necessary to protect the life, health, safety, and welfare of such employees: Provided, That as used in this section, the terms "safe" or "safety" as applied to any employment, place of employment, place of public assembly or public building, shall include, without being restricted hereby, conditions and methods of sanitation and hygiene reasonably necessary for the protection of the life, health, safety, or welfare of employees or the public.

Every employer and every owner of a place of employment, place of public assembly, or a public building, now or hereafter constructed, shall so construct, repair and maintain the same as to render it reasonably safe.

When an accident occurs in any place of employment or public institution which results in injury to any employee, the employer or owner of such place of employment or public institution, when the same shall come to his knowledge, shall provide the commissioner of labor the necessary information as to cause of the injury, on blanks furnished free of charge to the employer and prescribed by the commissioner of labor.

To carry out the provisions of this chapter the commissioner of labor shall have the power to investigate and prescribe that reasonable safety devices, safeguards, or other means of protection be adopted for the prevention of accidents in every employment or place of employment, and to make, modify, repeal, and enforce reasonable general orders, applicable to either employers or employees, or both, for the prevention of accidents.

All orders of the commissioner of labor shall be prima facie lawful and reasonable, and shall not be held invalid because of any technical omission, provided there is substantial compliance with the provisions of this chapter.

§21-3-2. Guarding machinery and dangerous places; standards for construction of scaffolding, hoists and temporary floors; first aid equipment.

All power-driven machinery, including all saws, planers, wood shapers, jointers, sandpaper machines, iron mangles, emery wheels, ovens, furnaces, forges and rollers of metal; all projecting set screws or moving parts; all drums, cogs, gearing, belting, shafting, flywheels and flying shuttles; all laundry machinery, mill gearing and machinery of every description; all vats or pans and all receptacles containing molten metal or hot or corrosive fluids in any factory, mercantile establishment, mill or workshop, shall be so located, whenever possible, as not to be dangerous to employees, or, where possible shall be properly inclosed, fenced or otherwise protected. All dangerous places, in or about mercantile establishments, factories, mills or workshops, near to which any employee is obliged to pass or to be employed, shall, where practicable, be properly inclosed, fenced or otherwise guarded. No machine in any factory, mercantile establishment, mill or workshop, shall be used when the same is known to be dangerously defective, and no repairs shall be made to the active mechanism or operative part of any machine, when the machine is in motion. The state commissioner of labor is authorized to adopt the codes promulgated by the American standards association and approved by the United States department of labor, relating to the construction of scaffolding, hoists and temporary flooring of buildings two or more stories in height, in the course of erection. All factories, mills or workshops employing five or more people in the mechanical department shall keep on hand, easily accessible, necessary first aid equipment recommended by the bureau of labor and approved by the state health department.

§21-3-3. Guarding shafts, hatchways, wheel holes, elevators and electrical apparatus; requiring correction of unsafe conditions.

All hoistways, hatchways, elevators, wells and wheel holes in factories, mercantile establishments, mills or workshops, shall be securely fenced, inclosed or otherwise safely protected, and due diligence shall be used to keep all such means of protection closed, except when it is necessary to have the same open in order that such hatchways, elevators or hoisting apparatus may be used. All elevator cabs or cars, whether used for freight or passengers, shall be provided with some device, whereby the car or cab may be held, in the event of accident, to the shipper rope or hoisting machinery or controlling apparatus. If any elevator, machine, electrical apparatus or system of wiring, or any part or parts thereof, in any factory, mercantile establishment, mill or workshop, are in an unsafe condition, or are not properly guarded, where reasonable to guard the same, the owner, or lessee, or his agent, superintendent or other person in charge thereof, shall, upon notice from the commissioner of labor or factory inspector, remedy such unsafe condition within a reasonable time after receiving such notice.

§21-3-3a. National Electrical Code minimum standards.

In every factory, mercantile establishment, mill or workshop, the installation, alteration, repair, moving, removal, maintenance and conversion of all electrical wiring and apparatus and equipment shall be done in accordance with the minimum standards of safety and construction as set by the copyrighted National Electrical Code, as promulgated, from time to time, by the national fire protection association.

§21-3-4. Removal of safeguards.

No person shall remove or make ineffective any safeguard required by this article, during the active use or operation of the guarded machine or device, except for the purpose of immediately making repairs thereto, and all such safeguards so removed shall be promptly replaced.

§21-3-5. Control of machinery.

In every factory, mercantile establishment, mill or workshop, effective means shall be provided for immediately disconnecting the power, so that in case of need or accident any particular machine, group of machines, room or department, can be promptly and effectively shut down. Where machines are required to be started and stopped frequently, they shall, wherever practicable, be provided with tight and loose pulleys, clutch or other effective disengaging device. When provided with tight and loose pulleys, the shifting of the belt shall be accomplished by the use of a belt shifter, placed within easy reach of the operator. When a clutch or other disengaging device is used, an effective means for throwing such device into or out of engagement shall be provided, and shall be placed within easy reach of the operator. Where machines are directly connected with the prime mover (electric motor, steam, gas or gasoline engine, or other source of power), a switch, throttle, or other power controlling device shall be furnished and shall be placed within easy reach of the operator or his coworker. Where machines are arranged in groups, rooms or departments, and power is supplied by a prime mover, located within the confines of such group, rooms or department, a switch, throttle, or other controlling device shall be furnished, and shall be placed within easy reach of the operators affected, so that all shafting, transmitting machinery and machines of such group, room or department, can be simultaneously shut down. Where machines are arranged in groups, rooms or departments, and are supplied by power through the use of main or line shafts receiving power from some prime mover located without the group, room or department, the power receiving wheel or such main or line shaft shall, wherever possible, be provided with a friction clutch, or other effective power disengaging device, with suitable means for operating the clutch, or power disengaging device, and these means shall be placed within the confines of such group, room or department, and within easy reach of employees or operatives affected, so that all machines, shafting and other transmission machinery within such group, room or department, can be simultaneously shut down. In addition to such safeguard, communication, consisting of speaking tubes, electric bells, electric colored lights, or other approved and effective means, shall be provided in all cases covered by this section between each such group, room or department and the room in which the engineer or prime mover is located, so that in case of need or accident the motive power of such group, room or department can be promptly stopped or controlled.

§21-3-6. Stairways, passageways and lights; overloading floors or walls; space between machines.

In all factories, mercantile establishments, mills or workshops, proper and substantial handrails shall be provided on all stairways, and the treads thereon shall be so constructed as to furnish a firm and safe foothold. A proper light shall be kept burning by the owner or lessee in all main passageways, main hallways, at all main stairs, main stair landings and shafts, and in front of all passenger or freight elevators, upon the entrance floors, and upon other floors, on every workday of the year, from the time the building is open for use until it is closed, except at times when the influx of natural light shall make artificial light unnecessary. No floor space or any work room in any factory, mercantile establishment, mill or workshop, shall be so overloaded with machinery or other materials as thereby to cause serious risk to or endanger the life or limb of any employee, nor shall there be permitted in any such establishment a load in excess of the safe sustaining power of the floors and walls thereof. Machines shall not be placed so close together as to be a serious menace to those who have to pass between them. Passageways shall be of ample width, well lighted and free from obstruction.

§21-3-7. Regulation of operation of steam boilers.

(a) Any person owning or operating a steam boiler carrying more than fifteen pounds pressure per square inch (except boilers on railroad locomotives subject to inspection under federal laws; portable boilers used for agricultural purposes; boilers on automobiles; boilers of steam fire engines brought into the state for temporary use in times of emergency for the purpose of checking conflagrations; boilers used in private residences which are used solely for residential purposes; any sectional boilers; small portable boilers commonly used in the oil and gas industry about their wells and tool houses; and boilers under the jurisdiction of the United States) in this state shall first obtain a permit to operate a steam boiler from the Commissioner of Labor, or from an inspector working under his or her jurisdiction.

(b) Applications for permits to operate a steam boiler must be accompanied by a sworn statement made by the owner or operator of such boiler, setting forth the condition of the boiler and its appurtenances at which time, if the facts disclosed by such statement meet the safety requirements established under this article, the Commissioner of Labor shall issue a temporary permit, which shall be valid until such boiler has been inspected by a boiler inspector authorized by the state Commissioner of Labor; thereupon, if the boiler meets the safety requirements established under this article, the Commissioner of Labor shall issue an annual permit to operate such steam boiler: Provided, That boilers which are insured by an insurance company operating in this state and which are inspected by such insurance company's boiler inspector shall not be subject to inspection by the state Division of Labor, during any twelve-month period during which an inspection is made by the insurance company's boiler inspector.

(c) The Commissioner of Labor or state boiler inspector shall have the authority to inspect steam boilers in this state. To carry out the provisions of this section, the Commissioner of Labor shall prescribe rules and regulations under which boilers may be constructed and operated, according to their class. The Commissioner of Labor may revoke any permit to operate a steam boiler if the rules prescribed by the Commissioner of Labor, or his or her authorized representative, are violated or if a condition shall prevail which is hazardous to the life and health of persons operating or employed at or around the boiler. Any person or corporation who shall operate a steam boiler for which a permit is necessary under the provisions of this section, without first obtaining such permit to operate a steam boiler, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than $100 nor more than $500. Every day a steam boiler requiring a permit to operate is operated without the permit is a separate offense.

(d) The commissioner shall charge an annual fee to be established by legislative rule for the inspection of boilers by the division, for the processing of inspection reports from insurance companies, for the issuing of annual permits to operate boilers and for the commissioning of insurance company boiler inspectors. The commissioner shall propose rules for legislative approval, in accordance with §29A-3-1 et seq. of this code for the implementation and enforcement of this section. No fee may be charged for the inspection of boilers used on

mobile equipment or vehicles used for occasional entertainment or display purposes.

(e) All fees paid pursuant to this section 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 Steam Boiler Fund and expended for the implementation and enforcement of this section. Through June 30, 2019, amounts collected which are found from time to time to exceed funds needed for the purposes set forth in this section 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.

§21-3-8. Smoking where prohibited by sign.

Every person who shall light a pipe, cigar or cigarette in, or who shall enter with a lighted pipe, cigar or cigarette, any factory, mercantile establishment, mill or workshop in which is posted in a conspicuous place over and near each principal entrance a notice in plain English letters, stating that no smoking is allowed in such building, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than $20 nor more than $100 for each separate offense.

§21-3-9. Fire escapes.

In all factories, mercantile establishments, mills or workshops, sufficient and reasonable means of escape in case of fire shall be provided, and such means of escape shall at all times be kept free from any obstruction and shall be kept in good repair and ready for use, and shall be plainly marked as such. The commissioner of labor or factory inspector may order fire escapes erected on the outside of buildings used as factories, mercantile establishments, mills or workshops which are two or more stories in height, whenever deemed by the commissioner of labor or factory inspector to be necessary.

§21-3-10. Food or meals in factories.

No employee shall take or be allowed to take food into any room or apartment in any factory, mercantile establishment, mill or workshop, where white lead, arsenic, or other poisonous substances, or injurious or noxious fumes, dusts or gases under harmful conditions are present as the result of the business conducted by such factory, mercantile establishment, mill or workshop, and notice to this effect shall be posted in each room or apartment. Employees shall not remain in any such room or apartment during the time allowed for meals, and suitable provisions shall be made and maintained by the employer, when practicable, for enabling the employees to take their meals elsewhere in such establishment.

§21-3-10a. Meal breaks.

During the course of a workday of six or more hours, all employers shall make available for each of their employees, at least twenty minutes for meal breaks, at times reasonably designated by the employer. This provision shall be required in all situations where employees are not afforded necessary breaks and/or permitted to eat lunch while working

§21-3-11. Seats for female employees.

Every person, firm or corporation employing females in any factory, mercantile establishment, mill or workshop in this state shall provide a reasonable number of suitable seats for the use of such female employees, and shall permit the use of such seats by them when they are not necessarily engaged in active duties for which they are employed, and shall permit the use of such seats at all times when such use would not actually and necessarily interfere with the proper discharge of the duties of such employees, and, where practicable, such seats shall be made permanent fixtures and may be so constructed or adjusted that, when not in use, they will not obstruct such female employee when engaged in the performance of her duties.

§21-3-12. Water closets.

Every factory, mercantile establishment, mill or workshop shall be provided with a sufficient number of water closets, and whenever both male and female persons are employed, separate water closets shall be provided for the use of each sex, and plainly marked by which sex they are to be used. No person or persons shall be allowed to use the closets assigned to the opposite sex. Such water closets shall be constructed in an approved manner and properly enclosed, and at all times kept in a clean and sanitary condition. The closets, where practicable, shall be located so that they shall have direct ventilation with the outside air. Where it is impracticable to locate the closets so as to have direct ventilation with the outside air, they shall be placed in an inclosure, and every such closet shall be properly and effectively disinfected and separately ventilated, and shall be properly lighted by artificial light, except when the influx of natural light makes artificial light unnecessary.

§21-3-13. Washing facilities and dressing rooms.

In all factories, mercantile establishments, mills or workshops, adequate washing facilities shall be provided for the employees, where necessary. When the labor performed by the employees is of such a character as to make customary or necessary a change of clothing by the employees, there shall be provided a sanitary and suitable dressing room or rooms. Separate dressing rooms and washing facilities shall be maintained for each sex.

§21-3-14. Power of commissioner as to witnesses; prosecution of offenses; penalties; jurisdiction; exemption of coal mining operations; recovery of civil penalties.

The commissioner of labor or any authorized representative of the department of labor in the performance of any duty or the execution of any power prescribed by law shall have the power to administer oaths, certify to official acts, take and cause to be taken depositions of witnesses.

It shall be the duty of the Attorney General and the several prosecuting attorneys, upon request of the commissioner of labor or any of his authorized representatives, to prosecute any violation of the law which it is made the duty of the said commissioner of labor to enforce.

If any employer, employee, owner or other person shall violate any provision of this chapter or shall fail or refuse to perform any duty lawfully required within the time prescribed by the commissioner of labor or his authorized representatives, for which no penalty has been specifically provided, or shall fail, neglect, or refuse to obey any lawful order given, made or promulgated by the commissioner of labor or his authorized representatives, or shall interfere with, impede, or obstruct in any manner the commissioner of labor or his authorized representatives in the performance of his or their official duties, he shall be guilty of a misdemeanor and, upon conviction thereof shall be fined not less than $10 nor more than $50, or shall be imprisoned for not exceeding six months, or both so fined and imprisoned, for each such offense; and each day such violation, omission, failure, or refusal continues shall be deemed a separate offense.

A justice of the peace shall have concurrent jurisdiction with the circuit court and other courts having criminal jurisdiction in his county for the trial of offenses under this article. Those portions of all coal mining properties and operations which are under the supervision of the department of mines are excepted from the operation of provisions of this article.

In lieu of the penalties heretofore provided in this section, any such penalty may be recovered in a civil action in the name of the State of West Virginia.

§21-3-15. Records and reports of commissioner, inspectors and chief clerk.

The commissioner of labor, inspectors and chief clerk shall make and keep full and proper record of all their expenses, and of inspections and statistics as to conditions, changes and improvements made for the safety and welfare of employees affected by this article; and the commissioner of labor shall submit a proper report thereof to the Governor, as provided in section four, article one of this chapter.

§21-3-16. Inclosure of streetcar platforms.

It shall be unlawful for any person, firm or corporation owning or operating a street railway in this state, or for any officer or agent thereof having charge or control of the management of such line or railway, or the cars thereof, operating electric, cable or other cars propelled either by steam, cable or electricity, which require the constant services, care or attention of any person or persons upon the platforms of any such car, to require or permit such services, attention or care by any of its employees, or any other person or persons, unless such person, firm or corporation, its officers or superintending or managing agents, have first provided the platforms of such car with a proper and sufficient inclosure constructed of wood, iron, glass or similar suitable material, sufficient to protect such employees from exposure to the winds and inclemencies of the weather.

Any person, firm or corporation who violates the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than twenty nor more than $100. Each day that such person, firm or corporation causes any of its employees to operate such car or cars in violation of the aforesaid provisions, or causes a car or cars to be used or operated in violation thereof, shall be deemed a separate offense: Provided, That the provisions of this section shall not apply to cars used and known as trailing cars.

§21-3-17. Employers not to require payment of fees for medical examination as condition of employment; enforcement.

(a) The term "employer," as used in this section, shall mean and include an individual, a partnership, an association, a corporation, a legal representative, a trustee, receiver, trustee in bankruptcy, and any common carrier by rail, motor, water, air or express company doing business in or operating within the state.

(b) The term "employee" shall mean and include every person who may be permitted, required or directed by any employer, as defined in subsection (a), in consideration of direct or indirect gain or profit, to engage in any employment.

(c) It shall be unlawful for any employer, as defined in subsection (a) to require any employee or applicant for employment to pay the cost of a medical examination as a condition of employment.

(d) Any employer who violates the provisions of this section shall be liable to a penalty of not more than $100 for each and every violation. It shall be the duty of the commissioner of labor to enforce this section.

§21-3-18. Hazardous chemical substances; notice to employees; reports to commissioner; penalties.

(a) It is declared the policy of this state to require employers to disclose to employees the hazards of exposure in the work place to hazardous or toxic chemical substances and materials. For this purpose, the commissioner of labor shall establish and maintain, by rule or regulation, a list of chemical substances and materials which have been determined or are suspected to be hazardous or toxic to the health of employees who may be exposed to them in the course of employment. In establishing and maintaining such list, the commissioner may give consideration to any list made or hereafter made by the secretary of labor of the United States identifying or proposing to identify chemical substances and materials as hazardous or toxic, or setting standard levels of safe exposure thereto, as the same are published from time to time in the federal register. The commissioner shall publish and update, at least annually, such list of substances and materials and shall include in the publication thereof, for each listed substance or material, any standard levels of safe exposure published by said secretary in the federal register, giving due consideration to any changes made or proposed by said secretary in the secretary's list of hazardous or toxic chemical substances and materials, or in any standard levels of safe exposure established or proposed from time to time by said secretary, as the same are published in the federal register.

(b) The commissioner shall make copies of such list prepared under this section available to any employer requesting the same: Provided, That the commissioner shall limit such list to no more than six hundred such substances and materials to be selected from the lists included in 29 Code of Federal Regulations 1910.1000, Subpart Z, which the commissioner elects to include because of either frequency of use in the state, frequency of exposure or over exposure thereof to workers in the state, the seriousness of the effects of such exposure or other reason which the commissioner determines to be sufficient.

(c) Any employer of ten or more employees using or producing any such listed hazardous chemical substance or material shall conspicuously post a warning notice in the work area where any such substance or material is used, to read substantially as follows:

WARNING NOTICE

_____

(Name of hazardous chemical substance or material) is used at this work site.

Common symptoms of overexposure include the following:

Name of Employer

Any such notice required to be posted with regard to a mobile work site may be posted on the container or containers of the hazardous substance or material or in some other

conspicuous place.

The employer shall include in the notice such common symptoms of overexposure as (1) may be published with the standard levels of safe exposure, or (2) certified to the employer by a physician employed for that purpose. Good faith reliance upon either such source of information shall be sufficient notice of such common symptoms.

(d) Any employer having notice of any incident of exposure to a listed hazardous chemical substance or material in excess of its standard level of safe exposure published by the commissioner shall within ten days thereof report to the commissioner the circumstances of such incident and provide a copy of the report to the employee.

(e) Any person or corporation that violates the provisions of this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than $100 nor more than $1,000 for each violation.

(f) The provisions of this section shall not apply to any coal mine, coal mining or coal processing plant, and any agricultural or horticultural activity, and any such mine, plant or activity is hereby exempted from the provisions of this section.

§21-3-19. Discrimination for use of tobacco products prohibited.

(a) It shall be unlawful for any employer, whether public or private, or the agent of such employer to refuse to hire any individual or to discharge any employee or otherwise to disadvantage or penalize any employee with respect to compensation, terms, conditions or privileges of employment solely because such individual uses tobacco products off the premises of the employer during nonworking hours.

(b) This section shall not apply with respect to an employer which is a nonprofit organization which, as one of its primary purposes or objectives, discourages the use of one or more tobacco products by the general public.

(c) This section shall not prohibit an employer from offering, imposing or having in effect a health, disability or life insurance policy which makes distinctions between employees for type of coverage or price of coverage based upon the employee's use of tobacco products: Provided, That any differential premium rates charged to employees must reflect differential costs to the employer: Provided, however, That the employer must provide employees with a statement delineating the differential rates used by its insurance carriers.

(d) Nothing in this section shall be construed to prohibit an employer from making available to smokers and other users of tobacco products, programs, free of charge or at reduced rates, which encourage the reduction or cessation of smoking or tobacco use.

§21-3-20. Use of video and other electronic surveillance devices by employers prohibited.

(a) It is unlawful for any employer or the agent or representative of an employer, whether public or private, to operate any electronic surveillance device or system, including, but not limited to, the use of a closed circuit television system, a video-recording device, or any combination of those or other electronic devices for the purpose of recording or monitoring the activities of the employees in areas designed for the health or personal comfort of the employees or for safeguarding of their possessions, such as rest rooms, shower rooms, locker rooms, dressing rooms and employee lounges.

(b) Any employer or agent thereof who violates any provision of this section is guilty of a misdemeanor and, if convicted, shall be fined $500 for the first offense. An employer or agent thereof convicted a second time under this provision shall be fined $1,000. For the third and any subsequent offense, the penalty shall be $2,000.

§21-3-21. Special Revenue Fund for the Division of Labor; authorized deposits; disbursements; purpose.

There is hereby created in the state Treasury a special revenue fund to be known as the "Occupational Safety and Health Fund" which shall consist of all gifts, grants, bequests, transfers, appropriations or other donations or payments which may be received by the Division of Labor from any governmental entity or unit or any person, firm, foundation, or corporation for the purposes of this section, and all interest or other return earned from investment of the fund. Expenditures from the fund shall be made by the Commissioner of the Division of Labor to provide matching funds, or to reimburse the Division of Labor for providing matching funds, to obtain federal funds for the administration of an occupational safety and health consultation program under contract with the federal Division of Labor.

§21-3-22. OSHA construction safety program.

(a) For the purposes of this section:

(1) "Business entity" means any firm, partnership, association, company, corporation, limited partnership, limited liability company or other entity.

(2) "Commissioner" means the Commissioner of Labor or his or her designee.

(3) "Public authority" has the same meaning as in section two, article one-d of this chapter.

(4) "Public improvement" has the same meaning as in section two, article one-d of this chapter.

(b) No person or business entity providing services as a contractor or subcontractor under a contract, entered on or after July 1, 2014, for the construction, reconstruction, alteration, remodeling or repairs of any public improvement, by or on behalf of a public authority, where the total contract cost of all work to be performed by all contractors and subcontractors is in excess of $50,000, may use, employ or assign any person to a public improvement work site who has not successfully completed a ten-hour construction safety program designed by OSHA, no later than twenty-one calendar days after being employed at or assigned to the public improvement work site.

(c) The training requirement contained in subsection (b) of this section does not apply to a person used, employed or assigned to a public improvement work site for less than twenty-one consecutive calendar days following the person's first day of employment or assignment at the public improvement work site.

(d) During the three hundred sixty-five days following the effective date of this section, a person employed or assigned to a public improvement work site shall have ninety days to complete the training requirement of subsection (b) of this section.

(e) A contractor or subcontractor subject to this section shall make and maintain a record of the persons he or she uses, employs or assigns pursuant to the contract, including the date of the completion of the safety training program required by subsection (b) of this section and the identity of the provider of the training. The records required by this subsection shall be preserved pursuant to section five, article five-c of this chapter and be maintained at the employer's business office.

(f) Upon a finding by the commissioner that a person has been used, employed at or assigned to a public improvement work site in violation of subsection (b) of this section, the commissioner may issue a cease-and-desist order to the person who has not completed the requisite training until the person presents the commissioner with evidence that he or she has successfully completed the training program required by subsection (b) of this section.

(g) The commissioner may assess a civil penalty of not less than $100 nor more than $1,000

to any person or business entity for each violation of this section.

(h) Any person with knowledge that a document or other record falsely represents that a person has completed the training program required by subsection (b) of this section and who provides or exhibits the document or record to the commissioner or to an employer shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $250 nor more than $2,500.

(i) The following persons are exempt from the training requirements of subsection (b) of this section:

(1) Law-enforcement officers involved with traffic control or job-site security;

(2) Federal, state and municipal government employees and inspectors; and

(3) Suppliers of materials and persons whose sole responsibility is to deliver materials to the work site.

(j) The Commissioner shall report to the Joint Committee on Government and Finance by January 1, 2017, on accident and injury rates at public improvement work sites during the two years prior and following enactment of this section.

§21-3A-1. Short title.

This article shall be known and cited as the "West Virginia Occupational Safety and Health Act."

§21-3A-1a. Legislative policy.

The Legislature finds that the safety and health of public employees in the workplace is of primary public concern. Personal injuries and illnesses arising out of work situations result not only in wage loss and increased medical expenses for public employees, but also in decreased productivity and increased workers' compensation expenses for public employers. The Legislature therefore declares:

(a) That it is the policy of this state to ensure that all public employees be provided with safe and healthful work environments free from recognized and avoidable hazards;

(b) That it is the responsibility of the state to promulgate standards for the protection of the health and safety of its public workforce; and

(c) That it is in the public interest for public employers and public employees to join in a cooperative effort to enforce these standards.

§21-3A-2. Definitions.

As used in this chapter, unless the context clearly indicates otherwise:

(a) "Commission" means the occupational safety and health review commission established under this article;

(b) "Commissioner" means the labor commissioner or his designated agent;

(c) "Employee" means any public employee of the state, or any state agency;

(d) "Employer" means public employer and shall include the state or any department, division, bureau, board, council, agency or authority of the state, but shall not include the department of corrections, the department of health and the Legislature;

(e) "Occupational safety and health standard" means a standard for health or safety which requires the adoption or use of one or more practices, means, methods, operations or processes reasonably necessary or appropriate to provide safe and healthful employment in places of employment;

(f) "Person" means one or more individuals; and

(g) "Workplace" means a place where public employees are assigned to work but shall not include any place where public employees are assigned to work that is inspected and regulated in accordance with federal occupational safety and health standards or mine safety and health administration standards, or facilities under the authority of the department of corrections, the department of health, or the Legislature.

§21-3A-3. Division of occupational safety and health; coordination of activities with workers' compensation commission.

(a) There is continued in the labor department a division of occupational safety and health comprised of a subdivision for safety, a subdivision for health and the other subdivisions the commissioner considers necessary. This division shall administer all matters pertaining to occupational safety and occupational health.

(b) The labor commissioner may require the assistance of other state agencies and may enter into agreements with other state agencies and political subdivisions of the state for the administration of this chapter.

(c) The labor commissioner shall provide for coordination between the division of occupational safety and health and the workers' compensation commission including, but not limited to, the establishment of standardized procedures and reportings.

§21-3A-4. Application of article.

(a) This article applies to all public employers, public employees and public workplaces within the State of West Virginia.

(b) Nothing in this article may be construed to supersede or in any manner affect any workers' compensation law or to diminish in any manner common law or statutory rights, duties or liabilities of employers or employees, under any law with respect to injuries, diseases or death of employees arising out of and in the course of employment.

§21-3A-5. Duties of employer and employee.

(a) Each employer shall furnish to each of his employees employment and a place of employment which are free from recognized hazards causing or likely to cause death or serious physical harm or serious illness to his employees.

(b) Each employer shall, upon the written request of any employee, furnish the employee with a written statement listing the substances which the employee uses or with which the employee comes into contact, which substances have been identified as toxic and hazardous by occupational safety and health standards, under Title 29 CFR 1910.1000 "Air Contaminant Code of Federal Regulations" through 1910.1046, or listed in the most recent National Institute for Occupational Safety and Health Registry of the Toxic Effects of Chemical Substances (RTECS).

(c) Each employer shall comply with occupational safety and health standards promulgated under this article.

(d) Each employee shall comply with occupational safety and health standards and all regulations and orders issued pursuant to this article which are applicable to his actions and conduct.

§21-3A-6. Rules.

In the rules adopted under the authority of this article, the commissioner shall:

(a) Provide for the preparation, adoption, amendment or repeal of rules necessary to effectuate the health and safety purposes of this article;

(b) Provide educational programs to encourage employers and employees in their efforts to reduce the number of safety and health hazards and to stimulate employers and employees to institute new programs, and to perfect existing programs to provide for safe and healthful working conditions;

(c) Provide for appropriate reporting procedures by employers with respect to information relating to conditions of employment which will assist in achieving the objectives of this article;

(d) Provide for the frequency, method and manner of making inspections of workplaces without advance notice: Provided, That in the event of an emergency or unusual situation, the commissioner may give advance notice;

(e) Provide for the publication and dissemination to employers, employees and labor organizations and the posting, where appropriate, by employers of informational, educational or training materials calculated to aid and assist in achieving the objectives of this article; and

(f) Provide for the establishment of new programs, and the perfection and expansion of existing programs for occupational safety and health education for employers and employees and institute methods and procedures to establish a program for voluntary compliance by employers and employees with the requirements of this article and all applicable safety and health standards and regulations promulgated pursuant to the authority of this article.

§21-3A-7. Adoption of federal and state standards; variances.

(a) The commissioner, on or before July 1, 1987, shall provide at the minimum, for the adoption of all occupational safety and health standards, amendments or changes adopted or recognized by the United States secretary of labor under the authority of the Occupational Safety and Health Act of 1970, which are in effect on the effective date of this section. Where no federal standards are applicable, or where standards more stringent than the federal standards are deemed advisable, the commissioner shall provide for the development of such state standards as will comport with the purposes of this act. Standards shall be adopted through state administrative procedures.

(b) In the event of emergency or unusual situations, the commissioner shall provide for an emergency temporary standard to take effect immediately if he determines:

(1) Employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards; and

(2) The emergency standard is necessary to protect employees from such danger.

The emergency standard may be in effect not longer than one hundred eighty days or, if renewed in compliance with the laws of this state governing the adoption or extension of rules, not longer than sixty additional days. On or before the expiration date of the emergency standard or renewal thereof, the commissioner shall develop a permanent standard to replace the emergency standard.

(c) Any standard promulgated shall prescribe the use of labels or other appropriate forms of warning necessary to ensure that employees are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment and, where appropriate, proper conditions and precautions of safe use or exposure. The standard shall also prescribe suitable protective equipment and control procedures for use in connection with such hazards and shall provide for measuring employee exposure in the manner necessary for the protection of employees. In addition, where appropriate, the standard shall prescribe the type and frequency of medical examinations or other tests which shall be made available to employees exposed to such hazards in order to determine any adverse effect from that exposure.

(d) Any employer may apply to the commissioner for a temporary order granting a variance from a standard, or any provision thereof, promulgated under this section. A temporary order shall be granted if the employer files an application which meets the requirements of subsection (e) of this section and establishes that:

(1) He is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date;

(2) He is taking all available steps to safeguard employees against the hazards covered by the standard; and

(3) He has an effective program for coming into compliance with the standard as quickly as practicable.

Any temporary order issued under this subsection shall prescribe the practices, means, methods, operations and processes which the employer must adopt and use while the order is in effect and state in detail his program for coming into compliance with the standard. A temporary order may be granted only after notice by the commissioner to employees and an opportunity for a hearing before the commissioner: Provided, That the commissioner may issue one interim order to be effective until a decision is made on the basis of the hearing. No temporary order may be in effect for longer than the period needed by the employer to achieve compliance with the standard or one year, whichever is shorter: Provided, however, That an order may be renewed if the requirements of this subsection are met and if an application for renewal is filed at least ninety days prior to the expiration date of the order. No interim renewal of an order may remain in effect longer than one hundred eighty days.

(e) An application for a temporary variance order shall contain:

(1) A specification of the standard or portion thereof from which the employer seeks a variance;

(2) A representation by the employer, supported by representations from qualified persons who have firsthand knowledge of the facts represented, that he is unable to comply with the standard or portion thereof and a detailed statement of the reasons therefor;

(3) A statement of the steps he has taken and will take, with specific dates, to protect employees against the hazard covered by the standards;

(4) A statement of when he expects to comply with the standard and what steps he has taken and what steps he will take, with dates specified, to come into compliance with the standard; and

(5) A certification that he has informed his employees of the application by giving a copy thereof to their authorized representative, posting a statement giving a summary of the application and specifying where a copy may be examined at the place or places where notices to employees are normally posted and by other appropriate means. A description of how employees have been informed shall be contained in the certification. The information to employees shall inform them of their right to petition the commissioner for a hearing. The commissioner is authorized to grant a variance from any standard or portion thereof whenever he determines that a variance is necessary to permit an employer to participate in an experiment, approved by the commissioner, designed to demonstrate or validate new and improved techniques to safeguard the health or safety of workers.

(f) Any affected employer may apply to the commissioner for an order granting a variance from a standard promulgated under this section. Affected employees shall be given notice of each such application and an opportunity to participate in a hearing before the commissioner. The commissioner shall issue such order if he determines on the record, after opportunity for an inspection where appropriate and a hearing, that the proponent of the variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations or processes used or proposed to be used by an employer will provide employment and places of employment which are as safe and healthful as those which would prevail if he complied with the standard. The order issued shall prescribe the conditions the employer must maintain and the practices, means, methods, operations and processes which he must adopt and utilize to the extent they differ from the standard in question. The order may be modified or revoked upon application by an employer or employees, or by the commissioner on his own motion, in the manner prescribed for its issuance under this subsection at any time after six months from its issuance.

(g) Any employee who may be adversely affected by a standard or variance or regulation issued under this section may challenge the validity or applicability of a standard or variance or regulation by bringing an action for a declaratory judgment.

(h) It is the expressed intent of the Legislature that an unlimited number of variances may be granted, if the conditions of this section are met.

§21-3A-8. Inspections and investigations; records.

(a) In order to carry out the purposes of this article, the commissioner or his agent, upon presenting appropriate credentials to the employer, is authorized:

(1) To enter without advance notice, except as provided in subsection (d) of section six, and at reasonable times may enter any workplace or environment where work is performed by an employee of an employer; and

(2) To inspect and investigate, during regular working hours and at other reasonable times and within reasonable limits and in a reasonable manner, any place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment and the materials therein, and to question privately any employer or employee. No public employer may refuse to allow a representative of the commissioner to inspect a place of employment. If an employer attempts to prevent a representative of the department from conducting an inspection, the commissioner may obtain an inspection warrant from the circuit court of Kanawha County or the circuit court of the county wherein the employer is located.

(b) In making his inspections and investigations under this entire article the commissioner may require the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of this state. In case of contumacy or failure or refusal of any person to obey such an order, the circuit court for the judicial circuit wherein the person resides, is found or transacts business has jurisdiction to issue to the person an order requiring the person to appear, to produce evidence if asked and, when so ordered, to give testimony relating to the matter under investigation or in question. Any failure to obey such order of the court may be punished by the court as a contempt thereof.

(c) (1) Each employer shall make, keep, preserve and make available to the commissioner and the United States secretary of labor records regarding his activities relating to this entire article as the commissioner may prescribe by rule as necessary or appropriate for the enforcement of this article or for developing information regarding the causes and prevention of occupational accidents and illnesses. In order to carry out the provisions of this subdivision, these rules may include provisions requiring employers to conduct periodic inspections. The commissioner shall also issue rules requiring that employers, through posting of notices or other appropriate means, keep their employees informed of their protections and obligations under this entire article, including the provisions of applicable standards.

(2) The commissioner shall prescribe rules requiring employers to maintain accurate records of and to make periodic reports on work-related deaths, injuries and illnesses other than minor injuries requiring only first-aid treatment and not involving medical treatment, loss of consciousness, restriction of work or motion or transfer to another job.

(3) The commissioner shall issue rules requiring employers to maintain accurate records of

employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured under any occupational safety and health standard adopted under this entire chapter. These regulations shall provide employees or their representatives an opportunity to observe the monitoring or measuring and to have access to the records. The regulations shall also make appropriate provisions for each employee or former employee to have such access to the records as will indicate his own exposure to toxic materials or harmful physical agents. Each employer shall promptly notify any employee who has been or is being exposed to toxic materials or harmful physical agents in concentrations or at levels which exceed those prescribed by an applicable occupational safety and health standard promulgated under section six of this article and shall inform any employee who is being thus exposed of the corrective action being taken.

(d) Any information obtained by the commissioner under this entire article shall be obtained with a minimum burden upon employers. Unnecessary duplication of efforts in obtaining information shall be eliminated to the maximum extent feasible.

(e) Subject to rules issued by the commissioner, a representative of the employer and a representative authorized by the employees of the employer shall be given an opportunity to accompany the commissioner or his authorized representative during the physical inspection of any workplace for the purpose of aiding the inspection. Where there is no authorized employee representative, the commissioner or his authorized representative shall consult with a reasonable number of employees concerning matters of health and safety in the workplace.

(f) (1) Any employee or representative of employees who believes that there is a violation of an occupational safety or health standard or that there is an imminent danger of physical harm may request an inspection by giving notice to the commissioner or his authorized representative of the violation or danger. The notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice and shall be signed by the employees or their representative. A copy of the notice shall be provided the employer or his agent no later than the time of the inspection: Provided, That upon the request of the person giving the notice, his name and the names of individual employees referred to therein shall not appear in the copy or on any record published, released or made available pursuant to subsection (g) of this section. If, upon receipt of the notification, the commissioner determines there are reasonable grounds to believe that such violation or danger exists, he shall make an inspection in accordance with the provisions of this section as soon as practicable to determine if the violation or danger exists. The commissioner shall maintain records of the results of any such investigation, which shall be made available to the public upon request. The authority of the commissioner to inspect any premises for purposes of investigating an alleged violation of safety standards shall not be limited to the alleged violation but shall extend to any other area of the premises in which he has reason to believe that a violation of the safety standards promulgated under this act exists. If the commissioner determines there are no reasonable grounds to believe that the violation or danger exists, he shall notify the employer, employee or representative of employees in writing of the determination. The notification does not preclude future enforcement action if

conditions change.

(2) Prior to or during any inspection of a workplace, any employees or representative of employees employed in the workplace may notify the commissioner, or any representative of the commissioner responsible for conducting the inspection, in writing of any violation of this entire article which they have reason to believe exists in the workplace. The commissioner shall, by rule, establish procedures for review of any refusal by a representative of the commissioner to issue a citation with respect to any alleged violation, and shall furnish the employer and the employees or representative of employees requesting the review a written statement of the reasons for the commissioner's final disposition of the case. The notification does not preclude future enforcement action if conditions change.

(g) (1) The commissioner is authorized to compile, analyze and publish in either summary or detail form all reports or information obtained under this section.

(2) The commissioner shall prescribe such rules as he considers necessary to carry out his responsibilities under this article, including rules dealing with the inspection of an employer's or owner's establishment.

§21-3A-9. Citation for violation.

(a) If, upon inspection or investigation, the commissioner or his authorized representative believes that an employer or employee has violated any safety and health standards or variance or the commissioner finds a condition which poses a recognized hazard likely to cause death or serious physical harm or illness, the commissioner shall, with reasonable promptness, issue a citation to the employer or employee. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of this article, or the standard, rule or order alleged to have been violated. The citation shall fix a reasonable time for the abatement of the violation.

(b) Each citation issued under this section or a copy or copies thereof shall be prominently posted as prescribed in rules issued by the commissioner at or near each place a violation referred to in the citation occurred.

§21-3A-10.

Repealed.

Acts, 2015 Reg. Sess., Ch. 53.

§21-3A-11. Notice to employer of contest period; action by commissioner; action by review commission.

(a) If, after inspection or investigation, the commissioner issues a citation pursuant to section nine, he shall, within a reasonable time after the termination of the inspection or investigation, notify the employer or employee by certified mail. The notification shall inform the employer or employee that he has fifteen working days from the receipt of notice within which to notify the commissioner that he wishes to contest the citation or to seek a variance. If the employer or employee fails to so notify the commissioner within fifteen days, and if no notice is filed by any employee or representative of employees pursuant to subsection (c) of this section within fifteen days, the citation, as proposed, becomes a final order and not subject to review by any court or agency.

(b) If the commissioner has reason to believe that an employer or employee has failed to correct a violation for which a citation has been issued within the period permitted for correction, the commissioner shall notify the employer or employee by certified mail or personal service of such failure and the commissioner shall seek judicial enforcement of such citation order: Provided, That in the case of a review proceeding initiated by the employer or employee under this section in good faith and not solely for delay, the period permitted for correction of the violation does not begin to run until the entry of a final order by the review commission. The notification by the commissioner shall inform the employer or employee that he has fifteen working days from the receipt of the notice within which to notify the commissioner that he wishes to contest the notification. If, within fifteen days from receipt of notification under this section, the employer or employee fails to notify the commissioner that he intends to contest the notification, the notification and assessment as proposed become a final order of the commission and not subject to review by any court or agency.

(c) If an employer or employee notifies the commissioner within the fifteen day period provided for in subsection (b) of this section that he wishes to contest the notification, the commissioner shall immediately advise the commission of the notification and the commission shall afford an opportunity for a hearing. Upon a showing by an employer or employee of a good faith effort to comply with the abatement requirements of a citation and a showing that abatement has not been completed because of factors beyond his reasonable control, the commissioner, after an opportunity for a hearing as provided in this subsection, shall issue an order affirming or modifying the abatement requirements in the citation. The rules of procedure prescribed by the commission shall provide affected employees or representatives of affected employees an opportunity to participate as parties to hearings under this subsection.

(d) If the employer or employee, at a hearing under subsection (c) of this section, does not prove he made a good faith effort to comply, the commission shall seek judicial enforcement to compel compliance.

§21-3A-12. Appeal from review commission.

Any employer or employee, or the commissioner, adversely affected or aggrieved by an order of the review commission, after all administrative remedies provided by this article have been exhausted, is entitled to judicial review pursuant to section four, article five, chapter twenty-nine-a of this code.

§21-3A-13. Discrimination against employee filing complaint.

(a) No employer may discharge or in any manner discriminate against any employee because the employee has filed any complaint, instituted or caused to be instituted or participated in any proceedings under or related to this article, has testified or is about to testify in any such proceedings or has exercised on behalf of himself or others any right afforded by this article.

(b) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of this section may, within thirty days after the alleged violation occurs, file a complaint with the commissioner alleging such discrimination. Upon receipt of the complaint the commissioner shall cause an investigation to be made. If after such investigation the commissioner determines that the provisions of this section have been violated, he shall bring an action in the circuit court of Kanawha County against the employer. In any such action, the court has jurisdiction, for cause shown, to restrain violations of subsection (a) of this section and to order all appropriate relief including rehiring or reinstatement of the employee to his former position with back pay plus interest at the statutory rate in this state.

§21-3A-14. Enjoining of conditions or practices at places of employment; mandamus against commissioner for failure to act.

(a) The circuit court of Kanawha County or the circuit court in the county wherein the workplace is located has jurisdiction, upon petition by the commissioner, to restrain or enjoin any conditions or practices in any workplace which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of the danger can be eliminated through the enforcement procedures otherwise provided by this article. Any order issued under this section may require such steps to be taken as are necessary to avoid, correct or remove the imminent danger and prohibit the employment or presence of any individual in locations or under conditions where the imminent danger exists, except the presence of those individuals whose presence is necessary to avoid, correct or remove such imminent danger, or to maintain the capacity of a continuous process operation, or to resume normal operations without a complete cessation of operations or, where a cessation of operation is necessary, to permit such to be accomplished in a safe and orderly manner. No temporary restraining order issued without notice may be effective for more than five days.

(b) Whenever and as soon as an inspector concludes that conditions or practices described in subsection (a) of this section exist in any place of employment, he shall inform the affected employees and employer of the danger and shall further inform those persons that he is recommending to the commissioner that relief be sought. If the commissioner fails to seek relief under this section within forty-eight hours of being notified of such conditions, any employee who may have been injured by reason of such failure or the authorized representative of such employee may seek injunctive relief.

§21-3A-15. Research and demonstration projects.

The commissioner shall conduct research and undertake demonstration projects relating to occupational safety and health issues and problems, either within the labor department or by grants or contracts. The commissioner may prescribe rules requiring employers to measure, record and make reports on exposure of employees to toxic substances which he believes may endanger the health or safety of employees. The commissioner shall cooperate with the director of the national institute for occupational safety and health of the department of health and human services of the United States in establishing programs of medical examinations and tests necessary to determine the incidence of occupational illness and employee susceptibility to such illnesses. Such programs, upon the request of the employer, may be paid for by the commissioner, together with such other assistance as may be required. Information obtained under this section shall be made public without revealing the names of individual workers covered by physical examination or special studies and shall be made available to employers, employees and their authorized representatives.

§21-3A-16. Education program.

(a) The commissioner shall conduct directly or by grants or contracts education programs to provide an adequate supply of qualified personnel to carry out the purposes of this article and information programs on the importance and proper use of adequate safety and health equipment.

(b) The commissioner is authorized to conduct directly or by grants or contracts short-term training of personnel engaged in work related to this responsibility under this article.

(c) The commissioner shall provide for the establishment and supervision of programs for the education and training of employers and employees in the recognition, avoidance and prevention of unsafe or unhealthful working conditions in employment covered by this article. The commissioner shall consult with and advise employers, employees and organizations representing employers and employees as to effective means of preventing occupational injuries and illnesses.

§21-3A-17. Reports to United States secretary of labor.

In regard to the administration and enforcement of this article, the commissioner shall make reports to the secretary of labor of the United States in such form and containing such information as the secretary shall from time to time require.

§21-3A-18.

Repealed.

Acts, 2015 Reg. Sess., Ch. 53.

§21-3A-19. Optional coverage by subdivisions.

The governing body of any county or municipality or any department, division, bureau, board, council, agency or authority of any county or municipality or of any school district or special purposes district created pursuant to law may, by ordinance, resolution or other procedure, explicitly elect that some or all of its workplaces or employees shall be covered by the provisions of this article. The commissioner shall issue rules and regulations and prescribe forms and procedures regarding such optional coverage. The commissioner may issue rules and regulations providing for variances from the procedural and substantive requirements of this article in the case of the optional coverage described herein.

§21-3B-1. Title and purpose.

This article shall be known and may be cited as the "Employer Assistance For Environmental Protection Act."

It is the purpose of this article to make available to employers in this state assistance in identifying environmental and hazardous waste hazards common to the workplace and to further assist such employers in developing plans for compliance with all such concerns. Such assistance will be provided using the available personnel and resources of the various state agencies involved in the regulation and control of environmental and hazardous waste disciplines.

§21-3B-2. Duties and responsibilities of Division of Labor and the commissioner of labor.

(a) The Division of Labor shall:

(1) Encourage employers and employees to reduce existing environmental and hazardous waste hazards and to implement new or improved existing safety and health programs;

(2) Provide technical advice and information relating to environmental hazards and waste hazards;

(3) Develop and implement training programs to increase the employer and employee competence in managing and correcting environmental hazards and waste hazards;

(4) Develop and coordinate an information network relating to applicable environmental and hazardous waste law affecting the business community in West Virginia;

(5) Offer a program of on-site consultation to assist businesses in identifying environmental hazards and waste hazards; and

(6) Offer to businesses an off-site program by telephone or correspondence for information and assistance in complying with environmental regulation.

(b) The commissioner of labor shall develop and implement rules, regulations and administrative guidelines required to effectuate the purposes of this article.

(c) In carrying out the duties and responsibilities imposed by the provisions of subsection (a) of this subsection, or in developing and implementing rules, regulations and administrative guidelines in accordance with the provisions of subsection (b) of this section, the Division of Labor and the commissioner shall not expend any state funds or utilize any personnel of the division for the training of any permanent replacement employee, unless and until such permanent replacement employee has been determined by the commissioner to have been legally employed.

§21-3B-3.

Repealed.

Acts, 2015 Reg. Sess., Ch. 53.

§21-3B-4. Procedures.

(a) Any employer within the state may request the commissioner of labor in writing to provide advice and assistance in identifying and eliminating environmental hazards in compliance with applicable state, federal and local law. The employer may specify a limited scope for consultation by indicating hazards or situations on which consultation will be focused. No consultation services may be provided when an agency charged with enforcing federal, state or local environmental or hazardous waste regulations has issued a citation or ordered that a condition be abated or corrected.

(b) The commissioner shall provide on-site consultation services in identifying and eliminating environmental hazards. However, since employee contact by a consultant is needed for proper identification of environmental hazards in the workplace, employers must agree to such contact before a consultation may proceed. Employers must agree to correct all hazards noted by the consultant as a condition of the providing of consultation services. Employers are encouraged to permit employees to participate in the walk-around portion of a consultation visit.

(c) Prior to visiting a worksite, the consultant may request specific information concerning the worksite. Requested information must be provided before a consultation may proceed.

(d) If, in the course of an inspection, the consultant observes environmental hazards violating federal, state or local law which are outside the scope of a consultation request, the consultant shall treat such hazards as if they were within the scope of the consultation request.

(e) During the on-site consultation, the consultant shall point out hazards and violations observed, suggest approaches or options for corrective action, and provide additional information related to complying with applicable laws. The consultant shall prepare a written report, which shall be furnished to the employer, of all hazards observed and methods of abatement and may suggest where additional assistance may be secured. The consultant may follow through after the on-site consultation to assist in implementing recommendations and to assure that required corrective action is taken.

(f) Information obtained by a consultant related to environmental hazards and violations may not be disclosed to enforcement officials, except when an employer fails or refuses to take corrective action to eliminate imminent danger or serious hazards.

(g) No fees, penalties or costs may be assessed against the employer.

(h) The use of the consultation services contemplated by this article by any employer shall raise no presumption, inference, or defense to any action, order, citation, charge, rule to show cause, or any other enforcement effort brought against such employer by any agency of the State of West Virginia.

§21-3C-1. Definitions.

(1) "Accessibility equipment" means lifting devices designated to remove access barriers in public buildings and private residences for persons with physical challenges, including residential elevators, limited use/limited application elevators, vertical platforms, inclined platform lifts and stairway chairlifts.

(2) "Certificate of acceptance" means a certificate issued by the Division of Labor certifying that a newly installed elevator has been inspected and was found to be installed in compliance with the safety standards set forth in the American Society of Mechanical Engineers Safety Code for Elevators and Escalators (ASME) A17.1-3, "Safety Code for Elevators" and ASME A18.1, "Safety Code for Platform Lifts and Stairway Chairlifts."

(3) "Certificate of competency" means a certificate issued by the Division of Labor certifying that an individual is qualified to inspect elevators.

(4) "Certificate of operation" means a certificate issued by the Division of Labor certifying that an elevator has been inspected and is safe for operation.

(5) "Commissioner" means the Commissioner of the Division of Labor.

(6) "Division" means the Division of Labor.

(7) "Division inspector" means an employee or contractor of the division who has been examined and issued a certificate of competency and who only inspects elevators in state owned buildings.

(8) "Elevator" means all the machinery, construction, apparatus and equipment used in raising and lowering a car, cage or platform vertically between permanent rails or guides and includes all elevators, power dumbwaiters, escalators, gravity elevators and other lifting or lowering apparatus permanently installed between rails or guides, but does not include hand operated dumbwaiters, platform lifts for loading docks, manlifts of the platform type with a platform area not exceeding nine hundred square inches, construction hoists or other similar temporary lifting or lowering apparatus.

(9) "Elevator apprentice" means a person who meets the requirements set forth in legislative rule promulgated pursuant to this article.

(10) "Elevator mechanic" means a person who possesses an elevator mechanic's license in accordance with the provisions of this article and who is engaged in the business of erecting, constructing, installing, altering, servicing, repairing or maintaining elevators or related conveyances covered by this article.

(11) "Freight elevator" means an elevator used for carrying freight and on which only the operator, by the permission of the employer, is allowed to ride.

(12) "Inspector" means both a division inspector and a private inspector.

(13) "License" means a license issued to an elevator mechanic, accessibility technician or limited technician pursuant to this article.

(14) "Private residence elevator" means a passenger elevator of which use is limited by size, capacity, rise and speed, and access is limited by its location, by the requirement of a key for its operation or by other restriction.

(15) "Passenger elevator" means an elevator that is designed to carry persons to its contract capacity.

(16) "Limited Use/Limited Application elevator" means a power elevator in which the use and application is limited by size, capacity, speed and rise.

(17) "Private inspector" means a person who has been examined and issued a certificate of competency to inspect elevators within this state.

§21-3C-2. Inspectors; application; certificates of competency.

(a) No person may serve as an inspector unless he or she successfully completes the examination for Qualified Elevator Inspector (QEI) from an examination organization approved by the commissioner and holds a certificate of competency for elevator inspections issued by the division.

(b) The application for elevator inspector shall be in writing, accompanied by a fee of $10, upon a form furnished by the division. The applicant shall state his or her level of education, previous employers, the period of employment, the position held with each employer, and other information required by the division. The applicant shall also submit a copy of his or her QEI card, and a letter from one of his or her previous employers concerning his or her character and experience.

(c) Applications which contain any willfully submitted false or untrue information shall be rejected.

(d) The division shall issue a certificate of competency for elevator inspections to an applicant who successfully completes the examination and who complies with the requirements of this article and legislative rules promulgated by the division.

(e) Any person hired as a private inspector by a county or municipality shall possess a certificate of competency issued by the division.

(f) The division may hire division inspectors or enter into a contract for the services of a division inspector so long as the inspector has been certified competent by the division. The division may hire an inspector supervisor who shall supervise the inspection activities under this article.

§21-3C-2a. Installation prohibited; exemptions; two-way communication required; key required.

(a) On and after July 1, 2007, no private residence elevator may be installed in a nonresidential setting.

(b) A private residence elevator installed in a nonresidential setting which was in use on July 1, 2007, may continue in use so long as the elevator:

(1) Meets the specifications as set forth in the American Society of Mechanical Engineers (ASME) Safety Code for Elevators and Escalators A17.1 5.3 "Safety Code for Elevators";

(2) Has a method of two-way communication between the car and each floor served by the elevator;

(3) Is operated automatically; and

(4) Is inspected annually by an inspector and is issued a certification of operation by the division.

(c) New residential elevators shall undergo an acceptance test performed by an inspector, and the inspector shall file a report of the test with the division.

(d) An elevator in a residential property shall be inspected by an inspector when the residential property is transferred, and the inspector shall file a report of the inspection with the division.

§21-3C-3. Suspension or revocation of certificates.

A certificate of competency for elevator inspectors may be suspended or revoked by the division if the inspector is found to be incompetent or untrustworthy or for the falsification of any matter or statement contained on the application or in a report of any inspection. Any willfully submitted false statement contained in an inspection report shall constitute grounds for suspension of the certificate of competency.

§21-3C-4. Registration of elevators; notification to counties and municipalities.

The owner or operator of an elevator shall register each elevator with the division, giving the type, capacity and description, name of manufacturer, and purpose for which each is used. The registration shall be made on a form designed and furnished by the division. The division shall forward a list of registered elevators to the county or municipality wherein the elevators are located.

§21-3C-5. Powers and duties of counties and municipalities; annual inspections required; acceptance inspection.

(a) A county or municipality may hire a private inspector or contract with any person who possesses a West Virginia elevator inspector's certificate of competency issued by the Division.

(b) The county or municipality shall ensure that every elevator which has been in use for five years or more is inspected annually. A private inspector may inspect any elevator in the state. A division inspector may inspect any elevator in the state for the purpose of monitoring whether private inspectors are in compliance with the provisions of this article.

(c)(1) The county or municipality shall ensure that each newly installed elevator within its jurisdiction is inspected and issued a certificate of acceptance by the Division prior to being placed in service.

(2) A certificate of acceptance shall only be issued if the elevator was installed in compliance with the safety standards set forth in the American Society of Mechanical Engineers Safety Code for Elevators and Escalators (ASME) A17.1-3, "Safety Code for Elevators" and ASME A18.1, "Safety Code for Platform Lifts and Stairway Chairlifts".

(3) The acceptance inspection shall be subject to the same procedures and requirements as any other elevator inspection.

§21-3C-6. Report of inspection; hearing on construction plans and specifications; findings and orders of division.

(a) The division shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code, prescribing inspection procedures and reporting requirements.

(b) Each inspector shall submit a complete report of each inspection made of an elevator to the division and to the county or municipality in which the elevator is located.

(c)(1) The inspection report shall list all changes or repairs required to be made for the safe operation of the elevator. A copy of the report as approved by the division shall be submitted to the owner or operator of the elevator. Unless the findings in the report are appealed, the owner or operator of the elevator shall make the required changes or repairs before a certificate of operation is issued.

(2) The owner or operator, within twenty days from receipt of the copy of an inspection report, may make written application to the division, upon forms to be furnished by the division, for a hearing on the inspection report including the issue of whether the elevator in question is reasonably safe. The division shall promptly consider the submitted application.

(3) If it appears from the evidence that the elevator will be reasonably safe to operate without the recommended changes or repairs set forth in the report or by making only a part of the recommended changes or repairs, the division shall make its finding and order accordingly. If the finding and order require changes or repairs to be made to the elevator, the division may not issue a certificate of operation until the elevator owner has complied with the order or the division issues its approval of the change or repair plans or specifications. If the finding and order of the division has been affirmed or modified by appeal, on the grounds of reasonable safety considered by the division, the division shall, upon the owner or operator's compliance with the order, issue the certificate of operation, but if the finding and order of the division has been vacated, the certificate of operation shall be issued immediately.

(4) An elevator owner adversely affected by a finding and order of the division, is entitled to judicial review of the finding and order in accordance with the provisions of section four, article five, chapter twenty-nine-a of this code.

(d) No elevator may be operated after being inspected without having the certificate of operation conspicuously posted except during the period a hearing on the issuance of the certificate of operation is pending.

§21-3C-7. Safety equipment.

Every passenger elevator shall be equipped, maintained and operated in a safe manner in accordance with legislative rules promulgated by the division as authorized by this article.

§21-3C-8. Certificate of operation; renewal.

A certificate of operation for any elevator may not be issued until the elevator has been inspected for safety and the inspection report filed with the division. The certificate of operation shall list the date of inspection and shall expire one year after the date of inspection. The certificate of operation shall be conspicuously posted in the elevator at all times. An expired certificate of operation shall be renewed in the manner that the prior certificate was obtained.

§21-3C-9. Permits for removal or repairs.

Before any existing elevator is removed to a different location, an application of specifications shall be submitted to the division listing such information concerning the installation and operation of the elevator as the division may require on forms designed and furnished by the division. Copies of the complete installation plans shall be submitted with the application.

In all cases where any changes or repairs proposed by the owner or operator which alter the elevator's construction or classification, grade or rated lifting capacity, except when made pursuant to a report of an inspector, the owner or operator of the elevator shall submit to the division an application containing such information as deemed appropriate by the division.

Upon approval of such application and installation plans, the division shall issue a permit for the installation or repair of such elevator. No elevator being removed and reinstalled or repaired may be operated until its completion, in accordance with the approved plans and specifications: Provided, That the division may grant a temporary permit to such elevator, authorizing its operation.

§21-3C-10. Enforcement; notice of defective machinery.

If during an inspection the division or the inspector finds that a passenger elevator or a part thereof cannot be operated safely, the division or the inspector shall contact the owner or operator in writing stating the deficiencies and recommend changes or alterations and shall post a notice upon such elevator prohibiting further use of the elevator. The notice shall be in effect until the changes or alterations set forth in the notice have been made. The notice shall contain a statement that operators or passengers are subject to injury by its continued use, a description of the alteration or other change necessary to be made in order to secure its safe operation, date of such notice, and the name and signature of the inspector issuing the notice.

If any inspector finds a passenger elevator to be so unsafe that it represents imminent danger of death or physical injury, that unit shall be sealed out of service and a hazard notice as prescribed by the division posted thereon. The division shall be notified immediately as to the location and condition of the unit.

Any passenger elevator, once sealed, may not be operated except for the purpose of making repairs and in such a manner as prescribed by the division until all defects are corrected and the unit has been inspected and deemed safe by the division. The division shall promulgate legislative rules, as authorized by this article, to develop procedures for sealing and barricading an elevator once it has been declared inoperable.

No seal, notice or barricade placed on or around an elevator in accordance with the provisions of this article may be removed, obstructed or in any way altered without the written consent of the division.

§21-3C-10a. License requirements for elevator mechanics, accessibility technicians, limited technicians; contractors license requirements; supervision of elevator apprentices requirements.

(a) A person may not engage or offer to engage in the business of erecting, constructing, installing, altering, servicing, repairing, or maintaining elevators or related conveyances covered by this article in this state, unless he or she has a license issued by the commissioner in accordance with this article.

(b) A person licensed under this article shall:

(1) Have in his or her possession a copy of the license issued pursuant to this article on any job on which he or she is performing elevator mechanic work; and

(2) Be, or be employed by, a contractor licensed pursuant to the provisions of §30-42-1 *et seq*., of this code unless the work is performed by a historic resort hotel's regular employees, for which the employees are paid regular wages and not a contract price, on property owned or leased by the historic resort hotel which is not intended for speculative sale or lease;

(c) *Elevator mechanic license*. —

(1) To obtain an elevator mechanic's license, a person shall:

(A) Successfully complete educational programs that are registered with the Bureau of Apprenticeship and Training of the United States Department of Labor, including all required examinations and work experience: *Provided*, That if an applicant successfully completes such educational program prior to being registered with the Bureau of Apprenticeship and Training of the United States Department of Labor, the division may grant a license to the applicant after he or she demonstrates to the commissioner that he or she has successfully completed all the test and work experience requirements; or

(B) (i) Provide to the commissioner an acceptable combination of documented experience and educational credits of not less than four years of recent and active experience in the elevator industry in construction, maintenance, or service/repair or any combination thereof, as verified by current and previous employers listed to do business in this state, on a sworn affidavit; and

(ii) Obtain a score of 70 percent or better on a written competency examination approved or provided by the division.

(2) A licensed elevator mechanic may work on all elevators covered by this article.

(d) *Accessibility technician license*. —

(1) To obtain an accessibility technician's license a person shall:

(A) Provide to the commissioner a certificate of completion of an accessibility training program for the elevator industry such as the Certified Accessibility Training (CAT) program by the National Association of Elevator Contractors, or an equivalent nationally recognized training program; or

(B) (i) Have at least 18 months experience in the construction, maintenance, service and repair, or any combination thereof, as verified by current and previous employers, licensed to do business in this state, on a sworn affidavit, of accessibility lifts;

(ii) Have at least one year of documented vocational training and/or an associate degree in a related field; and

(iii) Obtain a score of 70 percent or better on a written competency examination approved or provided by the commissioner.

(2) A person holding an accessibility technician license may only perform work on accessibility equipment.

(3) A person holding an accessibility technician license may obtain a limited use/limited application (LULA) elevator endorsement. To obtain the LULA elevator endorsement, such person shall:

(A) (i) Hold a current accessibility technician license;

(ii) Provide the commissioner with a certificate of LULA manufacturer's training; and

(iii) Provide at least one year of documented work experience to the commissioner, on a sworn affidavit, in the construction, maintenance, service and repair of LULA elevators and comparable equipment, which was completed under the supervision of a licensed accessibility technician; or

(B) As of July 1, 2012, have at least 18 months of accessibility technician's experience in construction, maintenance, service and repair, or any combination thereof, as verified by current and previous employers, licensed to do business in this state, on a sworn affidavit: *Provided*, That an additional one year of documented work as an accessibility technician with certification of manufacturer's factory training, is required before a LULA endorsement may be obtained.

(4) Any person carrying an accessibility license as of July 1, 2012, shall receive the required endorsement to continue to work on this type of equipment, and will be qualified to supervise future applicants as described in this section.

(e) *Limited technician license*. —

(1) To obtain a limited technician's license an applicant shall:

(A) Complete a certified apprenticeship program, registered by the United States Department of Labor established at a historic resort hotel, qualifying for a limited technician license; or

(B) Provide an acceptable combination of documented experience, and educational credits of not less than three years of recent and active experience in the elevator industry, in maintenance, or service/repair or any combination thereof, as verified by current and previous employers authorized to do business in this state, on a sworn affidavit; and obtain a score of 70 percent or better on a written competency examination approved or provided by the division.

(2) A person holding a limited technician license may only perform work at a historic resort hotel: *Provided*, That for purposes of this section, "historic resort hotel" has the same meaning ascribed to it in §29-25-2 of this code.

(f) *Elevator apprentice*. —

(1) An elevator apprentice who is enrolled in an apprenticeship program approved by the commissioner, and who is in good standing in the program, may work under the supervision of a licensed elevator mechanic, as follows:

(A) An apprentice who has not successfully completed the equivalent of at least one year of the program may work only under the direct supervision of a licensed elevator mechanic who is present on the premises and available to the apprentice at all times.

(B) An apprentice who has successfully completed the equivalent of at least one year of the program may:

(i) Work under the direct supervision of a licensed elevator mechanic as set forth in subdivision (1) of this subsection; and

(ii) Perform the tasks set forth in this paragraph, only if delegated by and performed under the general supervision of a licensed elevator mechanic, who must, at a minimum, meet the apprentice on the job at the beginning of each day to delegate the specific tasks, and who remains responsible for the delegated tasks:

(I) Oiling, cleaning, greasing and painting;

(II) Replacing of combplate teeth;

(III) Relamping and fixture maintenance;

(IV) Inspection, cleaning and lubricating of hoistway doors, car tops, bottoms and pits; and

(V) Observing operation of equipment.

§21-3C-10b. Issuance and renewal of licenses.

(a) Upon approval of a properly completed application for licensure, the commissioner may issue a person a license under the provisions of this article.

(b) The licenses issued under the provisions of this article shall be renewed biennially upon application for renewal on a form prescribed by the commissioner and payment of a fee established by legislative rule.

(c) Upon a proper application for renewal, the commissioner shall renew a license, even if the license holder is unemployed or not working in the industry at the time of renewal: Provided, That before the license holder may engage or offer to engage in the business of erecting, constructing, installing, altering, servicing, repairing, or maintaining an elevator or related conveyance covered by this article, the license holder shall be a contractor, or be employed by a contractor licensed pursuant to the provisions of §30-42-1 *et seq.*, of this code.

§21-3C-11. Disposition of fees; legislative rules.

(a) The division shall propose rules for legislative approval in accordance with §29A-3-1 *et seq*. of this code, for the implementation and enforcement of the provisions of this article, which shall provide:

(1) Standards, qualifications, and procedures for submitting applications, taking examinations and issuing and renewing licenses, certificates of competency and certificates of operation of the three licensure classifications set forth in §21-3C-10a of this code;

(2) For the renewal of a license, even if the licensee is unemployed or not working in the industry: *Provided*, That to engage or offer to engage in the business of erecting, constructing, installing, altering, servicing, repairing, or maintaining an elevator or related conveyance covered by this article, the licensee shall be a contractor, or be employed by a contractor licensed pursuant to §30-42-1 *et seq*., of this code;

(3) Qualifications and supervision requirements for elevator apprentices;

(4) Provisions for the granting of licenses without examination, to applicants who present satisfactory evidence of having the expertise required to perform work as defined in this article and who apply for licensure on or before July 1, 2010: *Provided*, That if a license issued under the authority of this subsection subsequently lapses, the applicant may, at the discretion of the commissioner, be subject to all licensure requirements, including the examination;

(5) Provisions for the granting of emergency licenses in the event of an emergency due to disaster, act of God, or work stoppage when the number of persons in the state holding licenses issued pursuant to this article is insufficient to cope with the emergency;

(6) Provisions for the granting of temporary licenses in the event that there are no elevator mechanics available to engage in the work of an elevator mechanic as defined by this article;

(7) Continuing education requirements;

(8) Procedures for investigating complaints and revoking or suspending licenses, certificates of competency and certificates of operation, including appeal procedures;

(9) Fees for testing, issuance and renewal of licenses, certificates of competency and certificates of operation, and other costs necessary to administer the provisions of this article;

(10) Enforcement procedures; and

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

(b) The rules proposed for promulgation pursuant to subsection (a) of this section shall

establish the amount of any fee authorized pursuant to the provisions of this article: *Provided*, That in no event may the fees established for the issuance of certificates of operation exceed $90.

(c) 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 known as the Elevator Safety 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.

(d) The division may enter into agreements with counties and municipalities whereby such counties and municipalities be permitted to retain the inspection fees collected to support the enforcement activities at the local level.

(e) The commissioner or his or her authorized representatives may consult with engineering authorities and organizations concerned with standard safety codes, rules and regulations governing the operation, maintenance, servicing, construction, alteration, installation and the qualifications which are adequate, reasonable and necessary for the elevator mechanic and inspector.

§21-3C-12. Penalties.

(a) On and after January 1, 2010, the commissioner may issue a cease and desist order to any person engaging in the business of erecting, constructing, installing, altering, servicing, repairing or maintaining elevators or related conveyances covered by this article in this state without a license, or inspecting elevators or related conveyances covered by this article without a certificate of competency, or operating an elevator or related conveyance covered by this article without a certificate of operation.

(b) Any person who violates a cease and desist order is guilty of a misdemeanor and, upon conviction thereof, 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, or confinement in jail for not more than six months, or both;

(3) For the third and subsequent offenses, a fine of not less than $1,000 nor more than $5,000, and confinement in jail for not less than thirty days nor more than one year.

(c) Each day that a person violates a cease and desist order or is otherwise not in compliance with the provisions of this article constitutes a separate offense.

(d) The Commissioner of Labor may institute proceedings in the circuit court 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. A circuit court by injunction may compel compliance with the provisions of this article, with the lawful orders of the Commissioner of Labor and with any final decision of the Commissioner of Labor. The Commissioner of Labor shall be represented in all such proceedings by the Attorney General or his or her assistants.

§21-3C-13. Mining and industrial elevators and general public elevators exempt.

The provisions of this article shall not be applicable to elevators or similar devices used by mining or industrial operations, or to elevators located within any single family residential dwelling.

§21-3C-14. Inapplicability of local ordinances.

Effective January 1, 2022, a political subdivision of this state may not require, as a condition precedent to the performance of erecting, constructing, installing, altering, servicing, repairing, or maintaining elevators or related conveyances covered by this article in the political subdivision, a person who holds a valid license to perform such work issued under the provisions of this article, to have any additional occupational license or other evidence of competence to engage in the business of erecting, constructing, installing, altering, servicing, repairing, or maintaining elevators or related conveyance covered by this article.

§21-3D-1. Definitions.

For purposes of this article:

(a) “Commissioner” means the Commissioner of the Division of Labor, or his or her authorized representative.

(b) “Crane” means a power-operated hoisting machine used in construction, demolition, or excavation work, which has a power-operated winch and load line and a power-operated boom that moves laterally by the rotation of the machine on a carrier, and which has a manufacturer’s rated lifting capacity of more than 2,000 pounds. “Crane” does not mean a forklift, digger, derrick truck, bucket truck, or any vehicle, aircraft, or helicopter, or equipment which does not have a power-operated winch and load line.

(c) “Tower crane” means a crane in which a boom, swinging jib, or other structural member is mounted on a vertical mast or tower.

§21-3D-2. Certification required.

A person may not operate a crane or tower crane without certification issued according to OSHA regulation 29 CFR § 1926.1427 Subpart CC and any amendments that may be made from time to time. Any certifications that may expire in calendar year 2021 shall not expire until January 1, 2022. The commissioner may enter into a cooperative agreement with OSHA to assist in the enforcement of this section.

§21-3D-3. Inapplicability of local ordinances.

On January 1, 2022, and thereafter, a political subdivision of this state may not require, as a condition precedent to the operation of a crane or tower crane in the political subdivision, a person who is certified according to OSHA regulation 29 CFR § 1926.1427 Subpart CC, to have any other license or other evidence of competence as a crane operator.

§21-3D-4. Minimum certification requirements.

[Repealed.]

§21-3D-5. Denial, suspension, revocation, or reinstatement of certification.

[Repealed.]

§21-3D-6. Effect of accident.

[Repealed.]

§21-3D-7. Penalties.

[Repealed.]

§21-3D-8. Crane Operator Certification Fund; fees; disposition of funds.

(a) All fees paid pursuant to this article shall be paid to the Commissioner of Labor and deposited in an appropriated special revenue account known as the Crane Operator Certification Fund in the State Treasury 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 the funds needed for 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.

(b) All funds remaining in the Crane Operating Certification Fund on January 1, 2022, shall be appropriated by the Legislature.

§21-3D-9. Reciprocity.

[Repealed.]

§21-3E-1. Short title.

This article is known as and may be cited as the West Virginia Safer Workplace Act.

§21-3E-2. Definitions.

For the purposes of this article:

“Alcohol” means ethanol, isopropanol, or methanol.

“Drugs” means any substance considered unlawful for nonprescribed consumption or use under the United States Controlled Substances Act (21 U. S. C. §812).

“Employer” means any person, firm, company, corporation, labor organization, employment agency or joint labor-management committee, which has one or more full-time employee employed in the same business, or in or about the same establishment, under any contract of hire, express or implied, oral or written in the state. “Employer” does not include, for purposes of this article, the United States, the state, any of its subdivisions or any other public-sector incorporated municipalities, counties, or other local government entities, or any Native American tribe.

“Employee” means any person in the service of an employer, as defined in this section.

“Good faith” means reasonable reliance on facts, or that which is held to be factual without the intent to deceive or be deceived and without reckless, malicious or negligent disregard for the truth.

“Prospective employee” means any person who has made application to an employer, whether written or oral, to become an employee.

“Sample” means such sample of the human body capable of revealing the presence of alcohol or other drugs or other metabolites.

“Split sample” means a part of the sample that is sent to a first laboratory and retained unopened, and which is transported to a second laboratory in the event that the employee requests that it be tested following a verified positive test result of the primary specimen.

§21-3E-3. Public policy; applicability.

The Legislature declares that the public policy of this state is to advance the confidence of West Virginia workers that they are in a safe workplace and to enhance the viability of the workplace they labor in by recognizing the right of West Virginia's employers to require mandatory drug testing, not only of applicants, but of current employees: Provided, That this article does not abrogate the right of privacy, including the right of an individual to be let alone and to keep secret his or her private communications, conversations and affairs, as stated in Roach v. Harper, 143 W. Va. 869, but rather determines that the right of privacy is outweighed by the public policy stated in this section if an employer meets the requirements set forth in this article.

This article applies only to employers, as defined in section three of this article, not previously made subject of drug and alcohol testing statutory provisions established by the Legislature including, but not limited to, employers covered by section one, article one-a, chapter twenty-two-a of the code, et seq., and section one, article one-d, chapter twenty-one of the code et seq.

§21-3E-4. Employers may test current and prospective employees for drugs or alcohol.

It is lawful for an employer to test employees or prospective employees for the presence of drugs or alcohol, in accordance with the provisions of this article, as a condition of continued employment or hiring. However, in order to qualify for a bar from being subjected to legal claims for acting in good faith on the results of a drug or alcohol test, employers must adhere to the accuracy and fairness safeguards outlined in this article.

§21-3E-5. Collection of samples.

In order to test reliably for the presence of drugs or alcohol, an employer may require samples from its employees and prospective employees, and may require presentation of reliable individual identification from the person being tested to the person collecting the samples. Collection of the sample shall be in conformance with the requirements of this article. The employer may designate the type of sample to be used for this testing.

§21-3E-6. Scheduling of tests.

Regarding the timing and costs of drug and/or alcohol tests, and in order for an employer to qualify for the benefits of this article:

(1) Any drug or alcohol testing by an employer of employees shall occur during, or immediately before or after, a regular work period. Testing by an employer is worked time for the purposes of compensation and benefits for current employees.

(2) An employer shall pay all actual costs for drug and/or alcohol testing required by the employer of employees and prospective employees.

(3) An employer is required to provide transportation or to pay reasonable transportation costs to current employees if their required tests are conducted at a location other than the employee's normal work site(s).

§21-3E-7. Testing procedure.

All sample collection and testing of drugs and alcohol under this article shall be performed in accordance with the following conditions:

(1) The collection of samples shall be performed under reasonable and sanitary conditions.

(2) Any observer of the collection of urine samples shall be of the same sex as the employee.

(3) Sample collections shall be documented, and these documentation procedures shall include:

(A) Labeling of samples so as to reasonably preclude the possibility of misidentification of the person tested in relation to the test result provided and handling of samples in accordance with reasonable chain-of-custody and confidentiality procedures; and

(B) An opportunity for the employee, or prospective employee, to voluntarily provide notification of any information which may be considered as relevant to the test, including, but not limited to, identification of currently or recently used prescriptions or nonprescription drugs, or other relevant medical information. This may be accomplished by providing procedures for review by a qualified medical professional to verify a laboratory sample which tests positive in a confirmatory test.

(4) Sample collection, storage and transportation to the place of testing shall be performed so as to reasonably preclude the possibility of sample contamination, adulteration, or misidentification.

(5) Confirmatory drug testing shall be conducted at a laboratory: (i) Certified by the U. S. Department of Health and Human Services' Substance Abuse and Mental Health Services Administration; (ii) approved by the U. S. Department of Health and Human Services under the Clinical Laboratory Improvements Act; or (iii) approved by the College of American Pathologists.

(6) Drug and alcohol testing shall include confirmation of any positive test results. For drug testing, confirmation will be by use of a different chemical process than was used by the employer in the initial drug screen. The second confirmatory drug test shall be a chromatographic technique such as gas chromatography/mass spectrometry, or another comparably reliable analytical method. An employer may take any adverse employment action, including job denial to a prospective employee, based only on a confirmed positive drug or alcohol test.

In the event a person desires to challenge the results of his or her initial sample test result, that person shall have the right to have the split sample tested by another laboratory as set forth in subsection four. The cost associated with the testing of the split sample shall be the responsibility of the person challenging the initial sample test results.

§21-3E-8. Testing policy requirements.

(a) Testing or retesting for the presence of drugs or alcohol by an employer shall be carried out within the terms of a written policy which has been distributed to every employee subject to testing, and is available for review by prospective employees.

(b) In order to comply with the provisions of this article, employers must provide employees, when requested and/or as appropriate, with information as to the existence and availability of counseling, employee assistance, rehabilitation and/or other drug abuse treatment programs which the employer offers, if any. The employer is not required to offer any of the benefits listed above by this article.

(c) Within the terms of the written policy, an employer may require the collection and testing of samples for, among other legitimate drug abuse prevention and/or treatment purposes, the following:

(1) Deterrence and/or detection of possible illicit drug use, possession, sale, conveyance, or distribution, or manufacture of illegal drugs, intoxicants, or controlled substances in any amount or in any manner, on or off the job, or the abuse of alcohol or prescription drugs;

(2) Investigation of possible individual employee impairment;

(3) Investigation of accidents in the workplace or incidents of workplace theft or other employee misconduct;

(4) Maintenance of safety for employees, customers, clients or the public at large; or

(5) Maintenance of productivity, quality of products or services, or security of property or information.

(d) The collection and testing of samples shall be conducted in accordance with this article and need not be limited to circumstances where there are indications of individual, job-related impairment of an employee or prospective employee.

(e) The employer’s use and disposition of all drug or alcohol test results are subject to the limitations of this article and federal and state law if the employer is to qualify for the legal protections available under this article.

(f) Nothing in this article may be construed to encourage, discourage, restrict, limit, prohibit or require on-site drug or alcohol testing.

§21-3E-9. Disciplinary procedures.

Upon receipt of a confirmed positive drug or alcohol test result which indicates a violation of the employer's written policy, or upon the refusal of an employee or prospective employee to provide a testing sample, an employer may use that test result or test refusal as a valid basis for disciplinary and/or rehabilitative actions, which may include, among other actions, the following:

(1) A requirement that the employee enroll in an employer-provided or approved rehabilitation, treatment and/or counseling program, which may include additional drug and/or alcohol testing, participation in which may be a condition of continued employment, and the costs of which may or may not be covered by the employer's health plan or policies;

(2) Suspension of the employee, with or without pay, for a designated period of time;

(3) Termination of employment;

(4) Refusal to hire a prospective employee; and/or

(5) Other adverse employment action in conformance with the employer's written policy and procedures, including any relevant collective bargaining agreement provisions.

§21-3E-10. Sensitive employees.

If the confirmatory drug or alcohol test of an employee is "positive," and the employee is in a sensitive position where an accident could cause loss of human life, serious bodily injury, or significant property or environmental damage, the employer may permanently remove the employee from the sensitive position and transfer or reassign the employee to an available nonsensitive position with comparable pay and benefits, or may take any other action, including termination or other adverse employment action, consistent with the employer's policy for confirmed positive drug or alcohol test for employees in sensitive positions, provided there are not applicable contractual provisions that expressly prohibit such action.

Employers obligated to perform drug testing under a federal or state mandated drug testing statute will be required to follow whatever additional requirements are mandated by those statutes.

§21-3E-11. Protection from liability.

No cause of action is or shall be established for any person against any employer who has established a policy and initiated a testing program in accordance with this article, for any of the following:

(1) Actions based on the results of a confirmed positive drug or alcohol test, or the refusal of an employee or job applicant to submit to a drug test;

(2) Failure to test for drugs or alcohol, or failure to test for a specific drug or other controlled substance;

(3) Failure to test for, or if tested for, failure to detect, any specific drug or other substance, any medical condition, any mental, emotional, or psychological disorder or condition; or

(4) Termination or suspension of any substance abuse prevention or testing program or policy.

§21-3E-12. Cause of action.

(a) No cause of action is or shall be established for any person against an employer who has established a program of drug or alcohol testing in accordance with this article, unless the employee's action was based on a false positive test result, and the employer had actual knowledge that the result was in error, and ignored the true test result because of disregard for the truth and/or the willful intent to deceive or be deceived.

(b) In any claim, including a claim under this article, where it is alleged that an employer's action was based on a false positive test result:

(1) There is a rebuttable presumption that the test result was valid if the employer complied with the provisions of this article; and

(2) The employer is not liable for monetary damages if its reliance on a false positive test result was reasonable and in good faith.

(c) There is no employer liability for any action taken related to a false negative drug or alcohol test.

§21-3E-13. Defamation.

No cause of action for defamation of character, libel, slander or damage to reputation is or shall be established for any person against any employer who has established a program of drug or alcohol testing in accordance with this article, unless:

(1) The results of that test were disclosed to a person other than the employer, an authorized employee, agent or representative of the employer, the tested employee, or the tested prospective employee, or the authorized agent or representative of the employee; and

(2) All elements of an action for defamation of character, libel, slander or damage to reputation as established by the relevant state statute or common law are satisfied.

§21-3E-14. No requirement to implement a testing policy.

No cause of action arises in favor of any person against an employer based upon the failure of the employer to establish a program or policy on substance abuse prevention, or to implement drug or alcohol testing.

§21-3E-15. Confidentiality.

All communications received by an employer relevant to employee or prospective employee drug or alcohol test results and received through the employer's drug testing program are confidential communications and may not be used or received in evidence, obtained in discovery or disclosed in any public or private proceeding, except in a proceeding related to an action taken by an employer under this article.

§21-3E-16. Employer testing; notice; termination; forfeiture.

If an employer implements a drug-free workplace program in accordance with this article, which includes notice, education, and procedural requirements for testing for drugs and alcohol pursuant to this law, the employer may require the employee to submit to a test for the presence of drugs or alcohol. If an employee is terminated because alcohol or a drug is found to be present in the employee's system at a level proscribed by the employer's policy, the employee, if injured at the time of the intoxication, forfeits indemnity benefits under the Workers' Compensation Laws. However, the employer's drug-free workplace program must notify all employees that it is a condition of employment for an employee to refrain from reporting to work or working with the presence of drugs or alcohol in his or her body and that policy must also state that if an injured employee refuses to submit to a test for drugs or alcohol that employee forfeits eligibility for indemnity benefits under the Workers' Compensation Laws. Employers who do not notify their employees of this condition of employment waive their right to assert that eligibility for benefits is entirely forfeited.

Nothing in this section may be construed or determined to affect §23-4-2(a) of this code and the provisions of said section shall be the sole manner in which intoxication may be proven to establish such intoxication as the proximate cause of an injury for purposes of said chapter.

§21-4-1. Hours of labor for telephone and telegraph operators on railroads.

It shall be unlawful for any person, association or corporation operating a railroad within this state to permit any person employed by it on such railroad, in the capacity of telephone or telegraph operator, whose duty it is to space or block trains or engines, or handle train orders governing the movement of trains or engines, or handle interlocking switches governing the movement of trains or engines, to be on duty more than eight hours in any twenty-four consecutive hours: Provided, That the provisions of this section shall apply only to such parts of a railroad where three or more passenger trains pass each way in twenty-four consecutive hours, or where ten or more freight trains pass each way in twenty-four consecutive hours, or at any office where such telegraph or telephone operators are employed twenty or more hours in twenty-four consecutive hours: Provided further, That in case of necessity caused by the sickness or death of any such operators, or by an accident on such railroad, such telephone and telegraph operators may be permitted to be on duty for a period of twelve consecutive hours in any twenty-four consecutive hours, but such extension of time shall extend only for a period long enough to enable such railroad company to supply the required number of operators at such office, and shall in no case extend over a period of more than two days, nor shall it be lawful for any such telegraph or telephone operator to be on duty twelve consecutive hours in any twenty-four consecutive hours for more than three times in any calendar month. Nothing in this section shall prevent any such company and operator from agreeing to a longer day than eight hours, but in no case shall any such operator be permitted to be on duty longer than twelve consecutive hours in any twenty-four consecutive hours under such agreement.

Any person, association or corporation violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined $100 for the first offense, and for each subsequent offense shall be fined $300.

§21-4-2. Hours of labor on state public works.

The service and employment of all laborers and mechanics who now are or hereafter may be employed by or on behalf of this state, or by any contractor or subcontractor, upon any of the public works of the state, is hereby limited and restricted to eight hours in any one calendar day, except in cases of extraordinary emergency; and it shall be unlawful for any officer of the state, or any such contractor or subcontractor, whose duty it shall be to employ, direct or control the service of such laborers or mechanics, to require or permit any such laborers or mechanics to work more than eight hours in any calendar day, except as hereinbefore provided.

Any officer or agent of the state, or any contractor or subcontractor, whose duty it shall be to employ, direct or control any laborer or mechanic employed upon any of the public works of the state, who shall intentionally violate any provision of this section, shall be deemed guilty of a misdemeanor and, for each and every such offense shall, upon conviction, be fined not to exceed $1,000, or imprisoned for not more than six months, or both fined and imprisoned, in the discretion of the court having jurisdiction thereof.

§21-5-1. Definitions.

NOTE: West Virginia Code §21-5-1 was amended by two bills passed during the 2021 Regular Session of the Legislature. When two acts of the Legislature amend the same section of the Code without express recognition in the bill of the action of the other bill, the Legislative Manager makes no determination as to the appropriate, legal effect of the two acts. Therefore, BOTH versions of this section are set out below.

The later of the two acts, House Bill 2009 (passed on March 19, 2021) amended West Virginia Code §21-5-1 to read as follows:

As used in this article:

(a) The term "firm" includes any partnership, association, joint-stock company, trust, division of a corporation, the administrator or executor of the estate of a deceased individual, or the receiver, trustee, or successor of any of the same, or officer thereof, employing any person.

(b) The term "employee" or "employees" includes any person suffered or permitted to work by a person, firm, or corporation, except those classified as an independent contractor pursuant to §21-5I-4 of this code.

(c) The term "wages" means compensation for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, commission, or other basis of calculation. As used in §21-5-4, §21-5-5, §21-5-8a, §21-5-10, and §21-5-12 of this code, the term "wages" shall also include then accrued fringe benefits capable of calculation and payable directly to an employee: *Provided*, That nothing herein contained shall require fringe benefits to be calculated contrary to any agreement between an employer and his or her employees which does not contradict the provisions of this article.

(d) The term "commissioner" means Commissioner of Labor or his or her designated representative.

(e) The term "railroad company" includes any firm or corporation engaged primarily in the business of transportation by rail.

(f) The term "special agreement" means an arrangement filed with and approved by the commissioner whereby a person, firm, or corporation is permitted upon a compelling showing of good cause to establish regular paydays less frequently than once in every two weeks: *Provided*, That in no event shall the employee be paid in full less frequently than once each calendar month on a regularly established schedule.

(g) The term "deductions" includes amounts required by law to be withheld, and amounts authorized for union, labor organization, or club dues or fees, pension plans, payroll savings plans, credit unions, charities, and any form of insurance offered by an employer: *Provided*, That for a public employee, other than a municipal employee covered by a collective bargaining agreement with a municipality which is in effect on July 1, 2021, the term "deductions" shall not include any amount for union, labor organization, or club dues or fees.

(h) The term "officer" shall include officers or agents in the management of a corporation or firm who knowingly permit the corporation or firm to violate the provisions of this article.

(i) The term "wages due" shall include at least all wages earned up to and including the twelfth day immediately preceding the regular payday.

(j) The term "construction" means the furnishing of work in the fulfillment of a contract for the construction, alteration, decoration, painting, or improvement of a new or existing building, structure, roadway, or pipeline, or any part thereof, or for the alteration, improvement, or development of real property: *Provided*, That construction performed for the owner or lessee of a single family dwelling or a family farming enterprise is excluded.

(k) The term "minerals" means clay, coal, flagstone, gravel, limestone, manganese, sand, sandstone, shale, iron ore, and any other metallurgical ore.

(l) The term "fringe benefits" means any benefit provided an employee or group of employees by an employer, or which is required by law, and includes regular vacation, graduated vacation, floating vacation, holidays, sick leave, personal leave, production incentive bonuses, sickness and accident benefits, and benefits relating to medical and pension coverage.

(m) The term "employer" means any person, firm, or corporation employing any employee.

(n) The term "doing business in this state" means having employees actively engaged in the intended principal activity of the person, firm, or corporation in West Virginia.

(o) The term "assignment", as used in §21-5-3 of this code, shall have the same meaning as the term "assignment of earnings" set forth in §46A-2-116(2)(b) of this code.

The earlier of the two acts, Senate Bill 272 (passed on March 11, 2021), amended West Virginia Code §21-5-1 to read as follows:

As used in this article:

(a) The term "firm" includes any partnership, association, joint-stock company, trust, division of a corporation, the administrator or executor of the estate of a deceased individual, or the receiver, trustee, or successor of any of the same, or officer thereof, employing any person.

(b) The term "employee" or "employees" includes any person suffered or permitted to work by a person, firm, or corporation, except those classified as an independent contractor pursuant to §21-5I-4 of this code.

(c) The term "wages" means compensation for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, commission, or other basis of calculation. As used in §21-5-4, §21-5-5, §21-5-8a, §21-5-10, and §21-5-12 of this code, the term "wages" shall also include then accrued fringe benefits capable of calculation and

payable directly to an employee: *Provided*, That nothing herein contained shall require fringe benefits to be calculated contrary to any agreement between an employer and his or her employees which does not contradict the provisions of this article.

(d) The term "commissioner" means the Commissioner of Labor or his or her designated representative.

(e) The term "railroad company" includes any firm or corporation engaged primarily in the business of transportation by rail.

(f) The term "special agreement" means an arrangement filed with and approved by the commissioner whereby a person, firm, or corporation is permitted upon a compelling showing of good cause to establish regular paydays less frequently than once every two weeks: *Provided*, That in no event shall the employee be paid in full less frequently than once each calendar month on a regularly established schedule.

(g) The term "deductions" includes amounts required by law to be withheld, and amounts authorized for union or club dues, pension plans, payroll savings plans, credit unions, charities, and hospitalization and medical insurance.

(h) The term "officer" shall include officers or agents in the management of a corporation or firm who knowingly permit the corporation or firm to violate the provisions of this article.

(i) The term "wages due" shall include at least all wages earned up to and including the 12th day immediately preceding the regular payday.

(j) The term "construction" means the furnishing of work in the fulfillment of a contract for the construction, alteration, decoration, painting, or improvement of a new or existing building, structure, roadway, or pipeline, or any part thereof, or for the alteration, improvement, or development of real property: *Provided*, That construction performed for the owner or lessee of a single-family dwelling or a family farming enterprise is excluded.

(k) The term "minerals" means clay, coal, flagstone, gravel, limestone, manganese, sand, sandstone, shale, iron ore, and any other metallurgical ore.

(l) The term "fringe benefits" means any benefit provided an employee or group of employees by an employer, or which is required by law, and includes regular vacation, graduated vacation, floating vacation, holidays, sick leave, personal leave, production incentive bonuses, sickness and accident benefits, and benefits relating to medical and pension coverage.

(m) The term "employer" means any person, firm, or corporation employing any employee.

(n) The term "doing business in this state" means having employees actively engaged in the intended principal activity of the person, firm, or corporation in West Virginia.

§21-5-2. Semimonthly payment of wages by railroads.

Every railroad company, authorized to do business by the laws of this state shall, on or before the first day of each month, pay the employees thereof the wages earned by them during the first half of the preceding month, ending with the fifteenth day thereof; and on or before the fifteenth day of each month, pay the employees thereof the wages earned by them during the last half of the preceding calendar month: Provided, That if, at any time of payment, any employee shall be absent from his regular place of labor, and shall not receive his wages through a duly authorized representative, he shall be entitled to such payment at any time thereafter upon demand upon the proper paymaster at the place where such wages are usually paid and where the next pay is due, and the proper mailing in the United States post office of such payment in time to reach the usual post office of the employee by the time aforesaid, in the usual course of the mails, shall be a compliance with this section.

It shall not be lawful for any railroad company to enter into or make any agreement with any employee for the payment of wages of any such employee otherwise than as provided in this section, except to pay such wages at shorter intervals than herein provided. Every agreement made in violation of this section shall be deemed to be null and void.

§21-5-3. Payment of wages by employers other than railroads; assignments of wages.

(a) Every person, firm, or corporation doing business in this state, except railroad companies as provided in §21-5-1 *et seq*. of this code, shall settle with its employees at least twice every month in a manner of the person, firm, or corporation's choosing, as set forth in subsection (b) of this section, and with no more than 19 days between settlements, unless otherwise provided by special agreement, and pay them the wages due, less authorized deductions and authorized wage assignments, for their work or services.

(b) Payment required in subsection (a) of this section shall be made by the person, firm, or corporation in one of the following ways:

(1) In lawful money of the United States;

(2) By check or money order;

(3) By deposit or electronic transfer of immediately available funds into an employee's payroll card account in a federally insured depository institution: *Provided*, That an employer who compensates its employees using payroll cards shall provide full written disclosure of any applicable fees associated with the payroll card: *Provided, however*, That if an employer compensates its employees using payroll cards, the employer shall ensure that the employee has the ability to make at least one withdrawal or transfer from the payroll card per pay period without cost or fee to the employee for any amount contained on the card: *Provided further*, That if an employer compensates its employees using payroll cards, the employer shall ensure that the employee has the ability to make in-network withdrawals or transfers from the payroll card without cost or fee to the employee for any amount contained on the card.

(4) By any method of depositing immediately available funds in an employee's demand or time account in a bank, credit union, or savings and loan institution upon the employee's identification of his or her financial institution, the type of account, and the account number: *Provided*, That if an employee does not identify the information necessary to enable a deposit pursuant to this subdivision, the employer may pay the employee by payroll card pursuant to subdivision (3) of this subsection: *Provided, however*, That nothing herein contained shall be construed in a manner to require any person, firm, or corporation to pay employees by depositing funds in a financial institution.

(c) An employer who chooses to compensate its employees using payroll cards pursuant to the provisions of subsection (b)(3) of this section must also give employees the option of being paid by electronic transfer under the provisions of subsection (b)(4) of this section.

(d) If, at any time of payment, any employee is absent from his or her regular place of labor and does not receive his or her wages through a duly authorized representative, he or she is entitled to payment at any time thereafter upon demand upon the proper paymaster at the

place where his or her wages are usually paid and where the next pay is due.

(e) Nothing herein contained may affect the right of an employee to assign part of his or her claim against his or her employer except as in subsection (e) of this section.

(f) No assignment of or order for future wages may be valid for a period exceeding one year from the date of the assignment or order. An assignment or order shall be in writing and shall specify thereon the total amount due and collectible by virtue of the same and, unless otherwise provided for in subsection (g) of this section, three-fourths of the periodical earnings or wages of the assignor are all times exempt from such assignment or order and no assignment or order is valid which does not so state upon its face: *Provided*, That no such order or assignment is valid unless the written acceptance of the employer of the assignor to the making thereof is endorsed thereon: *Provided, however*, That nothing herein contained may be construed as affecting the right of a private employer and its employees to agree between themselves as to deductions to be made from the payroll of employees.

(g) If an employee of the state has been overpaid wages, including incremental salary increases pursuant to §5-5-2 of this code, an employee may voluntarily authorize a written assignment or order for future wages to the state to repay the overpayment in an amount not to exceed three-fourths of his or her periodical earnings or wages.

(h) Nothing in this chapter shall be construed to interfere with the right of an employee to join, become a member of, contribute to, donate to, or pay dues or fees to a union, labor organization, or club.

(i) For purposes of this article:

(1) “Payroll card” means a card, code, or combination thereof or other means of access to an employee’s payroll card account, by which the employee may initiate electronic fund transfers or use a payroll card to make purchases or payments.

(2) “Payroll card account” means an account in a federally insured depository institution that is directly or indirectly established through an employer and to which electronic fund transfers of the employee’s wages, salary, commissions, or other compensation are made on a recurring basis, whether the account is operated or managed by the employer, a third person payroll processor, a depository institution, or another person.

§21-5-4. Cash orders; employees separated from payroll before paydays; employer provided property.

(a) In lieu of lawful money of the United States, any person, firm, or corporation may compensate employees for services by cash order which may include checks, direct deposits, payroll cards, or money orders on banks convenient to the place of employment where suitable arrangements have been made for the cashing of the checks by employees or deposit of funds for employees for the full amount of wages.

(b) Whenever a person, firm, or corporation discharges an employee, or whenever an employee quits or resigns from employment, the person, firm or corporation shall pay the employee's wages due for work that the employee performed prior to the separation of employment on or before the next regular payday on which the wages would otherwise be due and payable: *Provided*, That fringe benefits, as defined in section one of this article, that are provided an employee pursuant to an agreement between the employee and employer and that are due, but pursuant to the terms of the agreement, are to be paid at a future date or upon additional conditions which are ascertainable are not subject to this subsection and are not payable on or before the next regular payday, but shall be paid according to the terms of the agreement. For purposes of this section, "business day" means any day other than Saturday, Sunday, or any legal holiday as set forth in §2-2-1 of this code.

(c) Payment under this section may be made in person in any manner permissible under section three of this article, through the regular pay channels or, if requested by the employee, by mail. If the employee requests that payment under this section be made by mail, that payment shall be considered to have been made on the date the mailed payment is postmarked.

(d) When work of any employee is suspended as a result of a labor dispute, or when an employee for any reason whatsoever is laid off, the person, firm or corporation shall pay in full to the employee not later than the next regular payday, either through the regular pay channels or by mail if requested by the employee, wages earned at the time of suspension or layoff.

(e) If a person, firm, or corporation fails to pay an employee wages as required under this section, the person, firm, or corporation, in addition to the amount which was unpaid when due, is liable to the employee for two times that unpaid amount as liquidated damages. This section regulates the timing of wage payments upon separation from employment and not whether overtime pay is due. Liquidated damages that can be awarded under this section are not available to employees claiming they were misclassified as exempt from overtime under state and federal wage and hour laws. Every employee shall have a lien and all other rights and remedies for the protection and enforcement of his or her salary or wages, as he or she would have been entitled to had he or she rendered service therefor in the manner as last employed; except that, for the purpose of liquidated damages, the failure shall not be deemed to continue after the date of the filing of a petition in bankruptcy with respect to the employer if he or she is adjudicated bankrupt upon the petition.

(f)(1) Notwithstanding any provision in this section to the contrary, if at the time of discharge or resignation, an employee fails to return employer provided property, as set forth by the parties under paragraph (C) of this subsection, the employer may withhold, deduct, or divert an employee's final wages, in an amount not to exceed the replacement cost of the employer provided property that was not returned as set forth under paragraph (C) of this subsection, to recover the replacement cost of the employer provided property, subject to the following:

(A) The employer provided property had been provided to the employee in the course of, and for use in, the employer's business;

(B) The employer provided property has a value in excess of $100;

(C) The employee had signed a written agreement with the employer contemporaneous with the obtaining of the employer provided property, or signed and ratified an agreement if property had been provided prior to the effective date of this provision; and such agreement contained, at a minimum, the following information:

(i) Specific itemization of the employer provided property, with a specified replacement cost;

(ii) Clear statement that such items are to be returned immediately upon discharge or resignation; and

(iii) Clear statement, coupled with the employee's acknowledgement and agreement, that should the employee fail to timely return the specified items, the replacement cost of such items may be recovered by the employer from the employee's final wages;

(D) The employer shall notify the employee in writing at the time of discharge or resignation by personal service, or as soon thereafter as practicable by personal service or via certified mail with return receipt requested, as to the replacement cost of the items and make a demand for return of such employer provided property within a certain date, not to exceed 10 business days of the notification; and

(E) The employer shall relinquish the withheld, deducted, or diverted wages to the employee if the employee returns the employer's property, equipment, supplies, and uniforms in a condition suitable for the age and usage of the items within the deadline specified in paragraph (D) of this subsection: *Provided*, That uniforms returned to the employer within three years of their issuance shall be deemed acceptable in their current condition at the time of separation from employment for purposes of this section: *Provided, however*, That replacement tools are deemed to be the property of the employee and are not subject to the provisions of this section.

(2) Nothing herein precludes an employee from voluntarily consenting in writing to an employer's withholding, deduction, or diversion of a certain amount from the employee's final wages in satisfaction of subsection (1) of this section.

(3) If an employee objects to the replacement cost amount to be deducted by an employer, and provides such written objection within the deadline specified in paragraph (D), subsection (1) of this subsection, then the employer shall place the controverted amount in an interest bearing escrow account: *Provided*, That if a civil action or equitable relief is not brought by the employee for the claimed amount within three months, the employee shall forfeit the amount in escrow and such money shall revert to the employer.

(4) Nothing in this subsection is intended, nor shall it be construed, to abolish or limit any other remedies available to an employer to recover employer provided property, damages related to employer provided property or any other damages or relief, equitable or otherwise, available under any applicable law.

(5) Notwithstanding any provision in this section to the contrary, this provision shall not apply to employer-employee business relationships that are subject to, and governed by, collective bargaining agreements.

(6) For purposes of this section the following terms mean:

(A) The term “employer provided property” means all property provided by an employer to an employee for use in the employer’s business, including but not limited to, equipment, phone, computer, supplies, or uniforms.

(B) The term “replacement cost” means actual cost paid by an employer for employer provided property, or for the same or similar property, if the original employer provided property no longer exists. In calculating the “replacement cost”, the cost shall include any vendor discounts provided to the employer for such property.

(C) The term “replacement tools” means equipment, other than uniforms, provided by the employer to the employee for use in the course of the employer’s business and to replace equipment provided by the employee that is lost.

§21-5-4a. Safe Harbor.

(a) An employee, in bringing an action for the underpayment or nonpayment of wages and fringe benefits due upon the employee's separation of employment as contemplated by §21-5-4 of this code, is not entitled to seek liquidated damages or attorney's fees from an employer without first making a written demand, as defined in subsection (c) of this section, to the employer seeking the payment of any alleged underpayment or nonpayment as set forth in this section: *Provided,* That upon separation or with the issuance of the final paycheck, the employer shall notify the employee in writing who the employer's authorized representative is and where to send a written demand by both e-mail and regular mail: *Provided however*, that if the employer fails to provide the required written notice, the employee is not required to comply with the provisions of this section. Upon receiving a written demand, the employer has seven calendar days from receipt to correct the alleged underpayment or nonpayment of the wages and fringe benefits due. If, after seven days, the employer has not corrected the alleged underpayment or nonpayment, or paid all undisputed amounts due to the employee, the employee may seek liquidated damages and attorney's fees. Nothing in this section prohibits the employee from presenting a claim under this article without making a written demand to the employer.

(b) In a class action lawsuit brought under this article for the underpayment or nonpayment of wages and fringe benefits due upon the employees' separation of employment, the employee, prior to the filing of the class action, shall submit a written demand stating it is a demand for all other employees similarly situated for the underpayment or nonpayment of their wages and fringe benefits: *Provided,* That if only the underpayment or nonpayment of wages and fringe benefits of the named employee is corrected, a class action may proceed for the underpayment or nonpayment of wages and fringe benefits still owed to the other members of the class.

(c) For purposes of this section, a "written demand" means any writing, including e-mail, from or on behalf of an employee stating that the employer has not paid all of the wages or fringe benefits which the employee is owed.

§21-5-5. Coercion of employees to purchase merchandise in payment of wages; sale of merchandise for more than prevailing cash value.

If any corporation, company, firm or person shall coerce or compel, or attempt to coerce or compel, an employee in its, their or his employment to purchase goods or supplies in payment of wages due him or to become due him or otherwise, from any corporation, company, firm or person, such first named corporation, company, firm or person shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished as provided in the next preceding section. And if any such corporation, company, firm or person shall, directly or indirectly, sell to any such employee in payment of wages due or to become due him or otherwise, goods or supplies at prices higher than the reasonable or current market value thereof at cash, such corporation, company, firm or person shall be liable to such employee, in a civil action, in double the amount of the charges made and paid for such goods or supplies, in excess of the reasonable or correct value thereof in cash.

§21-5-5a. Definitions.

As used in sections five-b, five-c and five-d of this article, unless the context clearly requires otherwise:

(1) "Employer" means any individual, person, corporation, department, board, bureau, agency, commission, division, office, company, firm, partnership, council or committee of the state government; public benefit corporation, public authority or political subdivision of the state; or other business entity, which employs or seeks to employ an individual or individuals. All provisions of sections five-b, five-c and five-d of this article pertaining to employers shall apply in equal force and effect to their agents and representatives.

(2) "Employee" means an individual employed by an employer.

(3) "Psychophysiological detection of deception instrument" means an instrument used for the detection of deception which records permanently and simultaneously a person's cardiovascular and respiratory patterns and galvanic skin response: Provided, That the instrument may record other physiological changes pertinent to the detection of deception.

(4) "Prospective employee" means an individual seeking or being sought for employment with an employer.

(5) "Psychophysiological detection of deception" means an examination which records permanently and simultaneously a person's cardiovascular and respiratory patterns and galvanic skin response.

§21-5-5b. Employer limitations on use of detection of deception devices or instruments; exceptions.

No employer may require or request either directly or indirectly, that any employee or prospective employee of the employer submit to a psychophysiological detection of deception examination, lie detector or other similar examination utilizing mechanical or electronic measures of physiological reactions to evaluate truthfulness, and no employer may knowingly allow the results of any examination administered outside this state to be utilized for the purpose of determining whether to employ a prospective employee or to continue the employment of an employee in this state: Provided, That the provisions of this section shall not apply to employees or prospective employees who would have direct access to the manufacture, storage, distribution or sale of any controlled substance listed in schedule I, II, III, IV or V of section eight hundred twelve of title twenty-one of the United States code: Provided, however, That the provisions of this section shall not apply to law-enforcement agencies or to military forces of the state as defined by section one, article one, chapter fifteen of the code: Provided further, That the results of any examination shall be used solely for the purpose of determining whether to employ or to continue to employ any person exempted hereunder and for no other purpose.

§21-5-5c. License required for psychophysiological detection of deception examiners; qualifications; promulgation of rules governing administration of psychophysiological detection of deception examinations.

(a) No person, firm, or corporation shall administer a psychophysiological detection of deception examination, lie detector, or other similar examination utilizing mechanical or electronic measures of physiological reactions to evaluate truthfulness without holding a current valid license to do so as issued by the Commissioner of Labor. No examination shall be administered by a licensed corporation except by an officer or employee thereof who is also licensed.

(b) A person is qualified to receive a license as an examiner if he or she:

(1) Is at least 21 years of age;

(2) Is a citizen of the United States;

(3) Has not been convicted of a felony: *Provided*, That the commissioner shall apply §21-1-6 of this code to determine if the prior criminal conviction bears a rational nexus to the license being sought;

(4) Has not been released or discharged with other than honorable conditions from any of the armed services of the United States or that of any other nation;

(5) Has passed an examination conducted by the Commissioner of Labor or under his or her supervision to determine his or her competency to obtain a license to practice as an examiner;

(6) Has satisfactorily completed not less than six months of internship training; and

(7) Has met any other qualifications of education or training established by the Commissioner of Labor in his or her sole discretion which qualifications are to be at least as stringent as those recommended by the American Polygraph Association.

(c) The Commissioner of Labor may designate and administer any test he or she considers appropriate to those persons applying for a license to administer psychophysiological detection of deception, lie detector, or similar examination. The test shall be designed to ensure that the applicant is thoroughly familiar with the code of ethics of the American Polygraph Association and has been trained in accordance with association rules. The test must also include a rigorous examination of the applicant’s knowledge of and familiarity with all aspects of operating psychophysiological detection of deception equipment and administering psychophysiological detection of deception examinations.

(d) The license to administer psychophysiological detection of deception, lie detector, or similar examinations to any person shall be issued for a period of one year. It may be reissued from year to year. The licenses to be issued are:

(1) "Class I license" which authorizes an individual to administer psychophysiological detection of deception examinations for all purposes which are permissible under the provisions of this article and other applicable laws and rules.

(2) "Class II license" which authorizes an individual who is a full-time employee of a law-enforcement agency to administer psychophysiological detection of deception examinations to its employees or prospective employees only.

(e) The Commissioner of Labor shall charge an annual fee to be established by legislative rule. All fees paid pursuant to this section 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 Psychophysiological Examiners Fund and expended for the implementation and enforcement of this section. Through June 30, 2019, amounts collected which are found from time to time to exceed funds needed for the purposes set forth in this section 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. In addition to any other information required, an application for a license shall include the applicant's Social Security number.

(f) The Commissioner of Labor shall propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code governing the administration of psychophysiological detection of deception, lie detector, or similar examination to any person: *Provided*, That all applicable rules in effect on the effective date of §21-5-5a, §21-5-5b, §21-5-5c, and §21-5-5d of this code will remain in effect until amended, withdrawn, revoked, repealed, or replaced. The legislative rules shall include:

(1) The type and amount of training or schooling necessary for a person before which he or she may be licensed to administer or interpret a psychophysiological detection of deception, lie detector, or similar examination;

(2) Testing requirements, including the designation of the test to be administered to persons applying for licensure;

(3) Standards of accuracy which shall be met by machines or other devices to be used in psychophysiological detection of deception, lie detector, or similar examination;

(4) The conditions under which a psychophysiological detection of deception, lie detector, or similar examination may be administered;

(5) Fees for licenses, renewals of licenses, and other services provided by the commissioner;

(6) Any other qualifications or requirements, including continuing education, established by the commissioner for the issuance or renewal of licenses; and

(7) Any other purpose to carry out the requirements of §21-5-5a, §21-5-5b, §21-5-5c, and

§21-5-5d of this code.

§21-5-5d. Penalties; cause of action.

(a) It shall be a misdemeanor to administer or interpret a psychophysiological detection of deception, lie detector or similar examination utilizing mechanical or electronic measures of physiological reactions to evaluate truthfulness without having received a valid and current license to do so as issued by the commissioner of labor or in violation of any rule or regulation promulgated by the commissioner under section five-c of this article. Any person convicted of violating section five-c shall be fined not more than $500.

(b) Any person who violates section five-b of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $500.

(c) Any employee or prospective employee has a right to sue an employer or prospective employer for a violation of the provisions of section five-b of this article. If successful, the employee or prospective employee shall recover threefold the damages sustained by him or her, together with reasonable attorneys' fees, filing fees and reasonable costs of the action. Reasonable costs of the action may include, but shall not be limited to, the expenses of discovery and document reproduction. Damages may include, but shall not be limited to, back pay for the period during which the employee did not work or was denied a job.

§21-5-6. Refusal to pay wages or redeem orders.

If any person, firm or corporation shall refuse for the period of five days to settle with and pay any of its employees at the intervals of time as provided in section three of this article, or to provide fringe benefits after the same are due, or shall neglect or refuse to redeem any cash orders provided for in this article, within the time specified, if presented, and suit be brought for the amount overdue and unpaid, judgment for the amount of such claim proven to be due and unpaid, with legal interest thereon until paid, shall be rendered in favor of the plaintiff in such action; and, if the employee continues to hold the cash order herein provided for, given for payment of labor, in case of the insolvency of the person, firm or corporation giving same, such employee shall not lose his lien and preference under existing laws.

§21-5-7. Prime contractor's responsibility for wages and benefits.

(a) Whenever any person, firm, or corporation shall contract with another for the performance of any work which the prime contracting person has undertaken to perform for another, the prime contractor shall become civilly liable to employees engaged in the performance of work under the contract for the payment of wages and fringe benefits relating to such work only, exclusive of attorney's fees, interest, liquidated damages, or any other damages of any kind, as provided in §21-5-4(e) of this code, or other applicable law and/or common law, to the extent that the employer of the employee fails to pay the wages and fringe benefits: for work performed under the contract with the prime contractor. The employer, and its shareholders, owners, directors, and officers shall be personally and civilly liable to the prime contractor for any sums paid under this section, including attorney's fees.

(b) Any individual or entity seeking redress pursuant to subsection (a) of this section must:

(1) Notify the prime contractor, by certified mail, only that wages or fringe benefits have not been paid within 100 days of the date the wages or fringe benefits become payable to the employee; and

(2) Commence the action within one year of the date the employee delivered notice to the prime contractor pursuant to subdivision (1) of this subsection.

(c) The employer of the employee to whom wages and/or fringe benefits are owed, shall whenever feasible provide, immediately upon request by the employee or the prime contractor, complete payroll records relating to work performed under the contract with the prime contractor.

(d) Whenever the employee to whom wages and/or fringe benefits are due is represented by a union or other plan administrator, the union or other plan administrator, shall whenever feasible, immediately upon notice of a claim hereunder, cooperate with the employee and the prime contractor to identify and quantify the wages and fringe benefits owed for work performed under the contract with the prime contractor. Further, if the union or agents thereof or other plan administrator, including, but not limited to, third party administrators, trustees, administrators, or employees, become aware that an employer is not timely in the payment of wages and/or fringe benefits, the union or other plan administrator shall immediately notify the affected employee and the prime contractor for whom the affected employee provided work.

(e) A prime contractor must notify the owner and the architect prior to the completion of the contract if any subcontractor has not been paid in full.

§21-5-8. Checkweighman where wages depend on production.

Where the amount of wages paid to any of the persons employed in any manufacturing, mining, or other enterprise employing labor, depends upon the amount produced by weight or measure, the persons so employed may, at their own cost, station or appoint at each place appointed for the weighing or measuring of the products of their labor a checkweighman or measurer, who shall in all cases be appointed by a majority ballot of the workmen employed at the works where he is appointed to act as such checkweighman or measurer.

§21-5-8a. Deceased employees.

In the event of the death of any employee, wages due him by a person, firm or corporation not in excess of $800 may upon proper demand be paid, in the absence of actual notice of the pendency of probate proceedings, without requiring letters testamentary or of administration in the following order of preference to decedent's: (1) Surviving spouse, (2) children eighteen years of age and over in equal shares, (3) father and mother, or survivor, (4) sisters and brothers, or to the person who pays the funeral expenses. Payments under this section shall release and discharge the person, firm or corporation to the amount of such payment.

§21-5-9. Notification, posting and records.

Every person, firm and corporation shall:

(1) Notify his employees in writing, at the time of hiring of the rate of pay, and of the day, hour, and place of payment.

(2) Notify his employees in writing, or through a posted notice maintained in a place accessible to his employees of any changes in the arrangements specified above prior to the time of such changes.

(3) Make available to his employees in writing or through a posted notice maintained in a place accessible to his employees, employment practices and policies with regard to vacation pay, sick leave, and comparable matters.

(4) Furnish each employee with an itemized statement of deductions made from his wages for each pay period such deductions are made.

(5) Keep posted in a place accessible to his employees an abstract of this article furnished by the commissioner, and

(6) Make such records of the persons employed by him including wage and hour records, preserve such records for such periods of time, and make such reports therefrom to the commissioner, as the commissioner shall prescribe by regulation as necessary or appropriate for the enforcement of the provisions of this article.

§21-5-10. Provisions of law may not be waived by agreement.

Except as provided in section thirteen, no provision of this article may in any way be contravened or set aside by private agreement, and the acceptance by an employee of a partial payment of wages shall not constitute a release as to the balance of his claim and any release required as a condition of such payment shall be null and void.

§21-5-11. Administrative enforcement.

(a) The commissioner shall enforce and administer the provisions of this article in accordance with chapter twenty-nine- a of this code. The commissioner or his authorized representatives are empowered to enter and inspect such places, question such employees, and investigate such facts, conditions, or matters as they may deem appropriate, to determine whether any person, firm or corporation has violated any provision of this article, or any rule or regulation issued hereunder or which may aid in the enforcement of the provisions of this article.

(b) The commissioner or his authorized representatives shall have power to administer oaths and examine witnesses under oath, issue subpoenas, compel the attendance of witnesses, and the production of papers, books, accounts, records, payrolls, documents and testimony, and to take depositions and affidavits in any proceeding before said commissioner.

(c) In case of failure of any person to comply with any subpoena lawfully issued, or on the refusal of any witness to testify to any matter regarding which he may be lawfully interrogated, it shall be the duty of the circuit court, on application by the commissioner, to compel obedience by attachment proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein.

§21-5-12. Employees' remedies.

(a) Any person whose wages have not been paid in accord with this article, or the commissioner or his designated representative, upon the request of such person, may bring any legal action necessary to collect a claim under this article. With the consent of the employee, the commissioner shall have the power to settle and adjust any claim to the same extent as might the employee.

(b) The court in any action brought under this article may, in the event that any judgment is awarded to the plaintiff or plaintiffs, assess costs of the action, including reasonable attorney fees against the defendant. Such attorney fees in the case of actions brought under this section by the commissioner shall be remitted by the commissioner to the treasurer of the state. The commissioner shall not be required to pay the filing fee or other costs or fees of any nature or to file bond or other security of any nature in connection with such action or with proceedings supplementary thereto, or as a condition precedent to the availability to the commissioner of any process in aid of such action or proceedings. The commissioner shall have power to join various claimants in one claim or lien, and in case of suit to join them in one cause of action.

§21-5-13. Rules and regulations.

The commissioner shall make rules and regulations to the extent necessary to effectuate the purposes of this article, in accordance with the provisions of chapter twenty-nine-a of the Code of West Virginia, as amended.

§21-5-14. Employer's bond for wages and benefits.

(a) Bond required. — With the exception of those who have been doing business in this state actively and actually engaged in construction work, or the severance, production or transportation of minerals for at least one year next preceding the posting of the bond required by this section, every employer, person, firm or corporation engaged in or about to engage in construction work, or the severance, production or transportation (excluding railroads and water transporters) of minerals, shall, prior to engaging in any construction work, or the severance, production or transportation of minerals, furnish a bond on a form prescribed by the commissioner, payable to the State of West Virginia, with the condition that the person, firm or corporation pay the wages and fringe benefits of his or her or its employees when due. The amount of the bond shall be equal to the total of the employer's gross payroll for four weeks at full capacity or production, plus fifteen percent of the said total of employer's gross payroll for four weeks at full capacity or production. The amount of the bond shall increase or decrease as the employer's payroll increases or decreases: Provided, That the amount of the bond shall not be decreased, except with the commissioner's approval and determination that there are not outstanding claims against the bond: Provided, however, That if the employer, person, firm or corporation meets one of the following, then such employer, person, firm or corporation shall be exempt from the requirements of this subsection:

(1) Has been in business in another state for at least five years;

(2) Has at least $100,000 in assets; or

(3) Is a subsidiary of a parent company that has been in business for at least five years.

(b) Waiver. — The commissioner shall waive the posting of any bond required by subsection (a) of this section upon his or her determination that an employer is of sufficient financial responsibility to pay wages and fringe benefits. The commissioner shall promulgate rules and regulations according to the provisions of chapter twenty-nine-a of this code which prescribe standards for the granting of such waivers.

(c) Form of bond; filing in office of circuit clerk. — The bond may include, with the approval of the commissioner, surety bonding, collateral bonding (including cash and securities), letters of credit, establishment of an escrow account or a combination of these methods. The commissioner shall accept an irrevocable letter of credit in lieu of any other bonding requirement. If collateral bonding is used, the employer may deposit cash, or collateral securities or certificates as follows: Bonds of the United States or its possessions, or of the federal land bank, or of the homeowner's loan corporation; full faith and credit general obligation bonds of the State of West Virginia or other states, and of any county, district or municipality of the State of West Virginia or other states; or certificates of deposit in a bank in this state, which certificates shall be in favor of the state. The cash deposit or market value of such securities or certificates shall be equal to or greater than the sum of the bond.

The commissioner shall, upon receipt of any such deposit of cash, securities or certificates, promptly place the same with the State Treasurer whose duty it shall be to receive and hold the same in the name of the state in trust for the purpose for which such deposit is made. The employer making the deposit shall be entitled from time to time to receive from the State Treasurer, upon the written approval of the commissioner, the whole or any portion of any cash, securities or certificates so deposited, upon depositing with him or her in lieu thereof, cash or other securities or certificates of the classes herein specified having value equal to or greater than the sum of the bond. The commissioner shall cause a copy of the bond to be filed in the office of the clerk of the county commission of the county wherein the person, firm or corporation is doing business to be available for public inspection.

(d) Employee cause of action. — Notwithstanding any other provision in this article, any employee, whose wages and fringe benefits are secured by the bond, as specified in subsection (c) of this section, has a direct cause of action against the bond for wages and fringe benefits that are due and unpaid.

(e) Action of commissioner. — Any employee having wages and fringe benefits unpaid may inform the commissioner of the claim for unpaid wages and fringe benefits and request certification thereof. If the commissioner, upon notice to the employer and investigation, finds that such wages and fringe benefits or a portion thereof are unpaid, he or she shall make demand of such employer for the payment of such wages and fringe benefits. If payment for such wages and fringe benefits is not forthcoming within the time specified by the commissioner, not to exceed thirty days, the commissioner shall certify such claim or portion thereof, and forward the certification to the bonding company or the State Treasurer, who shall provide payment to the affected employee within fourteen days of receipt of such certification. The bonding company, or any person, firm or corporation posting a bond, thereafter shall have the right to proceed against a defaulting employer for that part of the claim the employee paid. The procedure specified herein shall not be construed to preclude other actions by the commissioner or employee to seek enforcement of the provisions of this article by any civil proceedings for the payment of wages and fringe benefits or by criminal proceedings as may be determined appropriate.

(f) Posting and reporting by employer. — With the exception of those exempt under subsection (a) of this section, any employer who is engaged in construction work or the severance, production or transportation (excluding railroad and water transporters) of minerals shall post the following in a place accessible to his or her or its employees:

(1) A copy of the bond or other evidence of surety specifying the number of employees covered as provided under subsection (a) of this section, or notification that the posting of a bond has been waived by the commissioner; and

(2) A copy of the notice in the form prescribed by the commissioner regarding the duties of employers under this section. During the first year that any person, firm or corporation is doing business in this state in construction work, or in the severance, production or transportation of minerals, such person, firm or corporation shall on or before February 1,

May, August and November of each calendar year file with the department a verified statement of the number of employees, or a copy of the quarterly report filed with the Bureau of Employment Programs showing the accurate number of employees, unless the commissioner waives the filing of the report upon his or her determination that the person, firm or corporation is of sufficient stability that the reporting is unnecessary.

(g) Termination of bond. — The bond may be terminated, with the approval of the commissioner, after an employer submits a statement, under oath or affirmation lawfully administered, to the commissioner that the following has occurred: The employer has ceased doing business and all wages and fringe benefits have been paid, or the employer has been doing business in this state for at least one year and has paid all wages and fringe benefits. The approval of the commissioner will be granted only after the commissioner has determined that the wages and fringe benefits of all employees have been paid. The bond may also be terminated upon a determination by the commissioner that an employer is of sufficient financial responsibility to pay wages and fringe benefits.

§21-5-14a. Insufficiency of bond; manner of distribution.

In the event that the claim of any employee or group of employees having wages and fringe benefits unpaid is in an amount in excess of the bond required in section fourteen of this article, the manner of distribution and order of priority of claims shall be as follows: Unpaid wages; unpaid fringe benefits; damages or expenses incurred or arising out of actual injury: Provided, That nothing contained in this section shall be construed so as to limit any other cause of action against any person, firm or corporation.

§21-5-15. Violations; cease and desist orders and appeals therefrom; criminal penalties.

(a) Any person, firm or corporation who knowingly and willfully fails to provide and maintain an adequate bond as required by section fourteen of this article is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than $200 nor more than $5,000, or imprisoned in the county jail not more than one month, or both fined and imprisoned.

(b) Any person, firm or corporation who knowingly, willfully and fraudulently disposes of or relocates assets with intent to deprive employees of their wages and fringe benefits is guilty of a felony and, upon conviction thereof, shall be fined not less than $5,000 nor more than $60,000, or imprisoned in the state correctional facility not less than one nor more than three years, or both fined and imprisoned.

(c) (1) At any time the commissioner determines that a person, firm or corporation has not provided or maintained an adequate bond, as required by section fourteen of this article, the commissioner shall issue a cease and desist order which is to be issued and posted requiring that said person, firm or corporation either post an adequate bond or cease further operations in this state within a period specified by the commissioner; which period shall be not less than five nor more than fourteen days. The cease and desist order may be issued by the commissioner at his or her own instance or at his or her direction, with or without application to or the approval of any other officer, agent, department or employee of the state or application to any court for approval thereof. Any person, firm or corporation who continues to engage in construction work or the severance, production or transportation of minerals without an approved bond after such specified period shall be guilty of a felony, and, upon conviction thereof, shall be fined not less than $5,000 nor more than $30,000, or imprisoned in the penitentiary not less than one nor more than three years, or both fined and imprisoned. Any cease and desist order issued by the commissioner pursuant to this subsection may be directed by the commissioner to the sheriff of the county wherein the business activity of which the order is the subject, or to any officer or employee of the department, commanding such sheriff, officer or employee to serve such order upon the business in question within seventy-two hours and to make proper return thereof.

(2) Any other provision of law to the contrary notwithstanding, any person against whom a cease and desist order has been directed shall be entitled to judicial review thereof by filing a verified petition taking an appeal therefrom within fifteen days from the date of service of such order. Such verified petition shall be filed in the circuit court of the county wherein service of the order was completed, at the option of the petitioner, or in the circuit court of Kanawha County, West Virginia. If the appeal is not perfected within such fifteen-day period, the cease and desist order shall be final and shall not thereafter be subject to judicial review. No appeal shall be deemed to have been perfected except upon the filing with the clerk of the circuit court of the county wherein the appeal is taken, of a bond or other security to be approved by the court, in an amount of not less than the amount of the bond otherwise required to be posted under the provisions of section fourteen of this article. The person so

filing a petition of appeal shall cause a copy of the petition and bond or other posted security to be served upon the commissioner by certified mail, return receipt requested, within seven days after the date upon which the petition for appeal is filed.

(d) Any person who threatens any officer, agent or employee of the department or other person authorized to assist the commissioner in the performance of his or her duties under any provision of section fourteen of this article or of this section or who shall interfere with or attempt to prevent any such officer, agent, employee or other person in the performance of such duties shall be guilty of a felony and, upon conviction thereof, shall be fined in an amount of not less than $1,000 nor more than $3,000 or imprisoned in the penitentiary not less than one nor more than three years, or both such fine and imprisonment.

§21-5-16. Contractors and subcontractors to notify commissioner.

Whenever a person, firm or corporation (hereinafter referred to in this section as "the prime contractor") contracts or subcontracts with an employer and such contract or subcontract contemplates the performance of either construction work or the severance, production or transportation (excluding railroads or water transporters) of minerals or any combination of the foregoing, then the prime contractor shall, within ten days next following the execution of such contract or subcontract, notify the commissioner in writing by certified mail, return receipt requested, of such contract, which notice shall include the employee's name, the location of the job site and the employer's principal business location: Provided, That if it is ascertained by the prime contractor from the commissioner that the commissioner has obtained the information required to be included in such notice from another agency of this state, then the filing of such notice by the prime contractor shall not be required. If the prime contractor is a firm, corporation or association, then any and all of the officers of such firm, corporation or association shall be responsible to see to the proper notification required by this section. If any prime contractor fails to give the notice required by this section when required to do so, such prime contractor is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than $500 nor more than $5,000.

§21-5-17. Employers prohibited from discharging employees for time lost as volunteer firemen or emergency medical service attendant.

No employer may terminate, or use any disciplinary action against, an employee who is a member of a volunteer fire department or who is an emergency medical service attendant and who, in the line of emergency duty as a volunteer fireman or an emergency medical service attendant, responds to an emergency call prior to the time he or she is due to report for work and which emergency results in a loss of time from his or her employment.

Any time lost from employment as provided in this section may be charged against the employee's regular pay or against the employee's accumulated leave, if any, at the option of the employee.

At the request of an employer, any employee losing time as provided herein shall supply his or her employer with a statement from the chief of the volunteer fire department or the supervisor or other appropriate person in charge of the emergency medical service entity stating that the employee responded to an emergency call and the time thereof.

As used in this section, "emergency" means going to, attending to or coming from: (1) A fire call; (2) a hazardous or toxic materials spill and cleanup; (3) a motor vehicle accident; or (4) any other situation to which his or her fire department or emergency medical service entity has been or later could be dispatched. The term "employer" includes any individual, partnership, association, corporation, business trust or any person or group of persons acting directly or indirectly in the interest of an employer in relation to any employee.

Any employer who willfully and knowingly violates the provisions of this section must reinstate the employee to his or her former position and shall be required to pay the employee all lost wages and benefits, including seniority, for the period between termination and reinstatement. Any action to enforce the provisions of this section must be commenced within a period of one year after the date of violation and the action must be commenced in the circuit court of the county wherein the place of employment is located.

§21-5-18. Employers prohibited from discharging employees for time lost as emergency medical service personnel.

No employer may terminate an employee who is a member of an emergency medical service and who, in the line of emergency duty as an emergency medical service member, responds to an emergency call prior to the time he is due to report for work and which emergency results in a loss of time from his employment.

Any time lost from employment as provided in this section may be charged against the employee's regular pay.

At the request of an employer, any employee losing time as provided herein shall supply his employer with a statement from the director of health stating that the employee responded to an emergency call and the time thereof.

As used in this section, "emergency" shall mean going to or coming from an actual medical emergency to prevent the imminent loss of life. The term "employer" includes any individual, partnership, association, corporation, business trust or any person or group of persons acting directly or indirectly in the interest of an employer in relation to any employee.

Any employer who willfully and knowingly violates the provisions of this section shall be required to reinstate such employee to his former position and shall be required to pay such employee all lost wages and benefits for the period between termination and reinstatement. Any action to enforce the provisions of this section shall be commenced within a period of one year after the date of violation and such action shall be commenced in the circuit court of the county wherein the place of employment is located.

§21-5A-1

Repealed.

Acts, 2016 Reg. Sess., Ch. 39

§21-5A-2

Repealed.

Acts, 2016 Reg. Sess., Ch. 39

§21-5A-3

Repealed.

Acts, 2016 Reg. Sess., Ch. 39

§21-5A-4.

Repealed.

Acts, 1991 Reg. Sess., Ch. 149.

§21-5A-5

Repealed.

Acts, 2016 Reg. Sess., Ch. 39

§21-5A-6

Repealed.

Acts, 2016 Reg. Sess., Ch. 39

§21-5A-7

Repealed.

Acts, 2016 Reg. Sess., Ch. 39

§21-5A-8

Repealed.

Acts, 2016 Reg. Sess., Ch. 39

§21-5A-9

Repealed.

Acts, 2016 Reg. Sess., Ch. 39

§21-5A-10

Repealed.

Acts, 2016 Reg. Sess., Ch. 39

§21-5A-11

Repealed.

Acts, 2016 Reg. Sess., Ch. 39

§21-5A-12

Repealed.

Acts, 2016 Reg. Sess., Ch. 39

§21-5B-1. Definitions.

(1) "Employer" means any person, partnership, firm or corporation employing one or more employees, but does not include the state, or any municipal corporation or political subdivision of the state having in force a civil service system based on merit: Provided, That the term employer shall not include any individual, corporation, business trust, or similar unit whose operations are subject to any federal act relating to equal wages for equal work, regardless of sex.

(2) "Employee" means any individual who, otherwise than as a copartner of the employer or as an independent contractor, renders personal services wholly or partly in this state to an employer who pays or agrees to pay such individual at a fixed rate: Provided, however, That where services are rendered only partly in this state, an individual is not an employee unless his contract of employment has been entered into, or payments thereunder are ordinarily made or are to be made, within this state.

(3) "Wages" means all compensation for performance of service by an employee for an employer whether paid by the employer or another person, including cash value of all compensation paid in any medium other than cash.

(4) "Rate" with reference to wages means the basis of compensation for services by an employee for an employer and includes compensation based on the time spent in the performance of such services, or on the number of operations accomplished, or on the quantity produced or handled.

(5) "Unpaid wages" means the difference between the wages actually paid to an employee and the wages required under section three of this article, to be paid to such employee.

§21-5B-2. State commissioner of labor to enforce article.

The state commissioner of labor shall have the power and it shall be his duty to carry out and enforce the provisions of this article.

§21-5B-3. Discrimination between sexes in payment of wages for work of comparable character prohibited.

(1) No employer shall: (a) In any manner discriminate between the sexes in the payment of wages for work of comparable character, the performance of which requires comparable skills; (b) pay wages to any employee at a rate less than that at which he pays wages to his employees of the opposite sex for work of comparable character, the performance of which requires comparable skills.

(2) Subsection (1) of this section does not apply where: (a) Payment is made pursuant to a seniority or merit system which does not discriminate on the basis of sex, (b) a differential in wages between employees is based in good faith on factors other than sex. No employee shall be reduced in wages in order to eliminate an existing, past or future wage discrimination or to effectuate wage equalization.

(3) No employer shall in any manner discriminate in the payment of wages against any employee because the employee has filed a complaint in a proceeding under this article, or has testified, or is about to testify, or because the employer believes that the employee may testify, in any investigation or proceedings pursuant to this article or in a criminal action pursuant to this article.

§21-5B-4. Employee's right of action against his employer.

(1) Any employee whose compensation is at a rate that is in violation of section three of this article shall have a right of action against his employer for the recovery of (a) the amount of the unpaid wages to which the employee is entitled for the one- year period preceding the commencement of the action, and (b) an additional amount as liquidated damages equal to the amount referred to in paragraph (a) of this subsection.

(2) In addition to any judgment awarded to the plaintiff, the court shall allow reasonable attorney's fees to be taxed as costs in any judgment recovered.

(3) The action for the unpaid wages and liquidated damages may be maintained by one or more employees on behalf of themselves or other employees similarly situated.

(4) No agreement for compensation at a rate of less than the rate to which such employee is entitled under this article is a defense to any action under this article.

§21-5B-5. Offenses; penalties.

In addition to the civil damages recoverable under section four of this article, any employer who violates any of the provisions of this article shall, upon conviction thereof, be guilty of a misdemeanor and, shall be fined not less than $25 nor more than $100.

§21-5B-6. Provisions of article severable.

If any provision of this article or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the provisions or application of this article which can be given effect without the invalid provisions or application, and to this end the provisions of this article are declared to be severable.

§21-5C-1. Definitions.

As used in this article:

(a) "Commissioner" means the Commissioner of Labor or his or her duly authorized representatives.

(b) "Wage and hour director" means the wage and hour director appointed by the Commissioner of Labor as Chief of the Wage and Hour Division.

(c) "Wage" means compensation due an employee by reason of his or her employment.

(d) "Employ" means to hire or permit to work.

(e) "Employer" includes the State of West Virginia, its agencies, departments, and all its political subdivisions, any individual, partnership, association, public or private corporation, or any person or group of persons acting directly or indirectly in the interest of any employer in relation to an employee; and who employs during any calendar week six or more employees as herein defined in any one separate, distinct, and permanent location or business establishment: Provided, That prior to January 1, 2015, the term "employer" does not include any individual, partnership, association, corporation, person or group of persons, or similar unit if 80 percent of the persons employed by him or her are subject to any federal act relating to minimum wage, maximum hours, and overtime compensation: Provided, however, That after December 31, 2014, for the purposes of §21-5C-3 of this code, the term "employer" does not include any individual, partnership, association, corporation, person or group of persons, or similar unit if 80 percent of the persons employed by him or her are subject to any federal act relating to maximum hours and overtime compensation.

(f) "Employee" includes any individual employed by an employer but shall not include: (1) Any individual employed by the United States; (2) any individual engaged in the activities of an educational, charitable, religious, fraternal, or nonprofit organization where the employer-employee relationship does not in fact exist, or where the services rendered to such organizations are on a voluntary basis; (3) newsboys, shoeshine boys, golf caddies, pinboys, and pin chasers in bowling lanes; (4) traveling salesmen and outside salesmen; (5) services performed by an individual in the employ of his or her parent, son, daughter, or spouse; (6) any individual employed in a bona fide professional, executive, or administrative capacity; (7) any person whose employment is for the purpose of on-the-job training; (8) any person having a physical or mental handicap so severe as to prevent his or her employment or employment training in any training or employment facility other than a nonprofit sheltered workshop; (9) any individual employed in a boys or girls summer camp; (10) any person 62 years of age or over who receives old-age or survivors benefits from the Social Security Administration; (11) any individual employed in agriculture as the word "agriculture" is defined in the Fair Labor Standards Act of 1938, as amended; (12) any individual employed as a firefighter by the state or agency thereof; (13) ushers in theaters; (14) any individual employed on a part-time basis who is a student in any recognized school

or college; (15) any individual employed by a local or interurban motorbus carrier; (16) so far as the maximum hours and overtime compensation provisions of this article are concerned, any salesman, parts man, or mechanic primarily engaged in selling or servicing automobiles, trailers, trucks, farm implements, or aircraft if employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles to ultimate purchasers; (17) any employee with respect to whom the United States Department of Transportation has statutory authority to establish qualifications and maximum hours of service; (18) any person employed on a per diem basis by the Senate, the House of Delegates, or the Joint Committee on Government and Finance of the Legislature of West Virginia, other employees of the Senate or House of Delegates designated by the presiding officer thereof, and additional employees of the Joint Committee on Government and Finance designated by such joint committee; (19) any person employed as a seasonal employee of a commercial whitewater outfitter where the seasonal employee works less than seven months in any one calendar year and, in such case, only for the limited purpose of exempting the seasonal employee from the maximum hours provisions of §21-5C-3 of this code; or (20) any person employed as a seasonal employee of an amusement park where the seasonal employee works less than seven months in any one calendar year and, in such case, only for the limited purpose of exempting the seasonal employee from the maximum hours provisions of §21-5C-3 of this code.

(g) "Work week" means a regularly recurring period of 168 hours in the form of seven consecutive 24-hour periods, need not coincide with the calendar week, and may begin any day of the calendar week and any hour of the day.

(h) "Hours worked" means the hours for which an employee is employed: Provided, That in determining hours worked for the purposes of §21-5C-2 and §21-5C-3 of this code, there shall be excluded any time spent in changing clothes or washing at the beginning or end of each workday, time spent in walking, riding, or traveling to and from the actual place of performance of the principal activity or activities which the employee is employed to perform and activities which are preliminary to or postliminary to the principal activity or activities, subject to such exceptions as the commissioner may by rules define.

(i) "Amusement park" means any person or organization which holds a permit for the operation of an amusement ride or amusement attraction under §21-10-1 et seq. of this code.

§21-5C-2. Minimum wages.

(a) Minimum wage:

(1) After June 30, 2006, every employer shall pay to each of his or her employees wages at a rate not less than $5.85 per hour.

(2) After June 30, 2007, every employer shall pay to each of his or her employees wages at a rate not less than $6.55 per hour.

(3) After June 30, 2008, every employer shall pay to each of his or her employees wages at a rate not less than $7.25 per hour.

(4) After December 31, 2014, every employer shall pay to each of his or her employees wages at a rate not less than $8.00 per hour.

(5) After December 31, 2015, every employer shall pay to each of his or her employees wages at a rate not less than $8.75 per hour.

(6) When the federal minimum hourly wage as prescribed by 29 U.S.C. §206 (a) (1) is equal to or greater than the wage rate prescribed in the applicable provision of this subsection, every employer shall pay to each of his or her employees wages at a rate of not less than the federal minimum hourly wage as prescribed by 29 U.S.C. §206 (a) (1). The minimum wage rates required under this subsection shall be thereafter adjusted in accordance with adjustments made in the federal minimum hourly rate. The adoption of the federal minimum wage provided by this subsection includes only the federal minimum hourly rate prescribed in 29 U.S.C. §206 (a) (1) and does not include other wage rates, or conditions, exclusions, or exceptions to the federal minimum hourly wage rate. In addition, adoption of the federal minimum hourly wage rate does not extend or modify the scope or coverage of the minimum wage rate required under this subsection.

(b) Training wage:

(1) Notwithstanding the provisions set forth in subsection (a) of this section to the contrary, an employer may pay an employee first hired after June 30, 2006, a subminimum training wage not less than $5.15 per hour: Provided, That an employer may pay an employee first hired after December 31, 2014, a subminimum training wage not less than $6.40 per hour.

(2) An employer may not pay the subminimum training wage set forth in subdivision (1) of this subsection to any individual:

(A) Who has attained or attains while an employee of the employer, the age of twenty years; or

(B) For a cumulative period of not more than ninety days per employee: Provided, That if any business has not been in operation for more than ninety days at the time the employer hired

the employee, the employer may pay the employee the subminimum training wage set forth in subdivision (1) of this subsection for an additional period not to exceed ninety days.

(3) When the federal subminimum training wage as prescribed by 29 U.S.C. §206 (g) (1) is equal to or greater than the wage rate prescribed in subdivision (1) of this subsection, every employer shall pay to each of his or her employees wages at a rate of not less than the federal subminimum training wage as prescribed by 29 U.S.C. §206 (g) (1). The subminimum training wage rates required under this subsection shall be thereafter adjusted in accordance with adjustments made in the federal subminimum training wage rate. The adoption of the federal subminimum training wage provided by this subsection includes only the federal subminimum training wage rate prescribed in 29 U.S.C. §206 (g) (1) and does not include other wage rates, or conditions, exclusions, or exceptions to the federal subminimum training wage rate. In addition, adoption of the federal subminimum training wage rate does not extend or modify the scope or coverage of the subminimum training wage rate required under this subsection.

(c) Notwithstanding any provision or definition to the contrary, the wages established pursuant to this section are applicable to all individuals employed by the State of West Virginia, its agencies and departments, regardless if the employee or employer are subject to any federal act relating to minimum wage: Provided, That at no time may the minimum wage established pursuant to this section fall below the federal minimum hourly wage as prescribed by 29 U.S.C. §206(a)(1), and at no time may the subminimum training wage established pursuant to this section fall below the federal subminimum training wage rate as prescribed by 29 U.S.C. §206 (g) (1).

§21-5C-3. Maximum hours; overtime compensation.

(a) On and after July 1, 1980, no employer shall employ any of his employees for a workweek longer than forty hours, unless such employee receives compensation for his employment in excess of the hours above specified at a rate of not less than one and one-half times the regular rate at which he is employed.

(b) As used in this section the "regular rate" at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf of, the employee, but shall not be deemed to include:

(1) Sums paid as gifts; payments in the nature of gifts made at Christmas time or on other special occasions, as a reward for service, the amounts of which are not measured by or dependent on hours worked, production, or efficiency;

(2) Payments made for occasional periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause; reasonable payments for traveling expenses, or other expenses, incurred by an employee in the furtherance of his employer's interests and properly reimbursable by the employer, and other similar payments to an employee which are not made as compensation for his hours of employment;

(3) Sums paid in recognition of services performed during a given period if either: (a) Both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement or promise causing the employee to expect such payments regularly; or (b) the payments are made pursuant to a bona fide profit-sharing plan or trust or bona fide thrift or savings plan, meeting the requirements of the commissioner set forth in appropriate regulation which he shall issue, having due regard among other relevant factors, to the extent to which the amounts paid to the employee are determined without regard to hours of work, production or efficiency; or (c) the payments are talent fees (as such talent fees are defined and delimited by regulations of the commissioner) paid to performers, including announcers, on radio and television programs;

(4) Contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old-age, retirement, life, accident, or health insurance or similar benefits for employees;

(5) Extra compensation provided by a premium rate paid for certain hours worked by the employee in any day or workweek because such hours are hours worked in excess of eight in a day or in excess of the maximum workweek applicable to such employee under subsection (a) or in excess of the employee's normal working hours or regular working hours, as the case may be;

(6) Extra compensation provided by a premium rate paid for work by the employee on

Saturdays, Sundays, holidays or regular days of rest, or on the sixth or seventh day of the workweek, where such premium rate is not less than one and one-half times the rate established in good faith for like work performed in nonovertime hours on other days; or

(7) Extra compensation provided by a premium rate paid to the employee, in pursuance of an applicable employment contract or collective bargaining agreement, for work outside of the hours established in good faith by the contract or agreement as the basic, normal or regular workweek where such premium rate is not less than one and one-half times the rate established in good faith by the contract or agreement for like work performed during such workweek.

(c) No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of the maximum workweek applicable to such employee under subsection (a) if such employee is employed pursuant to a bona fide individual contract, or pursuant to an agreement made as a result of collective bargaining by representatives of employees, if the duties of such employee necessitate irregular hours of work, and the contract or agreement (1) specifies a regular rate of pay of not less than the minimum hourly rate provided in section two and compensation at not less than one and one-half times such rate for all hours worked in excess of such maximum workweek, and (2) provides a weekly guaranty of pay for not more than sixty hours based on the rates so specified.

(d) No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of the maximum workweek applicable to such employee under such subsection if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, the amount paid to the employee for the number of hours worked by him in such workweek in excess of the maximum workweek applicable to such employee under such subsection:

(1) In the case of an employee employed at piece rates, is computed at piece rates not less than one and one-half times the bona fide piece rates applicable to the same work when performed during nonovertime hours; or

(2) In the case of an employee performing two or more kinds of work for which different hourly or piece rates have been established, is computed at rates not less than one and one-half times such bona fide rates applicable to the same work when performed during nonovertime hours; or

(3) Is computed at a rate not less than one and one-half times the rate established by such agreement or understanding as the basic rate to be used in computing overtime compensation thereunder: Provided, That the rate so established shall be authorized by regulation by the commissioner as being substantially equivalent to the average hourly earnings of the employee, exclusive of overtime premiums, in the particular work over a representative period of time; and if (i) the employee's average hourly earnings for the workweek exclusive of payments described in subdivisions (1) through (7) of subsection (b) are not less than the minimum hourly rate required by applicable law, and (ii) extra overtime

compensation is properly computed and paid on other forms of additional pay required to be included in computing the regular rate.

(e) Extra compensation paid as described in subdivisions (5), (6) and (7) of subsection (b) shall be creditable toward overtime compensation payable pursuant to this section.

(f) (1) Employees of county and municipal governments may receive, in accordance with this subsection and in lieu of overtime compensation, compensatory time off at a rate not less than one and one-half hours for each hour of employment for which overtime is required pursuant to this section.

(2) County and municipal governments may provide compensatory time under subdivision (1) of this subsection, only pursuant to a written agreement arrived at between the employer and employee before the performance of the work, and recorded in the employer's record of hours worked, and if the employee has not accrued compensatory time in excess of the limit prescribed in subdivision (3) of this subsection. Any written agreement may be modified at the request of either the employer or the employee, but under no circumstances shall changes in the agreement deny an employee compensatory time heretofore acquired.

(3) An employee may accrue up to four hundred eighty hours of compensatory time if the employee's work is a public safety activity, an emergency response activity or a seasonal activity. An employee engaged in other work for a county or municipal government may accrue up to two hundred forty hours of compensatory time. Any such employee who has accrued four hundred eighty or two hundred forty hours of compensatory time, as the case may be, shall for additional overtime hours of work, be paid overtime compensation. If compensation is paid to an employee for accrued compensatory time off, such compensation shall be paid at the regular rate earned by the employee at the time the employee receives such payment.

(4) An employee who has accrued compensatory time off authorized to be provided under subdivision (1) of this subsection shall, upon termination of employment, be paid for the unused compensatory time at a rate of compensation not less than:

(A) The average regular rate received by such employee during the last three years of the employee's employment; or

(B) The final regular rate received by such employee, whichever is higher.

(5) An employee of a county or municipal government:

(A) Who has accrued compensatory time off authorized to be provided under subdivision (1) of this subsection; and

(B) Who has requested the use of such compensatory time, shall be permitted by the employee's employer to use such time within a reasonable time after making the request if the use of the compensatory time does not unduly disrupt the operation of the public agency.

Compensatory time must be used within one year from the time it was acquired.

(6) For purposes of this subsection the terms "compensatory time" and "compensatory time off" mean hours during which an employee is not working, which are not counted as hours worked during the applicable workweek or other work period for purposes of overtime compensation, and for which the employee is compensated at the employee's regular rate.

§21-5C-4. Credits.

Prior to January 1, 2015, in determining whether an employer is paying an employee wages and overtime compensation as provided in sections two and three of this article, there shall be provided in accordance with the regulations which shall be promulgated by the commissioner a credit to the employer of twenty percent of the hourly rate of the amount paid an employee customarily receiving gratuities, and a reasonable credit for board and lodging furnished to an employee: Provided, That after December 31, 2014, in determining whether an employer is paying an employee wages and overtime compensation as provided in sections two and three of this article, there shall be provided in accordance with the legislative rules proposed for promulgation by the commissioner a credit to the employer of seventy percent of the hourly rate of the amount paid an employee customarily receiving gratuities, and a reasonable credit for board and lodging furnished to an employee. The commissioner shall propose legislative rules for promulgation relating to maximum allowances to employers for room and board furnished to employees: Provided, however, That the employer shall be required to furnish to the commissioner upon request, documentary evidence that the employee is receiving at least seventy percent of the minimum wage in gratuities or is receiving room and lodging in accordance with the rules and regulations promulgated by the commissioner.

§21-5C-5. Keeping of records.

Every employer subject to the provisions of this article shall make or cause to be made, and shall keep and preserve at his place of business for a period of two years, a written record or records of the name and address of each of his employees as herein defined, his rate of pay, hours of employment, payroll deductions, and amount paid him for each pay period.

§21-5C-6. Duties and powers of commissioner of labor.

(a) It shall be the duty of the commissioner to enforce and administer the provisions of this article and rules promulgated thereunder, and to promulgate such rules and regulations, in accordance with chapter twenty-nine-a of the Code of West Virginia, 1931, as amended, as shall be needful to give effect to the provisions of this article. The commissioner is authorized to promulgate emergency rules prior to January 1, 2015, to implement and administer the amendments made to this article in 2014. If the commissioner makes a finding that a conflict exists between state and federal standards defining employee exemptions, the commissioner is further authorized to promulgate emergency rules prior to January 1, 2015, for the purpose of revising the state standards to conform with federal law.

(b) The commissioner is authorized at reasonable times to enter the place of business of an employer subject to the provisions of this article, for purposes of: (1) Inspecting and examining, and copying, photographing or otherwise reproducing all payroll records of the employer directly relating to wages and hours of employment of persons employed by him or her; (2) questioning or otherwise examining persons employed by the employer on the subject of wages and hours of their employment, and gratuities received or earned in such employment.

(c) The commissioner is authorized and empowered to make investigations to determine whether there is reasonable cause to believe that any person is an employer as defined in section one of this article, or whether there is reasonable cause to believe that any provision of this article is being or has been violated.

(d) The commissioner is authorized and empowered to file criminal complaints against persons whom the commissioner has reasonable cause to believe have committed any offense created or defined by the provisions of this article.

(e) The commissioner is authorized and empowered to institute civil actions seeking appropriate injunctive relief to compel an employer subject to this article to comply with the provisions of this article.

(f) The commissioner shall enforce and administer the provisions of this article in accordance with chapter twenty-nine-a of this code. The commissioner or his or her authorized representatives are empowered to enter and inspect such places, question such employees and investigate such facts, conditions, or matters as they may deem appropriate, to determine whether any person, firm or corporation has violated any provision of this article, or any rule or regulation issued hereunder or which may aid in the enforcement of the provisions of this article.

§21-5C-7. Offenses and penalties.

(a) Any employer who wilfully discharges or in any manner wilfully discriminates against any employee because such employee has made complaint to his employer, or to the commissioner, that he has not been paid wages in accordance with the wage and hour provisions of this article, or because such employee has instituted or is about to institute any civil action, or file any petition or criminal complaint against the employer by reason of the provisions of this article, or because such employee has testified or is about to testify in any administrative proceeding, civil action, or criminal action under this article, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than $100 nor more than $500.

(b) Any employer, labor organization, employee, or other person, alone or in concert, who in any manner wilfully discriminates against any person with respect to wages, hours of work or overtime compensation because of race, religion, color, national origin, ancestry, age or sex, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than two hundred and fifty nor more than $1,000, or imprisoned in the county jail for not more than one year, or both fined and imprisoned.

(c) Any employer who wilfully violates any other provision of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $100.

§21-5C-8. Civil remedy of employee; limitation of actions.

(a) Any employer who pays an employee less than the applicable wage rate to which such employee is entitled under or by virtue of this article shall be liable to such employee for the unpaid wages; an agreement by an employee to work for less than the applicable wage rate is hereby declared by the Legislature of West Virginia to be against public policy and unenforceable.

(b) Any person whose wages have not been paid in accord with this article, or the commissioner or his designated representative, upon the request of such person, may bring any legal action necessary to collect a claim under this article. With the consent of the employee, the commissioner shall have the power to settle and adjust any claim to the same extent as might the employee.

(c) The court in any action brought under this article may, in the event that any judgment is awarded to the plaintiff or plaintiffs, assess costs of the action, including reasonable attorney fees against the defendant. Such attorney fees in the case of action brought under this section by the commissioner shall be remitted by the commissioner to the treasurer of the state. The commissioner shall not be required to pay the filing fee or other costs or fees of any nature or to file a bond or other security of any nature in connection with such action or with proceedings supplementary thereto, or as a condition precedent to the availability to the commissioner of any process in aid of such action or proceedings. The commissioner shall have power to join various claimants in one claim or lien, and in case of suit to join them in one cause of action.

(d) In any such action the amount recoverable shall be limited to such unpaid wages as should have been paid by the employer within two years next preceding the commencement of such action. Nothing in this article shall be construed to limit the right of an employee to recover upon a contract of employment.

§21-5C-9. Wage and hour division; wage and hour director; duties.

The commissioner of labor shall establish within the department of labor a division to be known as the wage and hour division, which shall be a separate administrative division with respect to personnel and duties. The division shall be in charge of a wage and hour director. The wage and hour director, employees, and representatives within the wage and hour division shall, under the direction of the commissioner of labor, carry out such duties and functions as are necessary to effectuate the provisions of this article. The wage and hour director, representatives and employees within the wage and hour division shall be selected by the commissioner of labor in the same manner as other employees of the department of labor.

§21-5C-10. Relation to other laws.

Any standards relating to minimum wages, maximum hours, overtime compensation or other working conditions in effect under any other law of this state on the effective date of this article, which are more favorable to employees than those applicable to such employees under this article shall not be deemed to be amended, rescinded or otherwise affected by this article but shall continue in full force and effect and may be enforced as provided by law.

§21-5C-11. Severability.

If any provision of this article or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

§21-5D-1. Legislative findings.

The Legislature hereby finds that there is a growing crisis in this country and state affecting the stability of our families, that the family unit is being torn apart due to the need for families to have two income producing parents. In order to address this situation and to provide for the love, nurturing and education of our children, the Legislature hereby enacts "The Parental Leave Act."

§21-5D-2. Definitions.

As used in this article:

(a) "Commissioner" means the commissioner of the department of labor.

(b) "Dependent" means any person who is living with or dependent upon the income of any employee whether related by blood or not.

(c) Employee. --

(1) "Employee" means any individual, hired for permanent employment, who has worked for at least twelve consecutive weeks performing services for remuneration within this state for any department, division, board, bureau, agency, commission or other unit of state government, or any county board of education in the state.

(2) "Employee" does not include:

(A) Individuals employed by persons who are not "employers" as defined by this article;

(B) Elected public officials or the members of their immediate personal staffs;

(C) Principal administrative officers of any department, division, board, bureau, agency, commission or other unit of state government, or any county board of education in the state; or

(D) A person in a vocational rehabilitation facility certified under federal law who has been designated an evaluee, trainee or work activity client.

(d) Employer. -- "Employer" includes any department, division, board, bureau, agency, commission or other unit of state government and any county board of education in the state.

(e) "Employment benefits" means all benefits, other than salary or wages, provided or made available to employees by an employer, and includes group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits and pensions, regardless of whether such benefits are provided by a policy or practice of an employer or by an employee benefit plan as defined in the federal Employee Retirement Income Security Act of 1974.

(f) The term "health care" or "health care services" means clinically related preventive, diagnostic, treatment or rehabilitative services whether provided in the home, office, hospital, clinic or any other suitable place, provided or prescribed by any health care provider or providers. Such services include, among others, drugs and medical supplies, appliances, laboratory, preventive, diagnostic, therapeutic and rehabilitative services, hospital care, nursing home and convalescent care, medical physicians, osteopathic

physicians, chiropractic physicians, and such other surgical, dental, nursing, pharmaceutical, and podiatric services and supplies as may be prescribed by such health care providers.

(g) "Health care provider" means a person, partnership, corporation, facility or institution licensed, certified or authorized by law to provide professional health care services in this state to an individual during this individual's medical care, treatment or confinement.

(h) "Parent" means a biological, foster or adoptive parent, a stepparent or a legal guardian.

(i) "Serious health condition" means a physical or mental illness, injury or impairment which involves:

(1) Inpatient care in a hospital, hospice or residential health care facility; or

(2) Continuing treatment, health care or continuing supervision by a health care provider.

(j) "Son" or "daughter" means an individual who is a biological, adopted or foster child, a stepchild or a legal ward, and is (1) under eighteen years of age; or (2) eighteen years of age or older and incapable of self-care because of mental or physical disability.

(k) "Spouse" means any person legally married to an "employee" covered under this article.

§21-5D-3. Scope.

Nothing in this article prohibits an employer from providing employees with rights to family leave which are more generous to the employee than the rights provided under this article.

§21-5D-4. Family leave.

(a) An employee shall be entitled to a total of twelve weeks of unpaid family leave, following the exhaustion of all his or her annual and personal leave, during any twelve-month period:

(1) Because of the birth of a son or daughter of the employee;

(2) Because of the placement of a son or daughter with the employee for adoption; or

(3) In order to care for the employee's son, daughter, spouse, parent or dependent who has a serious health condition.

(b) In the case of a son, daughter, spouse, parent or dependent who has a serious health condition, such family leave may be taken intermittently when medically necessary.

(c) An employee may take family leave on a part-time basis and on a part-time leave schedule, but the period during which the number of work weeks of leave may be taken may not exceed twelve consecutive months, and such leave shall be scheduled so as not to disrupt unduly the operations of the employer.

(d) (1) If a leave because of birth or adoption is foreseeable, the employee shall provide the employer with two weeks written notice of such expected birth or adoption.

(2) If a leave under this section is foreseeable because of planned medical treatment or supervision, the employee:

(A) Shall make a reasonable effort to schedule the treatment or supervision so as not to disrupt unduly the operations of the employer, subject to the approval of the health care provider of the employee's son, daughter, parent or dependent; and

(B) Shall provide the employer with two weeks written notice of the treatment or supervision.

(e) This article shall not be construed as granting an employee the family leave rights provided in this section if he or she is entitled to such family leave rights under any other provision of this code.

§21-5D-5. Certification.

(a) If an employee requests family leave to care for a family member with a serious health condition as authorized in this article, the employer may require the employee to provide certification by a health care provider of the health condition.

(b) The certification shall be sufficient if it contains the following:

(1) That the child, dependent, parent or employee has a serious health condition;

(2) The date the serious health condition commenced and its probable duration; and

(3) The medical facts regarding the serious health condition.

§21-5D-6. Position upon return from leave.

(a) The position held by the employee immediately before the leave is commenced shall be held upon a period not to exceed the twelve-week period of the parental leave and the employee shall be returned to that position: Provided, That the employer may employ a temporary employee or temporary employees to fill said position for the period of the parental leave.

(b) No employer may, because an employee received family leave or medical leave, reduce or deny any employment benefit or seniority which accrued to the employee before his or her leave commenced.

§21-5D-7. Seniority and employment benefits.

(a) Nothing in this section entitles any returning employee to the accrual of any seniority or employment benefits during any period of family leave.

(b) During any family leave by an employee, the employer shall continue group health insurance coverage for such employee: Provided, That the employee shall pay the employer the premium costs of such group health insurance coverage.

§21-5D-8. Prohibited acts.

No person may interfere with, restrain or deny the exercise of any right provided under this article.

§21-5D-9. Posting notice.

Each employer shall post, in one or more conspicuous places where notices to employees are customarily posted, a notice in a form approved by the department setting forth an employee's rights under this article.

§21-5E-1. Legislative findings and purpose.

[Repealed.]

§21-5E-2. Definitions.

[Repealed.]

§21-5E-3. Discrimination between sexes in payment of wages for work of comparable character prohibited.

[Repealed.]

§21-5E-4. Employee's right of action against employer.

[Repealed.]

§21-5E-5. Establishment of the Equal Pay Commission; appointment of members.

[Repealed.]

§21-5E-6. Commission's duties; promulgation of rules.

[Repealed.]

§21-5F-1. Legislative findings and purpose.

The Legislature finds and declares that:

(1) It is essential that qualified registered nurses and other licensed health care workers providing direct patient care be

available to meet the needs of patients;

(2) Quality patient care is jeopardized by nurses that work unnecessarily long hours in hospitals;

(3) Health care workers, especially nurses, are leaving their profession because of workplace stresses, long work hours and depreciation of their essential role in the delivery of quality, direct patient care;

(4) It is necessary to safeguard the efficiency, health and general well-being of health care workers in hospitals, as well as the health and general well-being of the persons who use their services;

(5) It is further necessary that health care workers be aware of their rights, duties and remedies with regard to hours worked

and patient safety; and

(6) Hospitals should provide adequate safe nursing staffing without the use of mandatory overtime.

§21-5F-2. Definitions.

For the purposes of this article:

(1) "Hospital" means a facility licensed under the provisions of article five-b, chapter sixteen of this code, but does not include hospitals operated by state or federal agencies.

(2) "Nurse" means a certified or licensed practical nurse or a registered nurse who is providing nursing services and is involved in direct patient care activities or clinical services, but does not include certified nurse anesthetists. Nurse managers are included with respect to their delivery of in-hospital patient care, but this is in no way intended to impact on their 24-hour management responsibility for a unit, area or service.

(3) "Overtime" means the hours worked in excess of an agreed upon, predetermined, regularly scheduled shift.

(4) "Taking action against" means discharging; disciplining; threatening; reporting to the board of nursing; discriminating against; or penalizing regarding compensation, terms, conditions, location or privileges of employment.

(5) "Unforeseen emergent situation" means an unusual, unpredictable or unforeseen circumstance such as, but not limited to, an act of terrorism, a disease outbreak, adverse weather conditions or natural disasters. An unforeseen emergent situation does not include situations in which the hospital has reasonable knowledge of increased patient volume or decreased staffing, including, but not limited to, scheduled vacations and scheduled health care worker medical leave.

§21-5F-3. Hospital nursing overtime limitations and requirements.

(a) Except as provided in subsections (b), (c), (d), (e) and (f) of this section, a hospital is prohibited from mandating a nurse, directly or through coercion, to accept an assignment of overtime and is prohibited from taking action against a nurse solely on the grounds that the nurse refuses to accept an assignment of overtime at the facility if the nurse declines to work additional hours because doing so may, in the nurse's judgment, jeopardize patient or employee safety.

(b) Notwithstanding subsections (a) and (g) of this section, a nurse may be scheduled for duty or mandated to continue on duty in overtime status in an unforeseen emergent situation that jeopardizes patient safety.

(c) Subsections (a) and (g) of this section do not apply when a nurse may be required to fulfill prescheduled on-call time, but nothing in this article shall be construed to permit an employer to use on-call time as a substitute for mandatory overtime.

(d) Notwithstanding subsections (a) and (g) of this section, a nurse may be required to work overtime to complete a single patient care procedure already in progress, but nothing in this article shall be construed to permit an employer to use a staffing pattern as a means to require a nurse to complete a procedure as a substitute for mandatory overtime.

(e) Subsection (a) of this section does not apply when a collective bargaining agreement is in place between nurses and the hospital which is intended to substitute for the provisions of this article by incorporating a procedure for the hospital to require overtime.

(f) Subsection (a) of this section does not apply to voluntary overtime.

(g) In the interest of patient safety, any nurse who works twelve or more consecutive hours, as permitted by this section, shall be allowed at least eight consecutive hours of off-duty time immediately following the completion of the shift. Except as provided in subsections (b), (c) and (d) of this section, no nurse shall work more than sixteen hours in a twenty-four hour period. The nurse is responsible for informing the employer hospital of other employment experience during the twenty-four hour period in question if this provision is to be invoked. To the extent that an on-call nurse has actually worked sixteen hours in a hospital, efforts shall be made by the hospital to find a replacement nurse to work.

Each hospital shall designate an anonymous process for patients and nurses to make staffing complaints related to patient safety.

(h) Each hospital shall post, in one or more conspicuous place or places where notices to employee nurses are customarily posted, a notice in a form approved by the commissioner setting forth a nurse's rights under this article.

§21-5F-4. Enforcement; offenses and penalties.

(a) Pursuant to the powers set forth in article one of this chapter, the Commissioner of Labor is charged with the enforcement of this article. The commissioner shall propose legislative and procedural rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to establish procedures for enforcement of this article. These rules shall include, but are not limited to, provisions to protect due process requirements, a hearings procedure, an appeals procedure, and a notification procedure, including any signs that must be posted by the facility.

(b) Any complaint must be filed with the commissioner regarding an alleged violation of the provisions of this article must be made within thirty days following the occurrence of the incident giving rise to the alleged violation. The commissioner shall keep each complaint anonymous until the commissioner finds that the complaint has merit. The commissioner shall establish a process for notifying a hospital of a complaint.

(c) The administrative penalty for the first violation of this article is a reprimand.

(d) The administrative penalty for the second offense of this article is a reprimand and a fine not to exceed $500.

(e) The administrative penalty for the third and subsequent offenses is a fine of not less than $2,500 and not more than $5,000 for each violation.

(f) To be eligible to be charged of a second offense or third offense under this section, the subsequent offense must occur within twelve months of the prior offense.

(g) All moneys paid as administrative penalties pursuant to this section shall be deposited into the General Revenue Fund.

§21-5F-5. Relation to other laws.

Any law of this state currently enacted shall not be deemed to be amended, rescinded or otherwise affected by any provision of this article, but shall continue in full force and effect.

§21-5G-1. Definitions.

As used in this article:

(1) The term “person” means any individual, proprietorship, partnership, firm, association, corporation, labor organization or any other legal entity.

(2) The term “labor organization” means any organization, agency, union or employee representation committee of any kind that exists, in whole or in part, to assist employees in negotiating with employers concerning grievances, labor disputes, wages, rates of pay or other terms or conditions of employment.

(3) The term “employer” means any person employing at least one individual in the state or any agent of an employer employing at least one individual in the state.

§21-5G-2. Individual's right to refrain from affiliating with a labor organization.

A person may not be required, as a condition or continuation of employment, to:

(1) Become or remain a member of a labor organization;

(2) Pay any dues, fees, assessments or other similar charges, however denominated, of any kind or amount to any labor organization; or

(3) Pay any charity or third party, in lieu of those payments, any amount that is equivalent to or a pro rata portion of dues, fees, assessments or other charges required of members of a labor organization.

§21-5G-3. Contracting for exclusion from employment because of affiliation or nonaffiliation with a labor organization.

Any agreement, contract, understanding or practice, either written or oral, implied or expressed, between any labor organization and an employer or public body which provides for the exclusion from employment of any person because of membership in, affiliation with, resignation from, or refusal to join or affiliate with any labor organization or employee organization of any kind is hereby declared to be unlawful, null and void, and of no legal effect.

§21-5G-4. Criminal penalty.

Any person who knowingly requires another person, as a condition or continuation of employment, to perform any of the conduct enumerated in section two of this article, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $500 nor more than $5,000.

§21-5G-5. Civil relief; damages.

Any person injured as a result of any violation or threatened violation of this article shall have a cause of action, and, if proven in a court of competent jurisdiction, may be entitled to the following relief against a person or persons violating or threatening to violate this article:

(1) Compensatory damages;

(2) Costs and reasonable attorney fees, which shall be awarded if the injured person substantially prevails;

(3) Punitive damages in accordance with the provisions of section twenty-nine, article seven, chapter fifty-five of this code;

(4) Preliminary and permanent injunctive relief; and

(5) Any other appropriate equitable relief.

§21-5G-6. Exceptions.

This article does not apply:

(1) To any employee or employer covered by the federal Railway Labor Act, 45 U. S. C. §151, et seq.;

(2) To any employee of the United States or a wholly owned corporation of the United States;

(3) To any employee who is employed on property over which the United States government has exclusive jurisdiction for purposes of labor relations; or

(4) Where the provisions of this article would otherwise conflict with, or be preempted by, federal law.

§21-5G-7. Applicability; severability.

(a) Applicability. — This article applies to any written or oral contract or agreement entered into, modified, renewed or extended on or after July 1, 2016: Provided, That the provisions of this article do not otherwise apply to or abrogate a written or oral contract or agreement in effect on or before June 30, 2016.

(b) Severability. — If any provision of this article or the application of any such provision of this article to any person or circumstance is held invalid by a court of competent jurisdiction, the remainder of this article or the application of its provisions to persons or circumstances other than those to which it is held invalid is not affected thereby.

§21-5H-1. Employer access to employee or potential employee personal accounts prohibited.

(a) An employer shall not do any of the following:

(1) Request, require or coerce an employee or a potential employee to disclose a username and password, password or any other authentication information that allows access to the employee or potential employee's personal account;

(2) Request, require or coerce an employee or a potential employee to access the employee or the potential employee’s personal account in the presence of the employer; or

(3) Compel an employee or potential employee to add the employer or an employment agency to their list of contacts that enable the contacts to access a personal account.

(b) Nothing in this section prevents an employer from:

(1) Accessing information about an employee or potential employee that is publicly available;

(2) Complying with applicable laws, rules or regulations;

(3) Requiring an employee to disclose a username or password or similar authentication information for the purpose of accessing:

(A) An employer-issued electronic device; or

(B) An account or service provided by the employer, obtained by virtue of the employee's employment relationship with the employer, or used for the employer's business purposes;

(4) Conducting an investigation or requiring an employee to cooperate in an investigation. The employer may require an employee to share the content that has been reported to make a factual determination, if the employer has specific information about an unauthorized transfer of the employer's proprietary information, confidential information or financial data, to an employee's personal account;

(5) Prohibiting an employee or potential employee from using a personal account during employment hours, while on employer time or for business purposes; or

(6) Requesting an employee to share specific content regarding a personal account for the purposes of ensuring compliance with applicable laws, regulatory requirements or prohibitions against work-related employee misconduct.

(c) If an employer inadvertently receives the username, password or any other authentication information that would enable the employer to gain access to the employee or potential employee's personal account through the use of an otherwise lawful technology that monitors the employer's network or employer-provided electronic devices for network security or data confidentiality purposes, then the employer is not liable for having that

information, unless the employer:

(1) Uses that information, or enables a third party to use that information, to access the employee or potential employee's personal account;

(2) After the employer becomes aware that that information was received, does not delete the information as soon as is reasonably practicable, unless that information is being retained by the employer in connection with an ongoing investigation of an actual or suspected breach of the computer, network or data security. Where an employer knows or, through reasonable efforts, should be aware that its network monitoring technology is likely inadvertently to receive such information, the employer shall make reasonable efforts to secure that information.

(d) Nothing in this section diminishes the authority and obligation of an employer to investigate complaints, allegations or the occurrence of sexual, racial, or other harassment as provided in this code.

(e) As used in this section, "personal account" means an account, service or profile on a social networking website that is used by an employee or potential employee exclusively for personal communications unrelated to any business purposes of the employer.

§21-5I-1. Short title.

This article shall be known as the West Virginia Employment Law Worker Classification Act.

§21-5I-2. Findings.

The Legislature finds as follows:

(a) Recent developments in the workforce marketplace, and in particular with the advent of the so-called “gig”, “entrepreneurial”, or “sharing” economy, have highlighted the uncertainty that currently exists with determining the correct classification of workers as independent contractors or employees. The proper classification of workers as employees or independent contractors is a complex legal issue that vexes workers and businesses as well as lawyers and the courts.

(b) Not only are the legal standards used to differentiate employees from independent contractors generally subjective in nature, but those standards differ based on the particular law at issue. As a result, some workers may be found to be employees under one law but independent contractors under another law, leaving the same person classified as an employee for some purposes but as an independent contractor for other purposes.

(c) It is in the best interests of this state, workers, and businesses for there to be certainty regarding the legal status of workers concerning workers’ compensation as defined in Chapter 23 of this code, unemployment compensation in Chapter 21A of this code, Human Rights Act rights in §5-11-1 *et seq*. of this code, and wage payment and collection in §21-5-1 *et seq*. of this code, and their applicable rights and obligations. Clarity in a worker’s classification allows businesses to comply with applicable laws, provides workers with certainty as to their benefits and obligations, and minimizes unnecessary mistakes, litigation, risk, and legal exposure laws concerning workers’ compensation in Chapter 23 of this code, unemployment compensation in Chapter 21A of this code, Human Rights Act rights in §5-11-1 *et seq*. of this code, and wage payment and collection in §21-5-1 *et seq*. of this code.

(d) It is in the best interests of workers, business, and government to have clear, objective, and certain standards for determining who is an employee and who is an independent contractor concerning workers’ compensation as defined in Chapter 23 of this code, unemployment compensation in Chapter 21A of this code, Human Rights Act rights in §5-11-1 *et seq*. *of* this code, and wage payment and collection in §21-5-1 *et seq*. of this code.

(e) The purpose of this article is to bring certainty and consistency in the laws and clarity regarding the distinction between employees and independent contractors in laws concerning workers’ compensation as defined in Chapter 23 of this code, unemployment compensation as defined in Chapter 21A of this code, Human Rights Act rights as defined in §5-11-1 *et seq*. of this code, and wage payment and collection as defined in §21-5-1 *et seq*. of this code. By doing so, the state will ensure that workers who are indeed “employees” are properly classified as such and will be afforded the legal protections and obligations that apply to such status, and that workers who desire to be, and meet the standards of being, independent contractors will be entitled to the freedoms that such a relationship provides, which will reduce unnecessary and costly litigation and confusion in the workforce marketplace and in the courts.

§21-5I-3. Certain laws may be superseded.

The purpose of this article is to bring clarity and certainty under the laws of this state with regard to differentiating employees from independent contractors in employment laws as defined in workers' compensation in Chapter 23 of this code, unemployment compensation in Chapter 21A of this code, Human Rights Act rights in §5-11-1 *et seq*. of this code, and wage payment and collection in §21-5-1 *et seq*. of this code, and by imposing objective standards for making that distinction. Consequently, all laws concerning workers' compensation in Chapter 23 of this code, unemployment compensation in Chapter 21A of this code, Human Rights Act rights in §5-11-1 *et seq*. of this code, and wage payment and collection in §21-5-1 *et seq*. of this code where the application thereof is contingent upon the classification of a worker as being an employee are superseded, to the extent necessary, by this article.

§21-5I-4. Classification of independent contractors and employees.

(a) Subject only to the provisions of subsection (b) of this section, a person shall be classified as an independent contractor under the laws of this state as defined in workers' compensation in Chapter 23 of this code, unemployment compensation in Chapter 21A of this code, Human Rights Act rights in §5-11-1 *et seq*. of this code, and wage payment and collection as defined in §21-5-1 *et seq*. of this code, if:

(1) The person signs a written contract with the principal, in substantial compliance with the terms of this subsection, that states the principal's intent to engage the services of the person as an independent contractor and contains acknowledgements that the person understands that he or she is:

(A) Providing services for the principal as an independent contractor;

(B) Not going to be treated as an employee of the principal;

(C) Not going to be provided by the principal with either workers' compensation or unemployment compensation benefits;

(D) Obligated to pay all applicable federal and state income taxes, if any, on any moneys earned pursuant to the contractual relationship, and that the principal will not make any tax withholdings from any payments from the principal; and

(E) Responsible for the majority of supplies and other variable expenses that he or she incurs in connection with performing the contracted services unless: The expenses are for travel that is not local; the expenses are reimbursed under an express provision of the contract; or the supplies or expenses reimbursed are commonly reimbursed under industry practice; and

(2) The person:

(A) Has either filed, or is contractually required to file, in regard to the fees earned from the work, an income tax return with the appropriate federal, state, and local agencies for a business or for earnings from self-employment; or

(B) Provides his or her services through a business entity, including, but not limited to, a partnership, limited liability company or corporation, or through a sole proprietorship registered with a "doing business as" as required under state or local law; and

(3) With the exception of the exercise of control necessary to ensure compliance with statutory, regulatory, licensing, permitting, or other similar obligations required by a governmental or regulatory entity, or to protect persons or property, or to protect a franchise brand, the person actually and directly controls the manner and means by which the work is to be accomplished, even though he or she may not have control over the final result of the work: *Provided*, That the required deployment, implementation, or use of any safety improvement by an independent contractor as required by contract or otherwise shall

not be considered when evaluating status as an employee or independent contractor under any state law. For purposes of this section, “safety improvement” shall mean any device, equipment, software, technology, procedure, training, policy, program, or operational practice intended and primarily used to improve or facilitate compliance with state, federal, or local safety laws or regulations or general safety concerns. This provision is satisfied even though the principal may provide orientation, information, guidance, or suggestions about the principal’s products, business, services, customers and operating systems, and training otherwise required by law; and

(4) The person satisfies three or more of the following criteria:

(A) Except for an agreement with the principal relating to final completion or final delivery time or schedule, range of work hours, or the time entertainment is to be presented if the work contracted for is entertainment, the person has control over the amount of time personally spent providing services;

(B) Except for services that can only be performed at specific locations, the person has control over where the services are performed;

(C) The person is not required to work exclusively for one principal unless:

(i) A law, regulation, or ordinance prohibits the person from providing services to more than one principal; or

(ii) A license or permit that the person is required to maintain in order to perform the work limits the person to working for only one principal at a time or requires identification of the principal;

(D) The person is free to exercise independent initiative in soliciting others to purchase his or her services;

(E) The person is free to hire employees or to contract with assistants, helpers, or substitutes to perform all or some of the work;

(F) The person cannot be required to perform additional services without a new or modified contract;

(G) The person obtains a license or other permission from the principal to utilize any workspace of the principal in order to perform the work for which the person was engaged;

(H) The principal has been subject to an employment audit by the Internal Revenue Service (IRS) and the IRS has not reclassified the person to be an employee or has not reclassified the category of workers to be employees;

(I) The person is responsible for maintaining and bearing the costs of any required business licenses, insurance, certifications, or permits required to perform the services; or

(5) The person satisfies the definition of a direct seller under Section 3508(b)(2) of the Internal Revenue Code of 1986.

(b) The classification of all workers who do not satisfy the criteria set forth in subsection (a) of this section shall be determined by the test set forth in Internal Revenue Service Rev. Ruling 87-41, for purposes of classifying workers under the laws concerning workers' compensation as defined in Chapter 23 of this code, unemployment compensation in Chapter 21A of this code, Human Rights Act rights in §5-11-1 *et seq*. of this code, and wage payment and collection in §21-5-1 *et seq*. of this code. In addition, nothing contained in said subsection requires a principal to classify a worker who meets the criteria contained therein as an independent contractor, the principal always being free to hire the worker as an employee.

§21-5I-5. Limitations as to scope of article.

The test for determining whether a person is an independent contractor or employee set forth in this article applies only for purposes of workers' compensation as defined in Chapter 23 of this code, unemployment compensation in Chapter 21A of this code, Human Rights Act rights in §5-11-1 *et seq*. of this code, and wage payment and collection in §21-5-1 *et seq*. of this code. This test has no application to other areas of law, such as whether a person is an independent contractor or an agent of principal for determining whether the law of principal and agent applies with respect to such questions as the issue of vicarious liability to a third party in tort. Further, this article does not apply with respect to organizations or persons subject to the provisions of §17-29-11 of this code.

§21-5I-6. Severability.

If any provision of this article or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this article, and to this end the provisions of this article are declared to be severable.

§21-6-1. Employment of children under fourteen.

Except as permitted and authorized by the provisions of this article, a child under fourteen years of age shall only be employed or permitted to work the following jobs: (1) Agriculture and horticulture activities which have not been declared hazardous by the secretary of the United States department of labor;

(2) Domestic services within the residence of the employer;

(3) Work for parents or legal guardian in their solely owned business, except those jobs set out in section two of this article;

(4) As actors or performers in motion pictures, theatrical, radio or television productions; and

(5) Newspaper delivery.

§21-6-2. Employment of children under eighteen in certain occupations; determination as to other occupations; exemptions for certain students performing roofing operations.

(a) A child under 18 years of age may not be employed, permitted, or suffered to work in, about, or in connection with any of the following occupations:

(1) Motor vehicle driver and outside helper whose work includes riding on a motor vehicle outside the cab for the purpose of assisting in transporting or delivery of goods;

(2) The manufacture, storage, handling or transportation of explosives or highly flammable substances;

(3) Ore reduction works, smelters, hot rolling mills, furnaces, foundries, forging shops, or in any other place in which the heating, melting, or heat treatment of metals is carried on;

(4) Logging and saw milling occupations;

(5) Power-driven woodworking machine occupations;

(6) Occupations involving exposure to radioactive substances and ionizing radiations;

(7) Power-driven hoisting apparatus occupations;

(8) Power-driven metal-forming, punching, and shearing machine occupations;

(9) Mining, including coal mining;

(10) Occupations involving slaughtering, meat-packing, or processing or rendering;

(11) Power-driven bakery machines;

(12) Power-driven paper-products machine occupations;

(13) Occupations involved in the manufacturing of brick, tile, and kindred products;

(14) Occupations involved in the operation of power-driven circular saws, band saws, and guillotine shears;

(15) Occupations involved in wrecking, demolition, and ship-breaking operations;

(16) Roofing operations above ground level, subject to subsection (d) of this section; and

(17) Excavation operations.

(b) A child under 18 years of age may not be employed or permitted to work in a bar, or be permitted, employed, or suffered to sell, dispense, or serve alcoholic beverages in any place

or establishment where the consumption of alcoholic beverages is permitted by law.

(c) A child under 18 years of age may not be employed or permitted to work in any occupation prohibited by law or determined by the commissioner to be dangerous or injurious: *Provided*, That a child between the ages of 16 and 18 years who is enrolled in, participating in, or has completed the minimum training requirements of the West Virginia State Fire Commission, West Virginia Department of Education Public Service Training, or West Virginia University fire service extension, or equivalent approved program, and who has the written consent of his or her parents or guardian, may be employed by or elected as a member of a volunteer fire department to perform firefighting functions: *Provided, however*, That no child may be permitted to operate any fire fighting vehicles, enter a burning building in the course of his or her employment or work or enter into any area determined by the fire chief or fireman in charge at the scene of a fire or other emergency to be an area of danger exposing the child to physical harm by reason of impending collapse of a building or explosion, unless the child is under the immediate supervision of a fire line officer.

(d) Students enrolled in a Youth Apprenticeship Program pursuant to §18-2-7g of this code are authorized to work on machinery associated with occupations listed in §21-6-2(a) of this code only on an occasional and incidental basis while under mandatory direct supervision. For the purposes of this section, the term “occasional and incidental use” means use done for training purposes and for no more than five percent of the student’s training hours a day.

(e) In compliance with U.S. Child Labor Provisions for nonagricultural occupations under the Fair Labor Standards Act, Child Labor Bulletin 101, exemptions shall be made for students 16 years of age or older performing roofing operations above ground level for the express purpose of learning how to install, wire, or repair a rooftop or other equipment provided the student is employed under the following conditions:

(1) The student is enrolled in a course of study and training in a cooperative vocational training program under a recognized state or local educational authority or in a course of study in a substantially similar program conducted by a private school;

(2) Written consent of the parent or legal guardian for the student to perform roofing operations pursuant to this subsection is submitted to both the cooperative vocational training program or private school, as applicable, and the employer; and

(3) The student is employed under a written agreement which stipulates that:

(A) The work will be intermittent and under the direct and close supervision of a qualified and experienced person;

(B) Safety instruction will be provided by the school and coordinated with the employer through on-the-job training; and

(C) A schedule of organized and progressive work processes be performed.

(f) Other limited exemptions for nonagricultural work in compliance with U.S. Child Labor Provisions for nonagricultural occupations under the Fair Standards Act, Child Labor Bulletin 101 may be permitted by the department.

§21-6-3. Parental consent for employment of children under 16.

A child 14 or 15 years of age may be employed or permitted to work in any gainful occupation, except as provided in §21-6-2 of this code, when the person, firm, or corporation by whom the child is employed or permitted to work, obtains and keeps on file and accessible to officers charged with the enforcement of this article, the written consent of the parent or parents, guardian, or custodian of the child.

§21-6-4. Contents of work permit; forms; filing; records; revocation.

[Repealed.]

§21-6-5. Age certificate for employers; contents of certificate; forms; records; filing; inquiry as to age; revocation of certificate.

(a) A child 14 or 15 years of age may be employed or permitted to work in any gainful occupation, except as provided in §21-6-2 of this code, when the person, firm, or corporation by whom the child is employed or permitted to work, obtains and keeps on file and accessible to officers charged with the enforcement of this article, an age certificate issued by the State Commissioner of Labor or a person authorized by him or her in writing. Upon request of any employer who is desirous of employing a child who represents his or her age to be 16 years or over, the commissioner or a person authorized by him or her in writing shall issue to the employer an age certificate in accordance with the provisions of this article.

(b) The commissioner, or a person authorized by him or her in writing to issue an age certificate under this article, shall issue the certificate only upon obtaining proof of age of the child in the form of a birth certificate, or attested transcript thereof, issued by the registrar of vital statistics or other officer charged with the duty of recording births. The age certificate shall set forth the full name and the date and place of birth of the child, with the name and address of his or her parents or parent, or guardian or custodian. It shall certify that the child has submitted for review proof of age, school attendance, prospective employment, brief description of job supplied by the employer, parental or other consent for children under 16 years of age as required by §21-6-3 of this code, and applicable work hours for children under 16 years of age as provided for in §21-6-7 of this code, with such work hours to be printed on the age certificate.

(c) The commissioner shall prepare printed forms for age certificates and make them available by posting on the Division of Labor's website or other method determined pursuant to rule. A record of all age certificates issued shall be kept in the office of the commissioner.

(d) The age certificate, when filed in the office of the employer, must be accepted by an officer charged with the enforcement of this article as evidence of the age of the child in whose name it was issued.

(e) Any officer charged with the enforcement of this article may inquire into the true age of a child apparently under the age of 16 years who is employed or permitted to work in any gainful occupation and for whom no age certificate is on file; and if the age of the child is found to be actually under 16 years, the employment of the child shall be considered a violation of the provisions of this article.

(f) The commissioner may at any time revoke any age certificate if in his or her judgment it was improperly issued, and for this purpose he or she is authorized to investigate the true age of any child employed, to hear evidence, and to require the production of relevant books and documents. If an age certificate is revoked, the issuing officer shall be notified of the action.

§21-6-6.

Repealed.

Acts, 2002 Reg. Sess., Ch. 49.

§21-6-7. Hours and days of labor by minors.

(a) No child under the age of sixteen who is employed or permitted to work in accordance with the provisions of this article shall work:

(1) During school hours, except as provided in work experience and career exploration programs approved by the United States Secretary of Labor;

(2) Before seven o'clock antemeridian or after seven o'clock postmeridian: Provided, That a child under the age of sixteen may work until nine o'clock postmeridian from June 1 through Labor Day;

(3) More than three hours per day, on days in which public schools are in session;

(4) More than eighteen hours per week, in weeks in which public schools are in session;

(5) More than eight hours, on days in which public schools are not in session;

(6) More than forty hours per week, in weeks in which public schools are not in session; or

(7) More than five hours continuously without an interval of at least thirty minutes for a lunch period.

(b) The provisions of subsection (a) of this section do not apply to children under sixteen performing the jobs set out in section one of this article.

§21-6-8. Supervision permits.

(a) The commissioner is authorized to prescribe and issue supervision permits to meet special circumstances, and to prescribe the terms and conditions thereof.

(b) The provisions of sections two, three and seven of this article do not apply to a child's employment under a supervision permit issued by the commissioner under this section. The commissioner shall issue a supervision permit only if he or she finds, after careful investigation, as follows:

(1) That the child, in performance of the work contemplated, will be supervised by a responsible party;

(2) That the employer for whom the child will be employed is not subject to federal regulation regarding child labor; and

(3) That the issuance of the supervision permit will promote the best interests of the child.

A supervision permit is valid only so long as the employment is in compliance with the terms and conditions prescribed by the commissioner and contained therein.

§21-6-8a. Blanket work permits.

[Repealed.]

§21-6-9. Enforcement of article.

It is the duty of the state commissioner of labor, and of his or her authorized representatives within the Division of Labor, to enforce the provisions of this article. To aid in enforcement, the commissioner and his or her representatives are authorized to enter and inspect any place or establishment covered by this article, and to have access to all files and records of employers the inspection of which is pertinent to the objects and purposes of this article. School officials, including truancy officers, shall lend to the commissioner all possible assistance toward effectuating such objects and purposes.

§21-6-10. Offenses; penalties.

Any person who violates a provision of this article, or any parent, guardian, or custodian of a child who permits the child to work in violation of the provisions of this article, or any other person who illegally issues an age certificate, or any person who furnishes false evidence in reference to the age, birthplace, job description, consent, or educational qualifications of a child under this article, shall be guilty of a misdemeanor and, upon conviction thereof, shall for the first offense be fined not less than $50 nor more than $200. A person convicted of a second or subsequent offense shall be fined not less than $200 nor more than $1,000 or confined in the county or regional jail for not more than six months, or both fined and confined.

§21-6-11. Rules.

The commissioner of the Division of Labor may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, to effectuate the provisions of this article. The rules may include provisions prohibiting the employment of children in occupations determined to be dangerous or injurious.

§21-7-1. Purpose of article.

The provisions of this article are designated to protect the health and welfare of the people of the state, and are in necessary exercise of the state's police power.

§21-7-2. Definitions.

For the purposes of this article:

"Employer" means any person who, directly or indirectly, or through an employee, agent, independent contractor or any other person, delivers to another person any materials or articles to be manufactured in a home, not for the personal use of himself or a member of his family; but shall not include the several departments, agencies and institutions of the State of West Virginia, nor any of its political subdivisions.

"Home" means any room, house, apartment, or other premises, whichever is the most extensive, used in whole or in part as a place of dwelling.

"Industrial homework" means any manufacture, in the home, of materials or articles for an employer.

"Commissioner" means the state commissioner of labor.

§21-7-3. Prohibited industrial homework.

The manufacture, or delivery for manufacture, of any of the following by industrial homework shall be unlawful and no permit or certificate issued under this article shall be deemed to authorize such manufacture or delivery:

(1) Tobacco;

(2) Drugs and poisons;

(3) Bandages and other sanitary goods;

(4) Explosives, fireworks, and articles of like character;

(5) Any other articles, the manufacture of which, in industrial homework, is in violation of this article or of any other labor law or of any health law of the state.

§21-7-4. Investigations by commissioner.

To carry out the purposes of this article, the commissioner shall have the power to make investigations into all phases of industrial homework in this state, including the investigation of any industry which employs industrial homeworkers.

No person shall interfere with or obstruct the commissioner or his authorized representatives in the carrying out of any investigation under this section.

§21-7-5. Enforcement by commissioner.

Whenever, after investigation, or on the basis of other information in his possession, the commissioner finds that a person has violated any provision of section three, he shall take appropriate action to bring about the enforcement of such provision.

§21-7-6. Employer's permit; fee.

No employer shall deliver or cause to be delivered to a person in this state any materials for manufacture by industrial homework unless and until such employer has obtained an employer's permit from the commissioner. Application for such permit shall be in the form prescribed by the commissioner.

An employer's permit shall be issued only after payment by the employer of a fee of $50, and shall be valid for a period of one year from its date of issuance unless sooner revoked or suspended pursuant to section ten. All fees collected under this section shall be paid forthwith into the State Treasury to the credit of the General Fund.

§21-7-7. Employer not to deliver material for industrial homework unless worker has certificate; labels.

No employer shall deliver or cause to be delivered, in this state, any materials for manufacture by industrial homework unless the person to be engaged in such manufacture is in possession of a valid homeworker's certificate issued in accordance with this article.

No employer shall deliver or cause to be delivered to any person any materials for manufacture by industrial homework unless there has been conspicuously affixed to each article, or, if this is not practicable, to the package or other container in which such materials are delivered, a label or other mark of identification bearing the employer's name and address printed or written legibly in English.

§21-7-8. Homeworker's certificate.

No person shall engage in industrial homework in this state unless and until he has obtained a homeworker's certificate from the commissioner. Application for such certificate shall be made in the form prescribed by the commissioner.

A homeworker's certificate shall be issued free of charge, and shall be valid for a period of one year from its date of issuance unless sooner revoked or suspended pursuant to section ten.

§21-7-9. Seizure of unlawfully manufactured articles.

Any article which is being, or is to be, manufactured in a home in violation of any provision of this article may be removed by the commissioner and retained by him The commissioner shall, by registered mail, notify the employer of such removal and retention. Unless the articles so removed and retained are claimed within thirty days after the notification, they may be destroyed or otherwise disposed of.

§21-7-10. Revocation or suspension of permits and certificates; powers of commissioner.

The commissioner is authorized to revoke or suspend any employer's permit or homeworker's certificate for the violation of a provision of this article.

The commissioner is further authorized to prescribe the form of application for employers' permits and homeworkers' certificates, and to prescribe the form of and to issue such permits and certificates; and to do all other acts required of him under the provisions of this article.

§21-7-11. Penalties.

A person who violates any provision of this article shall be guilty of a misdemeanor and, upon conviction of such violation shall be fined not less than five nor more than $50 and confined in jail not more than thirty days, or by both such fine and imprisonment in the discretion of the court.

§21-8-1.

Repealed.

Acts, 1982 Reg. Sess., Ch. 97.

§21-8-2.

Repealed.

Acts, 1982 Reg. Sess., Ch. 97.

§21-8-3.

Repealed.

Acts, 1982 Reg. Sess., Ch. 97.

§21-8-4.

Repealed.

Acts, 1982 Reg. Sess., Ch. 97.

§21-8-5.

Repealed.

Acts, 1982 Reg. Sess., Ch. 97.

§21-8-6.

Repealed.

Acts, 1982 Reg. Sess., Ch. 97.

§21-8-7.

Repealed.

Acts, 1982 Reg. Sess., Ch. 97.

§21-8-8.

Repealed.

Acts, 1982 Reg. Sess., Ch. 97.

§21-8-9.

Repealed.

Acts, 1982 Reg. Sess., Ch. 97.

§21-8-10.

Repealed.

Acts, 1982 Reg. Sess., Ch. 97.

§21-8-11.

Repealed.

Acts, 1982 Reg. Sess., Ch. 97.

§21-8-12.

Repealed.

Acts, 1982 Reg. Sess., Ch. 97.

§21-8-13.

Repealed.

Acts, 1982 Reg. Sess., Ch. 97.

§21-9-1. Short title.

This article shall be known as "The West Virginia Manufactured Housing Construction and Safety Standards Act."

§21-9-2. Definitions.

(a) “Board” means the West Virginia Manufactured Housing Construction and Safety Board created in this article.

(b) “Commissioner” means the Commissioner of the West Virginia State Division of Labor.

(c) “Contractor” means any person who performs operations in this state at the occupancy site which render a manufactured home fit for habitation. The operations include, without limitation, installation or construction of the foundation, positioning, blocking, leveling, supporting, tying down, connecting utility systems, making minor adjustments or assembling multiple or expandable units. The operations also include transporting the unit to the occupancy site by other than a motor carrier regulated by the West Virginia Public Service Commission.

Contractor does not include:

(1) A person who personally does work on a manufactured home which the person owns or leases; or

(2) A person who is licensed under §30-42-1 *et seq*., of this code and is performing work on a manufactured home pursuant to a contract with a person licensed under §21-9-9 of this code.

(d) “Dealer” means any person engaged in this state in the sale, leasing, or distributing of new or used manufactured homes, primarily to persons who in good faith purchase or lease a manufactured home for purposes other than resale.

(e) “Defect” includes any defect in the performance, construction, components, or material of a manufactured home that renders the home or any part of the home not fit for the ordinary use for which it was intended.

(f) “Distributor” means any person engaged in this state in the sale and distribution of manufactured homes for resale.

(g) “Federal standards” means the National Manufactured Housing Construction and Safety Standards Act of 1974, and federal manufactured home construction and safety standards and regulations promulgated by the Secretary of HUD to implement that act.

(h) “HUD” means the United States Department of Housing and Urban Development.

(i) “Manufacturer” means any person engaged in manufacturing or assembling manufactured homes, including any person engaged in importing manufactured homes for resale.

(j) “Manufactured home” means a structure, transportable in one or more sections, which in the traveling mode is eight body feet or more in width or 40 or more feet in length or, when

erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein; except that such term shall include any structure which meets all the requirements of this definition except the size requirements and with respect to which the manufacturer voluntarily files a certificate which complies with the applicable federal standards. Calculations used to determine the number of square feet in a structure will be based on the structure's exterior dimensions measured at the largest horizontal projections when erected on site.

(k) "Purchaser" means the first person purchasing a manufactured home in good faith for purposes other than resale.

§21-9-3. Board continued; appointment, qualifications, terms, oath, etc., of members; quorum; meetings; when members disqualified from participation; compensation; records; office space; personnel.

(a) There is hereby continued the West Virginia board of manufactured housing construction and safety, which shall consist of six members and the commissioner, who shall be chairman. At least two of the six members of the board shall represent and be consumers who are not related or employed in the manufactured housing and construction industry. The six members shall be appointed by the Governor by and with the advice and consent of the Senate. No more than three of the members appointed may be of the same political party.

(b) The members of the board shall be appointed for overlapping terms of six years, except that of the original appointments, two members shall be appointed for a term of two years, two members shall be appointed for a term of four years and two members shall be appointed for a term of six years, and in every instance until their respective successors have been appointed and qualified. Before entering upon the performance of his or her duties, each member shall take and subscribe to the oath required by section 5, article IV of the Constitution of the State of West Virginia, and shall certify that he or she is and during the term of his or her appointment shall remain free of any conflict of interest. The Governor shall, within sixty days following the occurrence of a vacancy on the board, fill the same by appointing a person for the unexpired term of the person vacating the office. Any member may be removed by the Governor in case of incompetency, neglect of duty, gross immorality or malfeasance in office.

(c) A majority of the members of the board constitutes a quorum. The board shall meet at least once in each calendar quarter on a date fixed by the board. The commissioner may, upon his or her own motion, or shall upon the written request of three members of the board, call additional meetings of the board upon at least twenty-four hours' notice. No member shall participate in a proceeding before the board to which a corporation, partnership or unincorporated association is a party, and of which he or she is or was at any time in the preceding twelve months a director, officer, owner, partner, employee, member or stockholder. A member may disqualify himself or herself from participation in a proceeding for any other cause considered by him or her to be sufficient. Each member shall receive compensation not to exceed the amount paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or portion of a day spent in attending meetings of the board and shall be reimbursed for all reasonable and necessary expenses incurred incident to his or her duties as a member of the board.

(d) The board shall keep an accurate record of all its proceedings and make certificates thereupon as may be required by law. The commissioner shall make available necessary office space and secretarial and other assistance as the board may reasonably require.

§21-9-4. General powers and duties; persons adversely affected entitled to hearing.

(a) The board shall have the power to:

(1) Regulate its own procedure and practice;

(2) Propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, to implement the provisions of this article and the federal standards;

(3) Advise the commissioner in all matters within his jurisdiction under this article;

(4) Prepare and submit to HUD a state plan application seeking the designation of the board as a state administrative agency for the purpose of administering and enforcing the federal standards and take all other action necessary to enable the board to serve as a state administrative agency;

(5) Study and report to the Governor and the Legislature on matters pertinent to the manufacture, distribution and sale of manufactured housing in this state and recommend changes in the law determined by the board to be necessary to promote consumer safety and protect purchasers of manufactured housing;

(6) Conduct hearings and presentations of views consistent with its rules and the federal standards;

(7) Approve or disapprove applications for licenses to manufacturers, dealers, distributors and contractors in accordance with section nine of this article, and revoke or suspend licenses in accordance with that section, and set the amounts of license fees and bonds or other forms of assurance in accordance with sections nine and ten of this article;

(8) Delegate to and authorize the commissioner to exercise the powers and duties of the board that the board may determine, including without limitation, the authority to approve, disapprove, revoke or suspend licenses in accordance with section nine of this article.

(b) Any person adversely affected by a decision of the board or the commissioner shall be afforded an opportunity for hearing before the board in accordance with section one, article five, chapter twenty-nine-a of this code.

§21-9-5. Board designated as state administrative agency for manufactured home construction and safety standards; board to administer and enforce act.

The board is hereby designated as the state administrative agency for the administration and enforcement of the federal standards and is charged with the adoption, administration and enforcement of manufactured home construction and safety standards. The standards to be adopted shall be identical to the federal standards. The board shall discharge such duties consistent with the rules and regulations promulgated by HUD.

§21-9-6. Inspection of certain facilities.

The board, by its authorized representatives, may enter, at reasonable times, any factory, warehouse or establishment in which manufactured homes are manufactured, stored or held for sale, for the purpose of ascertaining whether the federal standards and the standards promulgated by the board have been and are being met.

§21-9-7. Monitoring inspection fee.

The board shall establish a monitoring inspection fee in an amount established by HUD. Such fee shall be paid by the manufacturer for each manufactured home produced in this state to the secretary of HUD, who shall distribute the fees collected from all manufactured home manufacturers among the approved and conditionally approved states based on the number of new manufactured homes whose first location after leaving the manufacturing plant is on the premises of a distributor, dealer or purchaser in that state.

§21-9-8. Maintenance and production of records and other information.

Each manufacturer, dealer, distributor and contractor shall establish and maintain such records, make such reports and provide such information as the board or the secretary of HUD may reasonably require in order to be able to determine whether such manufacturer, dealer, distributor or contractor has acted or is acting in compliance with this article, the rules and regulations promulgated by the board pursuant to this article or the federal standards and shall, upon request of a person duly designated by the board or the secretary of HUD, permit such person to inspect appropriate books, papers, records and documents relevant to determining whether such manufacturer, dealer, distributor or contractor has acted or is acting in compliance with this article and the federal standards.

§21-9-9. License required; fees; form of license; display of license; denial, suspension, or revocation.

(a) No manufacturer, dealer, distributor, or contractor shall engage in business in this state without first having applied for and received a license pursuant to this section. The license shall authorize the holder to engage in the business permitted by the license. All license applications shall be accompanied by the required fee and surety bond or other form of assurance or fee assessed in satisfaction of assurance as required by rule or regulation promulgated by the board.

(b) All licenses shall be granted or refused within 30 days after proper and complete application. All licenses shall expire on June 30 of each year, unless sooner revoked or suspended. Applications shall be deemed valid for a period of 30 days.

(c) The annual license fees shall be in the amounts prescribed by rules promulgated by the board but in no event less than the following amounts:

(1) For manufacturers, $300;

(2) For dealers, $100;

(3) For distributors, $100; and

(4) For contractors, $50: *Provided*, That if a contractor has met the licensing requirements of this article and the West Virginia Contractor Licensing Act in §30-42-1 *et seq*., of this code, has paid the annual license fee under §30-42-8 of this code and has furnished bond or other assurance or fee under §21-9-10 of this code, he or she shall not be required to pay the annual license fee set forth in this section.

(d) The board shall prescribe the form of license and each license shall have affixed thereon the seal of the State Division of Labor.

(e) Each licensee shall conspicuously display the license in its established place of business.

(f) Pursuant to such rules and regulations as may be promulgated by the board, the board may deny the issuance of a license or revoke or suspend any license.

(g) All fees paid pursuant to this article shall be paid to the Commissioner of Labor and deposited in an appropriated special revenue account in the State Treasury to be known as the State Manufactured Housing Administration Fund. Expenditures from the fund shall be for the administration and enforcement of this article. Through June 30, 2019, amounts collected which are found 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.

§21-9-10. Licensee to furnish bond or other form of assurance.

(a) Each manufacturer, dealer, distributor or contractor which applies for a license under section nine of this article shall, at the time of making application for the license, furnish a surety bond or any other form of assurance of the applicant's financial responsibility permitted by the board by rule or regulation, the surety bond or other form of assurance to be in the amount prescribed by rule or regulation. In the event of forfeiture of any bond or security, the proceeds thereof shall be deposited in the special account continued in subsection (c) of this section.

(b) The board may assess an annual fee on licensees in satisfaction of the surety bond or other form of assurance required by subsection (a). This annual fee shall be in the amounts prescribed from time to time by legislative rules promulgated by the board but in no event less than the following amounts:

(1) For each manufacturer's licensed business location, $2,500;

(2) For each dealer's and/or distributor's licensed business location, $1,000;

(3) For each licensed contractor, $500.

(c) All fees collected from fees assessed pursuant to this section or the proceeds from the forfeiture of any bond or other security provided pursuant to this section or any fines paid to the board shall be deposited in the special account in the state Treasury known as the "State Manufactured Housing Recovery Fund". Expenditures from the fund shall be for the purposes set forth in subsection (d) of this section. The assets of the fund may be invested and reinvested by the board in accordance with applicable law. Interest revenues derived from the fund shall be used solely to maintain the fund. If the balance of the fund on June 30 of any year equals or exceeds $300,000, no assessments shall be collected from any previously licensed manufacturer, dealer, distributor or contractor for the next licensure period. New applicants for licensure shall pay the applicable assessment fee regardless of the balance of the fund. The board is authorized at any time to make special assessments upon all licensed manufacturers, dealers, distributors, and contractors if the board determines that the assessments are necessary to maintain the fiscal integrity of the fund. In no event may a special assessment be issued by the board until or unless the balance of the fund falls below $250,000.

(d) Moneys in the fund shall cover any misappropriation of funds of a purchaser or prospective purchaser of a manufactured home, any deception or false or fraudulent representations or deceitful practices in selling or representing a product, any failure by a licensee, because of bankruptcy, insolvency or other reason, to fulfill warranty obligations and any failure of the licensee, its agents or employees, to comply with federal standards, this article or any rules or regulations promulgated by the board pursuant to this article: Provided, That any payment to purchasers or prospective purchasers by the board from licensee bonds or other forms of financial assurance shall not include punitive or exemplary

damages, any compensation for property damage other than to the manufactured home, any recompense for any personal injury or inconvenience, any reimbursement for alternate housing, or any payments for attorney fees, legal expenses or court costs.

§21-9-11. State may act as primary inspection agency.

(a) This state, acting through the board, is hereby granted all powers and authority necessary to act as a primary inspection agency and to perform the functions of a "design approval primary inspection agency" and a "production inspection primary inspection agency", as the terms are defined in the federal standards. The board may apply to the secretary of HUD on behalf of this state to act as the primary inspection agency, including application for approval to act as the exclusive production inspection primary inspection agency in this state. The board may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code necessary to enable the board to act on behalf of this state as the primary inspection agency.

(b) The board may provide inspections to private home sites to aid in the resolution of a consumer complaint filed with the board by the home owner. The board may provide, free of charge, one initial and one follow-up inspection related to each consumer complaint: Provided, That the board may charge a licensee an inspection fee for any follow-up inspections which are necessitated by a licensee's failure to comply with an order of the board. The inspection fee may not exceed $75 per hour, plus expenses.

§21-9-11a. Inspection of manufactured housing; deferral period for inspection and administrative remedies; notification to consumers of rights.

(a) Inspection of manufactured housing. When a purchaser or owner of a manufactured home files a written complaint with the board alleging defects in the manufacture, construction or installation of the manufactured home, and any additional information the board considers necessary to conduct an investigation, the board shall, within sixty days, to the extent feasible, cause an inspection of the manufactured home by one or more of its employees or person authorized and supervised by the board. The board shall provide the consumer a written report indicating whether the defects alleged by the complaint constitute violations of federal or state statutory or regulatory standards or good and customary manufacturing standards in the construction, design, manufacture or installation of the manufactured home. If the report indicates that the alleged defects constitute a violation, the board shall take such further administrative action as provided for in this article including, but not limited to, ordering the manufacturer, dealer or contractor to correct any defects.

(b) Period of exclusive administrative remedy. No purchaser or owner of a manufactured home may file a civil action seeking monetary recovery or damages for claims related to or arising out of the manufacture, acquisition, sale or installation of the manufactured home until the expiration of ninety days after the consumer or owner has filed a written complaint with the board. The board has a period of ninety days, commencing with the date of filing of the complaint, to investigate and take administrative action to order the correction of defects in the manufacture or installation of a manufactured home. This period of exclusive administrative authority may not prohibit the purchaser or owner of the manufactured home from seeking equitable relief in a court of competent jurisdiction to prevent or address an immediate risk of personal injury or property damage. The filing of a complaint under this article shall toll any applicable statutes of limitation during the ninety-day period but only if the applicable limitation period has not expired prior to the filing of the complaint.

(c) Notice of consumer rights. Every dealer or contractor who moves homes from one place to another shall provide written notification to every purchaser of a manufactured home of the availability of administrative assistance from the board in investigating and ordering corrections of any defect in the manufacture or installation of a manufactured home and the period of exclusive jurisdiction given to the board. The board may prescribe that the notice contain any information the board determines to be beneficial to the purchaser or owner of the manufactured home in exercising that person's rights under this section.

§21-9-12. Violation of article; penalties; injunction.

(a) Any person who violates any of the following provisions relating to manufactured homes or any legislative rule proposed by the board pursuant to the provisions of this article, is liable to the state for a penalty, as determined by the board, not to exceed $1,000 for each violation. Each violation constitutes a separate violation with respect to each manufactured home, except that the maximum penalty may not exceed $1 million for any related series of violations occurring within one year from the date of the first violation. No person may:

(1) Manufacture for sale, lease, sell, offer for sale or lease, or introduce or deliver, or import into this state any manufactured home which is manufactured on or after the effective date of any applicable standard established by a rule promulgated by the board pursuant to the provisions of this article, or any applicable federal standard, which does not comply with that standard.

(2) Fail or refuse to permit access to or copying of records, or fail to make reports or provide information or fail or refuse to permit entry or inspection as required by the provisions of this article.

(3) Fail to furnish notification of any defect as required by the provisions of 42 U.S.C. §5414.

(4) Fail to issue a certification required by the provisions of 42 U.S.C. §5415 or issue a certification to the effect that a manufactured home conforms to all applicable federal standards, when the person knows or in the exercise of due care would have reason to know that the certification is false or misleading in a material respect.

(5) Fail to establish and maintain records, make reports, and provide information as the board may reasonably require to enable the board to determine whether there is compliance with the federal standards; or fail to permit, upon request of a person duly authorized by the board, the inspection of appropriate books, papers, records and documents relative to determining whether a manufacturer, dealer, distributor or contractor has acted or is acting in compliance with the provisions of this article or applicable federal standards.

(6) Issue a certification pursuant to the provisions of 42 U.S.C. §5403(a), when the person knows or in the exercise of due care would have reason to know that the certification is false or misleading in a material respect.

(b) Subdivision (1), subsection (a) of this section does not apply to:

(1) The sale or the offer for sale of any manufactured home after the first purchase of it in good faith for purposes other than resale;

(2) Any person who establishes that he did not have reason to know in the exercise of due care that the manufactured home is not in conformity with applicable federal standards; or

(3) Any person who, prior to the first purchase, holds a certificate by the manufacturer or

importer of the manufactured home to the effect that the manufactured home conforms to all applicable federal standards, unless that person knows that the manufactured home does not conform to those standards.

(c) Any manufacturer, dealer, distributor or contractor who engages in business in this state without furnishing a bond or other form of assurance as required by the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $50 for each day the violation continues.

(d) The board may institute proceedings in the circuit court of the county in which the alleged violation occurred or are occurring to enjoin any violation of the provisions of this article.

(e) Any person or officer, director, partner or agent of a corporation, partnership or other entity who willfully or knowingly violates any of the provisions listed in subsection (a) of this section, in any manner which threatens the health or safety of any purchaser, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 or confined in the county or regional jail for a period of not more than one year, or both fined and imprisoned.

(f) Nothing in this article applies to any bank or financial institution engaged in the disposal of foreclosed or repossessed manufactured homes.

§21-9-12a. Violation of cease and desist order; penalties.

(a) Upon a determination that a person is engaging in business without a valid license as required under the provisions of section nine of this article, the board or commissioner may immediately issue a cease and desist order requiring the person to cease all operations within this state. After a hearing, the board may impose a penalty of not less than two hundred dollars nor more than one thousand dollars upon any person found to have been engaging in business in this state without a valid license as required under the provisions of section nine of this article.

(b) The board may institute proceedings in the circuit court of the county where the violation occurred, against any person violating a cease and desist order issued under the provisions of subsection (a) of this section.

(c) Any person continuing to engage in business in this state without a valid license as required under the provisions of section nine of this article, after the issuance of a cease and desist order under the provisions of subsection (a) of this section, is guilty of a misdemeanor and, upon conviction thereof, is subject to the following penalties:

(1) For a first offense, a fine of not less than two hundred dollars nor more than one thousand dollars;

(2) For a second offense, a fine of not less than five hundred dollars nor more than five thousand dollars, or confinement in a county or regional jail for not less than thirty days nor more than six months or both a fine and confinement; and

(3) For a third or subsequent offense, a fine of not less than one thousand dollars nor more than five thousand dollars, and confinement in the county or regional jail for not less than thirty days nor more than one year.

§21-9-13.

Repealed.

Acts, 2010 Reg. Sess., Ch. 32.

§21-10-1. Short title.

This article shall be known and may be cited as the "Amusement Rides and Amusement Attractions Safety Act."

§21-10-2. Definitions.

As used in this article:

(a) "Amusement ride" means a mechanical device which carries or conveys passengers along, around or over a fixed or restricted route or course for the purpose of giving its passengers amusement, pleasure, thrills or excitement. The term includes carnival rides and fair rides of a temporary or portable nature which are assembled and reassembled or rides which are relocated from place to place. "Amusement ride" may not be construed to mean any mechanical device which is coin operated and does not include the operation of a ski lift, the operation of tramways at state parks, the operation of vehicles of husbandry incidental to any agricultural operations or the operation of amusement devices of a permanent nature which are subject to building regulations issued by cities or counties and existing applicable safety orders;

(b) "Amusement attraction" means any building or structure around, over or through which people may move or walk without the aid of any moving device integral to the building or structure that provides amusement, pleasure, thrills or excitement, including those of a temporary or portable nature which are assembled and reassembled or which are relocated from place to place. The term does not include any enterprise principally devoted to the exhibition of products of agriculture, industry, education, science, religion or the arts and shall not be construed to include any concession stand or booth for the selling of food or drink or souvenirs;

(c) "Kiddie ride" means an amusement ride or amusement attraction that is expressly designed for or offered to: (1) Children age twelve or less; (2) persons who are forty-two inches in height or less; or (3) persons who are ninety pounds in weight or less;

(d) "Intoxicated" means influenced or affected by the ingestion of alcohol, a controlled substance, any intoxicant or any combination of alcohol, controlled substances and intoxicants;

(e) "Mobile amusement ride or mobile amusement attraction" means an amusement ride or amusement attraction which is erected in a single physical location for a period of less than twelve consecutive months;

(f) "Operator" means the person having direct control of the starting, stopping and speed of an amusement ride or attraction;

(g) "Owner" means any person, corporation, partnership, or association who owns an amusement ride or attraction or, in the event that the amusement ride or attraction is leased, the lessee;

(h) "Stationary amusement ride or stationary amusement attraction" means an amusement ride or amusement attraction that is erected in a single physical location for a period of more

than twelve consecutive months.

§21-10-3. Rules.

The Division of Labor shall propose legislative rules for promulgation for the safe installation, repair, maintenance, use, operation and inspection of all amusement rides and amusement attractions as the division finds necessary for the protection of the general public using amusement rides and amusement attractions. The rules shall be in addition to the existing applicable safety orders and shall be concerned with engineering force stresses, safety devices and preventative maintenance. All such rules shall be promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code.

§21-10-4. Inspection and permit fees.

(a) The division shall charge inspection and permit fees. The annual permit fee is $100 for each ride or attraction. The annual inspection fee, if an inspection is to be done by the division, is $100 for each ride or attraction. The annual inspection fee, if an inspection is to be done by the division, is due at the time of application for the annual permit. The division shall waive the inspection fee for any ride or attraction whose owner provides proof of nonprofit business status or for any ride or attraction whose owner provides proof that an inspection has been completed within the last year by a certified special inspector as provided in §21-10-6 of this code.

(b) The division may charge additional inspection fees equal to the annual inspection fee for additional inspections required as the result of the condemnation of a device for safety standards violations and for inspections required as a result of accidents involving serious or fatal injury. If any owner or operator requires an inspection as the result of a violation of the permitting requirements of §21-10-6 of this code, the division shall charge the owner or operator $75 per hour in addition to the established inspection fee, including travel time.

(c) All fees paid pursuant to this article shall be paid to the Commissioner of Labor and deposited in an appropriated special revenue account in the State Treasury known as the Amusement Rides and Amusement Attractions Safety 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.

(d) No inspection fee may be charged public agencies.

(e) The division shall issue, and the owner, operator, or both of the amusement rides and amusement attractions shall visibly display to the public, inspection stickers denoting and signifying that the inspection and permit fee authorized by this section has been paid or waived.

§21-10-5. Inspectors.

(a) The Division may hire or contract with inspectors to inspect amusement rides and amusement attractions. The Division is responsible for oversight and review of the activities of special inspectors and may hire or contract with inspectors to review the activities of special inspectors.

(b) The Division shall certify all special inspectors who are employed by insurance providers that write insurance policies for amusement rides and amusement attractions required by section twelve of this article. The Division may suspend or revoke any certification of a special inspector upon a showing of good cause. The Division shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code providing an application process and minimum qualifications for certification of special inspectors. The Division may charge an annual certification fee not to exceed $50.

§21-10-6. Permits; application; annual inspection.

No operator or owner may knowingly permit the operation of an amusement ride or amusement attraction without a permit issued by the Division. Each year and at least fifteen days before the first time the amusement ride or amusement attraction is made available in this state for public use, an operator or owner shall apply for a permit to the Division on a form furnished by the Division and containing any information the Division may require. The Division shall, within thirty days of the first time in the calendar year the ride or attraction is made available in this state for public use, inspect all amusement rides and amusement attractions. The Division shall inspect all stationary rides and attractions at least once every year. The Division may inspect all mobile amusement rides and amusement attractions each time they are disassembled and reassembled for use in this state. The Division may conduct inspections at any reasonable time without prior notice: Provided, That in lieu of performing its own inspection, the Division may accept inspection reports from special inspectors certified by the Division.

§21-10-7. Issuance of permit; certificate of inspection; availability to public.

If, after inspection, an amusement ride or amusement attraction is found to comply with the rules of the division, the division shall issue a permit to operate. The permit shall be in the form of a certificate of inspection and shall be kept in the records of any operator or owner for a three-year period and shall be readily accessible to the public for inspection at any reasonable time at the carnival, fair or event where the amusement ride or attraction is located. A copy of the certificate, showing the last date of inspection, shall be affixed to the amusement ride or amusement attraction upon issuance: Provided, That the division shall take final action upon all completed permit applications within thirty days of receipt if the application is uncontested, or within ninety days if the application is contested.

§21-10-8. Notice of intention to erect new ride or attraction or add to or alter existing ride or attraction.

Before a new amusement ride or amusement attraction is erected, or whenever any additions or alterations are made which change the structure, mechanism, classification or capacity of any amusement ride or amusement attraction, the operator shall file with the division a notice of his or her intention and any plans or diagrams requested by the division for purposes of determining the applicability of section six of this article.

§21-10-9. Notice of serious physical injury or fatality; investigations; records available to public.

An owner or operator of an amusement ride or amusement attraction shall notify the division not later than twenty-four hours after any fatality or accident occurring as a result of the operation of the amusement ride or amusement attraction that results in a serious physical injury to any person requiring medical treatment or results in a loss of consciousness to any person. The notice may be oral or written. The division shall investigate each fatality or accident and any safety-related complaint involving an amusement ride or amusement attraction in this state about which the division receives notice. Every owner or operator of an amusement ride or amusement attraction shall keep a record of each accident or fatality and the record shall be kept with the certificate of inspection required by this article and shall be readily accessible to the public for inspection at any reasonable time at the carnival, fair or event where the amusement ride or amusement attraction is located.

§21-10-10. Service of process.

Any person, firm or corporation operating an amusement ride or amusement attraction may be served with civil process in the same manner as if the owner or operator was a domestic or foreign corporation.

§21-10-11. Temporary cessation of operation of ride or attraction determined to be unsafe.

The division may order, in writing, a temporary cessation of operation of an amusement ride or amusement attraction if it has been determined after inspection to be hazardous or unsafe. Operation of the amusement ride or amusement attraction shall not resume until the conditions are corrected to the satisfaction of the division.

§21-10-12. Insurance; bond.

No person may operate an amusement ride or amusement attraction unless at the time there is in existence: (a) A policy of insurance approved by the division and obtained from an insurer authorized to do business in this state in an amount of not less than $300,000 per person and $1 million in the aggregate for each amusement ride or attraction location insuring the owner or operator against liability for injury suffered by persons riding the amusement ride or by persons in, on, under or near the amusement attraction; or (b) a bond in a like amount, as approved by the division: Provided, That the aggregate liability of the surety under any bond shall not exceed the face amount of the bond; or (c) cash or other security acceptable to the division. Satisfactory evidence of the insurance, bond or other security shall accompany the permit application.

§21-10-12a. Minimum age for operating amusement ride.

No individual under the age of sixteen may be the operator of a kiddie ride or if under the age of eighteen be an operator of any other amusement ride or attraction: Provided, That the individual is not otherwise prohibited from being an operator pursuant to other state or federal law.

§21-10-13. Regulation of carnivals, fairs and amusement rides and amusement attractions by cities and counties.

Nothing contained in this article prevents cities and counties from regulating carnivals, fairs or amusement rides and amusement attractions with regard to any aspect not relating to installation, repair, maintenance, use, operation and inspection of amusement rides and amusement attractions.

§21-10-14. Criminal penalty for violation.

Any operator or owner who knowingly permits the operation of an amusement ride or amusement attraction in violation of the provisions of sections six, seven, eight, nine, eleven, twelve or twelve-a of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than 250 nor more than $1,000, confined in the county or regional jail not more than twelve months, or both fined and confined. Each day that a violation continues shall be considered a separate violation.

§21-10-15. Operating or assembling an amusement ride while intoxicated; criminal penalty.

(a) A person may not operate or assemble an amusement ride or attraction while intoxicated.

(b) A person who violates subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $1,000 and not more than $2,500, or confined in the county or regional jail for not less than thirty days and not more than one year, or both.

(c) The clerk of the magistrate court or circuit court in which a person is convicted of a violation of this section shall notify the commissioner within ten days of the conviction.

§21-10-16. Revocation and suspension of permits.

The commissioner may revoke or temporarily suspend the permit to operate issued pursuant to the provisions of section seven of this article to an owner or employee or contractor of an owner who is convicted of, or enters a guilty plea or a plea of nolo contendere to, a violation of subsection (a), section fifteen of this article.

§21-10-17. Civil penalties for violations.

(a) If an individual is convicted of, or enters a guilty plea or a plea of nolo contendere to, a violation of subsection (a), section fifteen of this article, and the individual was not the owner of the ride being operated or assembled, the commissioner may impose a civil penalty not to exceed $5,000 on the owner of the ride being operated or assembled: Provided, That the owner knew or should have known that the individual was acting in violation of subsection (a), section fifteen of this article.

(b) All civil penalties collected by the commissioner shall be deposited into the amusement rides and amusement attractions safety fund created in section four of this article.

§21-10-18. Continuing authority of State Fire Marshal.

Nothing in this article shall be construed to be in conflict with or to in any way limit the authority of the State Fire Marshal under the provisions of article three, chapter twenty-nine of this code pertaining to fire prevention and control.

§21-10-19. Patron responsibility.

The owner or operator of an amusement ride or attraction may refuse any member of the public admission to a ride if his or her bearing or conduct could endanger himself or herself or others. These reasons include, but are not limited to: (1) Intoxication; (2) refusal to obey posted rules; (3) unacceptable or unsafe behavior as determined by the operator of the ride; and (4) violation of any age, height or weight restrictions as posted.

§21-11-1. Short title.

[Repealed.]

§21-11-2. Policy declared.

[Repealed.]

§21-11-3. Definitions.

[Repealed.]

§21-11-4. West Virginia contractor licensing board created; members; appointment; terms; vacancies; qualifications; quorum.

[Repealed.]

§21-11-5. Administrative duties of the board; regulations.

[Repealed.]

§21-11-6. Necessity for license; exemptions.

[Repealed.]

§21-11-7. Application for and issuance of license.

[Repealed.]

§21-11-8. Licenses; expiration date; fees; renewal.

[Repealed.]

§21-11-9. Unlawful use, assignment, transfer of license; revocation.

[Repealed.]

§21-11-10. Prerequisites to obtaining building permit; mandatory written contracts.

[Repealed.]

§21-11-10a. Informational list for basic universal design features; penalties.

[Repealed.]

§21-11-11. Notice included with invitations to bid and specifications.

[Repealed.]

§21-11-12. License renewal, lapse and reinstatement.

[Repealed.]

§21-11-13. Violation of article; injunction; criminal penalties.

[Repealed.]

§21-11-14. Disciplinary powers of the board.

[Repealed.]

§21-11-15. Administrative duties of division.

[Repealed.]

§21-11-16. Rules.

[Repealed.]

§21-11-17. Recordkeeping; fees.

[Repealed.]

§21-11-18. Reciprocity.

[Repealed.]

§21-11-19.

Repealed.

Acts, 2010 Reg. Sess., Ch. 32.

§21-11-20. Board authorized to provide training.

[Repealed.]

§21-11A-1. Purpose.

This article is intended to establish procedures for the negotiation of a claim of a construction defect asserted by a claimant against a contractor. The parties to a contract are encouraged to resolve any disagreement concerning the contract short of litigation.

§21-11A-2. Applicability of article.

This article does not apply to an action:

(1) Against a contractor for which a claimant, as a consumer, is entitled to a specific remedy pursuant to Chapter 46A of this code;

(2) Against a contractor who is not licensed under the provisions of §30-42-1 *et seq.*, of this code;

(3) Demanding damages of $5,000 or less;

(4) Alleging a construction defect that poses an imminent threat of injury to person or property;

(5) Alleging a construction defect that causes property not to be habitable;

(6) Against a contractor who failed to provide the notice required by §21-11A-5 or §21-11A-6 of this code;

(7) Against a contractor if the parties to the contract agreed to submit claims to mediation, arbitration, or another type of alternative dispute resolution; or

(8) Alleging claims for personal injury or death.

§21-11A-3. Suit by contractor; perfecting mechanic's lien.

(a) If a contractor, subcontractor, supplier or design professional files suit against a property owner upon whose property they provided goods or services, this article is not applicable, and a claimant alleging a construction defect may counterclaim or file an independent action, as appropriate.

(b) Nothing in this article precludes a contractor, subcontractor, supplier or design professional from perfecting a lien in accordance with the provisions of article two, chapter thirty-eight of this code.

§21-11A-4. Applicability of definitions; definitions.

For the purposes of this article, the words or terms defined in this article, and any variation of those words or terms required by the context, have the meanings ascribed to them in this article. These definitions are applicable unless a different meaning clearly appears from the context.

(1) "Action" means any civil action, or any alternative dispute resolution proceeding other than the negotiation required under this article, for damages, asserting a claim for injury or loss to real or personal property caused by an alleged defect arising out of or related to residential improvements.

(2) "Claim" means a demand for damages by a claimant based upon an alleged construction defect in residential improvements.

(3) "Claimant" means a homeowner, including a subsequent purchaser, who asserts a claim against a contractor concerning an alleged construction defect in residential improvements.

(4) "Construction defect" means a deficiency in, or a deficiency arising out of, the design, specifications, planning, supervision or construction of residential improvements that results from any of the following:

(A) Defective material, products, or components used in the construction of residential improvements;

(B) Violation of the applicable codes in effect at the time of construction of residential improvements;

(C) Failure in the design of residential improvements to meet the applicable professional standards of care;

(D) Failure to complete residential improvements in accordance with accepted trade standards for good and workmanlike construction: *Provided*, That compliance with the applicable codes in effect at the time of construction is prima facie evidence of construction in accordance with accepted trade standards for good and workmanlike construction, with respect to all matters specified in those codes; or

(E) Failure to properly oversee, supervise, and inspect services or goods provided by the contractor's subcontractor, officer, employee, agent, or other person furnishing goods or services.

(5) "Contract" means a written contract between a contractor and a claimant by the terms of which the contractor agrees to provide goods or services, by sale or lease, to or for a claimant.

(6) "Contractor" means a contractor, licensed under the provisions of §30-42-1 *et seq.*, of this

code, who has entered into a contract directly with a claimant. The term does not include the contractor's subcontractor, officer, employee, agent or other person furnishing goods or services to a claimant.

(7) "Day" means a calendar day. If an act is required to occur on a day falling on a Saturday, Sunday or holiday, the first working day which is not one of these days should be counted as the required day for purposes of this article.

(8) "Goods" means supplies, materials, or equipment.

(9) "Parties" means: (A) The claimant; and (B) any contractor, subcontractor, agent or other person furnishing goods or services and upon whom a claim of an alleged construction defect has been served under this article.

(10) "Residential improvements" means: (A) The construction of a residential dwelling or appurtenant facility or utility; (B) an addition to, or alteration, modification, or rehabilitation of an existing dwelling or appurtenant facility or utility; or (C) repairs made to an existing dwelling or appurtenant facility or utility; In addition to actual construction or renovation, residential improvements actually added to residential real property include the design, specifications, surveying, planning, goods, services and the supervision of a contractor's subcontractor, officer, employee, agent, or other person furnishing goods or services to a claimant.

(11) "Services" means the furnishing of skilled or unskilled labor or consulting or professional work, or a combination thereof.

(12) "Subcontractor" means a contractor who performs work on behalf of another contractor on residential improvements.

(13) "Supplier" means a person who provides goods for residential improvements.

§21-11A-5. Contract for residential improvements; notice.

(a) Upon entering into a contract for residential improvements, the contractor shall provide notice to the owner of the real property of the right of the contractor, or any subcontractor, supplier or design professional to offer to cure construction defects before a claimant may commence litigation against the contractor, or a subcontractor, supplier or design professional. Such notice shall be conspicuous and may be included as part of the underlying contract.

(b) The notice required by subsection (a) of this section shall be in substantially the following form:

WEST VIRGINIA STATE LAW, AS SET FORTH IN CHAPTER 21, ARTICLE 11A OF THE WEST VIRGINIA CODE, CONTAINS IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE YOU MAY FILE A LAWSUIT FOR DEFECTIVE CONSTRUCTION AGAINST THE CONTRACTOR WHO MADE RESIDENTIAL IMPROVEMENTS TO YOUR PROPERTY. AT LEAST NINETY DAYS BEFORE YOU FILE YOUR LAWSUIT, YOU MUST DELIVER TO THE CONTRACTOR A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE AND PROVIDE YOUR CONTRACTOR AND ANY SUBCONTRACTORS, SUPPLIERS OR DESIGN PROFESSIONALS THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY FOR THE DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY THE CONTRACTOR OR ANY SUBCONTRACTORS, SUPPLIERS OR DESIGN PROFESSIONALS. THERE ARE DEADLINES AND PROCEDURES UNDER STATE LAW AND FAILURE TO FOLLOW THEM MAY AFFECT YOUR ABILITY TO FILE A LAWSUIT.

§21-11A-6. Contractor notification requirements for a new residential dwelling constructed for sale.

(a) A contractor who constructs a new residential dwelling shall, at or before the closing of the sale, provide in writing to the initial purchaser of the residence:

(1) The name, license number, business address and telephone number of each subcontractor, supplier or design professional who provided goods or services related to the design or construction of the dwelling; and

(2) A brief description of the goods or services provided by each subcontractor, supplier or design professional identified pursuant to this section.

(b) At or before the closing of the sale, a notice shall be given to the purchaser that is in substantially the same form as set forth in subsection (b), section five of this article.

§21-11A-7. Prerequisites to commencing an action.

(a) The procedures contained in this article are exclusive and required prerequisites to commencing a civil action under the West Virginia rules of civil procedure.

(b) If a claimant files a civil action alleging a construction defect without first complying with the provisions of this article, then on application by a party to the action, the court shall dismiss the action, without prejudice, and the action may not be refiled until the claimant has complied with the requirements of this article.

§21-11A-8. Notice of claim of construction defect.

(a) A claimant asserting a claim of a construction defect under this article shall file notice of the claim as provided by this section.

(b) The notice of claim shall:

(1) Be in writing and signed by the claimant or the claimant's authorized representative;

(2) Be delivered by hand, certified mail, return receipt requested or other verifiable delivery service, to the person designated in the contract to receive a notice of claim of a construction defect; if no person is designated in the contract, the notice shall be delivered to the contractor's chief administrative officer; and

(3) State in detail:

(A) The nature of the alleged construction defect and a description of the results of the defect;

(B) A description of damages caused by the alleged construction defect, including the amount and method used to calculate those damages; and

(C) The legal theory of recovery, i.e., a construction defect, including the causal relationship between the alleged construction defect and the damages claimed.

(c) In addition to the mandatory contents of the notice of claim as required by subsection (b) of this section, the claimant may submit supporting documentation or other tangible evidence to facilitate the contractor's evaluation of the claimant's claim.

(d) The notice of claim shall be delivered no later than ninety days prior to filing an action.

§21-11A-9. Service on additional parties.

Within fourteen days after the initial service of the notice of claim required in subsection (a) of this section, the contractor shall forward a copy of the notice to each subcontractor, supplier and design professional who the contractor reasonably believes is responsible for a defect specified in the notice and include with the notice a description of the specific defect for which the contractor believes the subcontractor, supplier or design professional is responsible.

§21-11A-10. Request for voluntary disclosure of additional information.

(a) Upon the filing of a claim, parties may request to review and copy relevant information in the possession or custody or subject to the control of the other party that pertains to the alleged construction defect, including, without limitation:

(1) Reports of outside consultants or experts; or

(2) Photographs and videotapes.

(b) Subsection (a) of this section applies to all information in the parties' possession regardless of the manner in which it is recorded, including, without limitation, paper and electronic media.

(c) The claimant and the contractor may seek additional information directly from third parties.

(d) Nothing in this section requires any party to disclose the requested information or any matter that is privileged under West Virginia law.

Within thirty days after service of the notice of claim by the claimant, each contractor, subcontractor, supplier or design professional that has received a notice of claim shall serve a written response on the claimant, delivered by hand, certified mail, return receipt requested or other verifiable delivery service, directed to the claimant or representative of the claimant who signed the notice of claim of a construction defect. The written response shall:

(1) Offer to compromise and settle the claim by monetary payment without inspection;

(2) Propose to inspect the residential improvement that is the subject of the claim; or

(3) State that the contractor, subcontractor, supplier or design professional disputes the claim and will neither remedy the alleged construction defect nor compromise and settle the claim.

(e) If the contractor, subcontractor, supplier or design professional disputes the claim pursuant to subdivision (3), subsection (d) of this section and will neither remedy the alleged construction defect nor compromise and settle the claim or does not respond to the claimant's notice of claim within the time stated in said subsection, the claimant may bring an action against the contractor, subcontractor, supplier or design professional for the claim described in the notice of claim without further notice.

(f) If the claimant rejects the inspection proposal or the settlement offer made by the contractor, subcontractor, supplier or design professional pursuant to subsection (d) of this section, the claimant shall serve written notice of the claimant's rejection on the contractor, subcontractor, supplier or design professional. The notice shall include the basis for the

claimant's rejection of the contractor, subcontractor, supplier or design professional's proposal or offer.

(g) After service of the rejection required by subsection (f) of this section, the claimant may bring an action against the contractor, subcontractor, supplier or design professional for the claim described in the initial notice of claim without further notice.

(h) If the claimant elects to allow the contractor, subcontractor, supplier or design professional to inspect the residential improvement in accordance with the contractor, subcontractor, supplier or design professional's proposal pursuant to subdivision (2), subsection (d) of this section, the claimant shall provide the contractor, subcontractor, supplier or design professional and its contractors or other agents reasonable access to the claimant's residence during normal working hours to inspect the premises and the claimed defect to determine the nature and cause of the alleged defects and the nature and extent of any repairs or replacements necessary to remedy the alleged defects.

(i) Within fourteen days following completion of the inspection, the contractor, subcontractor, supplier or design professional shall serve on the claimant:

(1) A written offer to remedy the construction defect at no cost to the claimant, including a report of the scope of the inspection, the findings and results of the inspection, a description of the additional labor and materials necessary to remedy the defect described in the claim and a timetable for the completion of such construction;

(2) A written offer to compromise and settle the claim by monetary payment; or

(3) A written statement that the contractor, subcontractor, supplier or design professional will not proceed further to remedy the defect.

(j) If a claimant accepts a contractor, subcontractor, supplier or design professional's offer made pursuant to subdivision (1) or (2), subsection (i) of this section and the contractor, subcontractor, supplier or design professional does not proceed to make the monetary payment or remedy the construction defect within the agreed timetable, the claimant may bring an action against the contractor, subcontractor, supplier or design professional for the claim described in the initial notice of claim without further notice.

(k) If a claimant receives a written statement that the contractor, subcontractor, supplier or design professional will not proceed further to remedy the defect, the claimant may bring an action against the contractor, subcontractor, supplier or design professional for the claim described in the initial notice of claim without further notice.

(l) If the claimant rejects the offer made by the contractor, subcontractor, supplier or design professional to either remedy the construction defect or to compromise and settle the claim by monetary payment, the claimant shall serve written notice of the claimant's rejection on the contractor, subcontractor, supplier or design professional. The notice shall include the

basis for the claimant's rejection of the contractor, subcontractor, supplier or design professional's offer. After service of the rejection, the claimant may bring an action against the contractor, subcontractor, supplier or design professional for the claim described in the notice of claim without further notice.

(m) Any claimant accepting the offer of the contractor, subcontractor, supplier or design professional to remedy the construction defects shall do so by serving the contractor, subcontractor, supplier or design professional with a written notice of acceptance within a reasonable period of time after receipt of the offer but no later than thirty days after receipt of the offer.

(n) If a claimant accepts a contractor, subcontractor, supplier or design professional's offer to repair a defect described in an initial notice of claim, the claimant shall provide the contractor, subcontractor, supplier or design professional and its contractors or other agents reasonable access to the claimant's residence during normal working hours to perform and complete the construction by the timetable stated in the offer.

(o) During negotiations under this article, if the running of the applicable statute of limitations would otherwise become a bar to a civil action, service of a claimant's written notice of claim pursuant to this article tolls the applicable statute of limitations until six months after the termination of negotiations under this article.

§21-11A-11. Duty to negotiate.

The parties shall negotiate in accordance with the times set forth in section twelve of this article (relating to timetable) to attempt to resolve all claims. No party is obligated to settle with the other party as a result of the negotiation.

§21-11A-12. Timetable.

(a) Following receipt of a claimant's notice of claim, the contractor or other designated representative shall review the claimant's claim and initiate negotiations with the claimant to attempt to resolve the claim.

(b) Subject to subsection (c) of this section, the parties shall begin negotiations within a reasonable period of time not to exceed thirty days following the date the contractor receives the claimant's notice of claim.

(c) The parties may conduct negotiations according to an agreed schedule, but must begin negotiations no later than the deadline set forth in subsection (b) of this section.

(d) Subject to subsection (e) of this section, the parties shall complete the negotiations that are required by this article within ninety days after the contractor receives the claimant's notice of claim.

(e) The parties may agree in writing to extend the time for negotiations, on or before the ninetieth day after the contractor receives the claimant's notice of claim. The agreement shall be signed by representatives of the parties with authority to bind each respective party and shall provide for the extension of the statutory negotiation period until a date certain. The parties may enter into a series of written extension agreements that comply with the requirements of this section.

§21-11A-13. Conduct of negotiation.

Negotiation is a consensual bargaining process in which the parties attempt to resolve the claim. A negotiation under this article may be conducted by any method, technique or procedure authorized under the contract or agreed upon by the parties, including, without limitation, negotiation in person, by telephone, by correspondence, by video conference or by any other method that permits the parties to identify their respective positions, discuss their respective differences, confer with their respective advisers, exchange offers of settlement and settle.

§21-11A-14. Settlement agreement.

(a) A settlement agreement may resolve an entire claim or any designated and severable portion of a claim.

(b) To be enforceable, a settlement agreement must be in writing and signed by representatives of the claimant and the contractor who have authority to bind each respective party.

(c) A partial settlement does not waive parties' rights as to the parts of the claims that are not resolved.

§21-11A-15. Costs of negotiation.

Unless the parties agree otherwise, each party shall be responsible for its own costs incurred in connection with a negotiation, including, without limitation, the costs of attorney's fees, consultant's fees and expert's fees.

§21-11A-16. Commencement of action.

If a claim for a construction defect is not resolved in its entirety through negotiation in accordance with this article on or before the ninetieth day after the contractor receives the notice of claim or after the expiration of any extension agreed to by the parties, the claimant may commence an action.

§21-11A-17. Additional construction defects; additional notice of claim.

A construction defect which is discovered after a claimant has provided a contractor with the original notice of claim is subject to the notice requirements and timetable of this article.

§21-12-1. Short title.

This article shall be known and may be cited as the "Commercial Bungee Jumping Safety Act."

§21-12-2. Definitions.

As used in this article:

"Bungee jumping" means a commercial recreational activity where participants jump off a platform or other area, whether natural or man-made with a cord or other elastic device attached or otherwise affixed or connected to the jumper in order to prevent the jumper from striking the ground or earth below the jump platform, and which activity is engaged in for the purpose of giving the jumpers amusement, pleasure, thrills or excitement.

§21-12-3. Rules.

The Division of Labor shall promulgate rules for the safe installation, repair, maintenance, use, operation and inspection of all commercial bungee jumping activities. The rules shall be in addition to any existing applicable safety orders and shall be concerned with the elasticity of cords relative to a jumper's weight; loss of cord elasticity after repetitive jumps; clear area in which the cord and jumper may swing following a jump; risks of falling off of a jump platform, both by customers and employees, equipment quality; engineering force stresses, safety devices and preventative maintenance. The rules shall be promulgated and designed for the purpose of developing commercial bungee jumping as a recreational activity and additional tourist attraction in West Virginia. All rules shall be promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code.

§21-12-4. Inspection and permit fees.

The division shall determine a schedule of inspection and permit fees, which fees shall not exceed $100 per commercial bungee jumping site per year. All fees received shall be deposited in the General Revenue Fund. No fees may be charged to public agencies.

§21-12-5. Inspectors.

The division may hire or contract with inspectors to inspect bungee jumping sites.

§21-12-6. Permits; application; annual inspection.

(a) An operator or owner shall not knowingly permit the operation of a commercial bungee jumping event without a permit issued by the division.

(b) Commercial bungee jumping sites will be inspected at intervals to be determined by the Division of Labor, but in no event, shall a commercial bungee jumping site be inspected less frequently than once per year.

§21-12-7. Issuance of permit; certificate of inspection; availability to public.

If, after inspection, a commercial bungee jumping site, together with the jump platform and equipment, is found to comply with the rules of the division, the division shall issue a permit to operate. The permit shall be in the form of a certificate of inspection and shall be kept in the records of any operator or owner for a three-year period and shall be readily accessible to the public for inspection at any reasonable time at the commercial bungee jumping site or where a commercial bungee jump is located. A copy of certificate, showing the last date of inspection, shall be affixed to the bungee jumping platform upon issuance, or at any other location designated by the commissioner of the Division of Labor: Provided, That the division shall take final action upon all completed permit applications within thirty days of receipt if the application is uncontested, or within ninety days if the application is contested.

§21-12-8. Notice of serious physical injury or fatality; investigations; records available to public.

An owner or operator of a commercial bungee jumping site shall notify the division not later than twenty-four hours after any fatality or accident occurring as a result of the operation of the commercial bungee jumping site that results in a serious physical injury requiring medical treatment or results in a loss of consciousness. The notice may be oral or written. The division shall investigate each fatality or accident and any safety related complaint involving a commercial bungee jumping site in this state about which the division receives notice. Every owner or operator of a commercial bungee jumping site shall keep a record of each accident or fatality and the record shall be kept with the certificate of inspection required by this article and shall be readily accessible to the public for inspection at any reasonable time at the commercial bungee jumping site or where the attraction is located.

§21-12-9. Service of process.

Any person, firm or corporation operating a commercial bungee jumping site may be served with civil process in the same manner as if the owner or operator was a domestic or foreign corporation.

§21-12-10. Temporary cessation of operation of bungee jumping site or attraction determined to be unsafe.

The division may order, in writing, a temporary cessation of operation of a commercial bungee jumping site if it has been determined after inspection to be hazardous or unsafe. Operation shall not resume until the conditions are corrected to the satisfaction of the division.

§21-12-11. Insurance; bond.

No person may operate a commercial bungee jumping site unless at the time there is in existence (a) a policy of insurance approved by the division and obtained from an insurer authorized to do business in this state in an amount of not less than $300,000 per person and $1 million in the aggregate for each commercial bungee jumping site or jump platform location insuring the owner or operator against liability for injury suffered by persons jumping from the jump platform or by persons in, on, under or near the jump platform or commercial bungee jumping site, or (b) a bond in a like amount, as approved by the division: Provided, That the aggregate liability of the surety under any bond shall not exceed the face amount thereof, or (c) cash or other security acceptable to the division. Satisfactory evidence of insurance, bond or other security shall accompany the permit application.

§21-12-12. Regulation of commercial bungee jumping events and attractions by cities and counties.

Nothing contained in this article prevents cities and counties from regulating commercial bungee jumping sites or events with regard to any aspect not relating to installation, repair, maintenance, use, operation and inspection of the commercial bungee jump site, jump platforms or equipment.

§21-12-13. Criminal penalty for violation.

Any operator or owner who knowingly permits the operation of a commercial bungee jumping site or event in violation of the provisions of section six of this article is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $1,000, imprisoned in the county jail not more than twelve months, or both fined and imprisoned.

§21-13-1. Purpose.

The Legislature finds that it is necessary to the safety, health, public interest and general welfare of the people of the State of West Virginia that convenience food stores operating in the state be regulated to prevent the ever-present danger to the safety, health, life and general welfare of its citizens and the employees of these stores.

§21-13-2. Definitions.

As used in this article, except where a different meaning is provided in section five of this article:

(1) "Convenience food store" means a business establishment that:

(A) Derives fifty percent or more of its gross income from the sale of goods, merchandise or other articles of value in their original containers or gasoline and other petroleum products with gross annual sales of $1 million or more; and

(B) Offers a limited quantity and variety of food, household and sundry items; and

(C) Operates at any time between the hours of twelve o'clock a.m. and five o'clock a.m.; and

(D) Does not sell or offer for sale prescription drug items.

(2) "Owner" means the person, corporation, partnership, joint venture or other group enterprise having an ownership or proprietary interest in a convenience food store.

(3) "Employee" means any person permitted to work by a person, corporation, partnership, joint venture or group enterprise legally responsible for the operation of the convenience food store.

§21-13-3. Convenience food store regulations.

All convenience food stores shall comply with the following provisions:

(1) If open for business after twelve o'clock a.m., the convenience food store must employ two persons who are continuously on duty on the premises from twelve o'clock a.m. until closing or five o'clock a.m., whichever occurs first, or employ one person during these hours and install the security camera system provided for in subdivision (3) of this section, or install a security booth for one person to occupy during these hours or lock their doors and allow customers to be served through a pass-through device.

(2) The entire area of the parking area used by customers of convenience food stores must be lighted during all hours of darkness when employees or customers, or both employees and customers are on the premises. Minimum average maintained illuminance must be two footcandles or greater with a uniformity ratio (average to minimum) of no more than five to one unless such lighting violates applicable municipal lighting code requirements or creates a public or private nuisance.

(3) If only one person is employed on duty on the premises from twelve o'clock a.m. until closing or five o'clock a.m., the store shall install, by January 1, 1999, a security camera capable of producing a retrievable image on film or tape that can be enlarged through projection or other means. The cameras shall be maintained in proper working order at all times.

(4) Any owner or employee who works between the hours of twelve o'clock a.m. and five o'clock a.m. at a convenience food store shall be trained in robbery prevention by the owner. Owners shall develop a written robbery prevention program which shall be available for inspection during regular business hours at each convenience food store, and shall base the training on the program.

(5) Provide height markers at the door or doors exiting the premise which display measurements from the floor: Provided, That any owner who is in compliance with this section and certifies such compliance to the Superintendent of State Police or the superintendents designee, or the county sheriff's department or the municipal police department, on or before January 1, 1999, shall be exempt from the provisions of section four of this article.

§21-13-4. Penalties and enforcement.

Any owner who fails to comply with this article, upon the first violation, shall be assessed a civil fine of not less than $100 nor more than $500; and, upon a second violation shall be fined not less than $500 nor more than $1,000. For third and subsequent violations, an owner shall be fined not less than $1,000 nor more than $5,000. If noncompliance is corrected within ten days after a violation, no fine may be assessed.

§21-13-5.

Repealed.

Acts, 2002 Reg. Sess., Ch. 104.

§21-14-1. 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 plumbing through licensure by the Commissioner of Labor.

§21-14-2. Definitions.

As used in this article:

(a) “License” means a valid and current license issued by the Commissioner of Labor in accordance with the provisions of this article.

(b) “Journeyman plumber” means a person qualified by passage of a journeyman plumber written examination with a score of at least 70 percent and who is competent to instruct and supervise the work of a plumber in training.

(c) “Master plumber” means a person who has passed a master plumber written examination with a score of at least 70 percent and who is competent to design plumbing systems, and to instruct and supervise the plumbing work of journeyman plumbers, and plumbers in training: *Provided*, That the master plumber written examination may not be taken until one year after passage of the journeyman plumber examination.

(d) “Plumber in training” means a person who has not passed the journeyman plumber examination: *Provided*, That the fee for plumbers in training may not be higher than $25.00.

(e) “Plumbing” means the practice, materials, and fixtures utilized within a building in the installation, extension, and alteration of all piping, fixtures, water treatment devices, plumbing appliances, and appurtenances, in connection with sanitary drainage or storm drainage facilities; the plumbing venting systems; medical gas systems; fuel oil and gas piping for residential, commercial, and institutional facilities; backflow preventers; and public or private water supply systems, as defined by the state building code.

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

§21-14-3. License required; exemptions.

(a) On and after January 1, 2009, a person performing or offering to perform plumbing work in this state shall have a license issued by the Commissioner of Labor, in accordance with the provisions of this article.

(b) A person licensed under this article must carry a copy of the license on any job in which plumbing work is being performed.

(c) This article does not apply to:

(1) A person who personally performs plumbing work on a single family dwelling owned or leased by that person or by a member of that person's immediate family;

(2) A person who performs plumbing at any 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 plumbing work while employed by an employer who engages in the business of selling appliances at retail, so long as such plumbing work is performed incidental to the installation or repair of appliances sold by the employer;

(4) A person who, while employed by a public utility or its affiliate, performs plumbing in connection with the furnishing of public utility service;

(5) A person who performs plumbing work while engaging in the business of installing, altering or repairing water distribution or drainage lines outside the foundation walls of a building, public or private sewage treatment or water treatment systems including all associated structures or buildings, sewers or underground utility services;

(6) A person who performs plumbing work while engaged in the installation, extension, dismantling, adjustment, repair, servicing or alteration of a heating ventilation and air conditioning (HVAC) system, air-veyor system, air exhaust system or air handling system;

(7) A person who performs plumbing work at a coal mine that is being actively mined or where coal is being processed; or

(8) A person who performs plumbing work at manufacturing, industrial and natural gas facilities.

§21-14-3a. Veteran qualification for examination for license as a plumber.

Any person who has served as a member of the United States armed forces, National Guard, or reserve, and who has successfully completed the course of instruction required to qualify him or her for rating as a plumber, utilities worker, or other equivalent rating in his or her particular branch of the armed forces, and whose service in the armed forces was under honorable conditions, may submit to the West Virginia Commissioner of Labor a photostatic copy of the certificate issued to him or her certifying successful completion of such course of instruction, a photostatic copy of his or her discharge from the armed forces, an application for a certification as a plumber, and the prescribed license fee.

If the certificate and discharge, as evidenced by the photostatic copies thereof, and the application and prescribed license fee are in order, and if the veteran meets all of the requirements of this article, the veteran shall be permitted to take the same examination or examinations as are required under this article for applicants who do not apply for a license under the provisions of this article: *Provided,* That the veteran may be required to attend additional training courses prior to taking the examination if more than 30 years have passed from his or her successful completion of the course of instruction and date of application. If the veteran passes the examination or examinations, he or she shall be licensed as a plumber and shall thereafter be subject to all of the provisions of this article. If the veteran does not pass the examination or examinations, any provisions of this article relating to reexaminations shall apply to the veteran the same as they apply to a person who does not apply for a license under the provisions of this article.

§21-14-4. Rule-making authority.

The Commissioner of Labor shall propose rules for legislative approval, in accordance with the provisions of article three, chapter twenty-nine-a 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, including classifications of licenses as defined in this article, applications, examinations and qualifications;

(2) Provisions for the granting of licenses without examination, to applicants who present satisfactory evidence of having the expertise required to perform work at the level of the classifications defined in this article and who apply for licensure on or before July 1, 2009: 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 testing, 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.

§21-14-5. Enforcement.

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 is authorized to enforce the provisions of this article, and may, at reasonable hours, enter any building or premises where plumbing work is performed and issue cease and desist orders for noncompliance.

§21-14-6. Denial, suspension, and revocation of license.

(a) The Commissioner of Labor may deny a license to any applicant who fails to comply with 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 if the prior criminal conviction bears a rational nexus 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 plumbing 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.

§21-14-7. Penalties.

(a) On and after January 1, 2009, a person performing or offering to perform plumbing work without a license issued by the Commissioner of Labor, is subject to a cease and desist order.

(b) Any person continuing to engage in plumbing 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; and

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

(c) A separate offense means each day, after official notice is given, that a person performs plumbing work that is unlawful or is not in compliance with the provisions of this article.

(d) The Commissioner of Labor may institute proceedings in the circuit court of the county where the alleged violation of the provisions of this article occurred or is occurring to enjoin any violation of any provision of this article. A circuit court by injunction may compel compliance with the provisions of this article, with the lawful orders of the Commissioner of Labor, and with any final decision of the Commissioner of Labor. 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 the provisions of chapter 29A of this code.

§21-14-8. Inapplicability of local ordinances.

On and after January 1, 2009, a political subdivision of this state may not require, as a condition precedent to the performance of plumbing work in the political subdivision, a person who holds a valid and current license issued under the provisions of this article, to have any other license or other evidence of competence as a plumber.

§21-14-9. Disposition of fees.

All fees paid pursuant to this article shall be paid to the Commissioner of Labor and deposited in a special revenue account in the State Treasury to be known as the Plumbing Work 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.

§21-15-1. Legislative purpose.

The Legislature finds that:

(1) The sport of ziplining and canopy touring is practiced by a large number of citizens of West Virginia and also attracts to West Virginia a large number of nonresidents, significantly contributing to the economy of West Virginia; and

(2) There are inherent risks in the sport of ziplining and canopy touring which should be understood by each participant and which are essentially impossible to eliminate by the zipline or canopy tour operator.

§21-15-2. Definitions.

As used in this article:

(1) "ACCT" means the Association for Challenge Course Technology;

(2) "Canopy tours" means a facility not located in an amusement park or carnival which is a supervised or guided educational or recreational activity including, but not limited to, beams, bridges, cable traverses, climbing walls, nets, platforms, ropes, swings, towers and ziplines, which may be installed on or in trees, poles, portable structures or buildings, or be part of self-supporting structures.

(3) "Challenge course standards" means the Challenge Course Standards: Association for Challenge Course Technology, Seventh Edition (2008), or substantially equivalent standards.

(4) "Division" means the West Virginia Division of Labor.

(5) "Employee" means an officer, agent, employee, servant, or volunteer, whether compensated or not, whether full time or not, who is authorized to act and is acting within the scope of his or her employment or duties with the zipline operator.

(6) "Operator" means any person, partnership, corporation or other commercial entity and their agents, officers, employees or representatives, who has operational responsibility for any zipline or canopy tour.

(7) "Participant" means any person who engages in activities on a zipline or canopy tour individually or in a group activity supervised by a zipline or canopy tour operator.

(8) "Special inspector" means a professional inspector who meets the qualifications set forth in ACCT or substantially equivalent standards and is certified by the division pursuant to section eight;

(9) "Zipline" means a commercial recreational activity where participants, by the use of a permanent cable or rope line suspended between support structures, enables a participant attached to a pulley to traverse from one point to another, for the purpose of giving the participants amusement, pleasure, thrills or excitement.

§21-15-3. Duties of a zipline or canopy tour operators.

Every operator shall:

(1) Construct, install, maintain and operate all ziplines and canopy tours in accordance with ACCT challenge course standards or substantially equivalent standards;

(2) Ensure that ziplines and canopy tours are inspected at least annually by the Division or a special inspector;

(3) Train employees operating ziplines and canopy tours in accordance with national standards associated with their profession;

(4) Procure and maintain commercial general liability insurance against claims for personal injury, death and property damages occurring upon, in or about the zipline or canopy tour which affords protection to the limit of not less than $1 million for injury or death of a single person, to the limit of $2 million in the aggregate, and to the limit of not less than $50,000 for property damage; and

(5) Maintain records for a period of at least three years from the date of the creation of the record of:

(A) Proof of insurance;

(B) Inspection reports;

(C) Maintenance records; and

(D) Participant acknowledgment of risks and duties.

§21-15-4. Responsibilities of participants; prohibited acts.

(a) It is the duty of each participant to participate as instructed by the operator.

(b) Participants have a duty to act as would a reasonably prudent person when engaging in the sport of ziplining or canopy touring offered by a operator.

(c) No participant may:

(1) Use a zipline or canopy tour without the authority, supervision and guidance of the zipline operator;

(2) Drop, throw or expel any object from a zipline or canopy tour except as authorized by the operator;

(3) Perform any act which interferes with the running or operation of a zipline or canopy tour; or

(4) Engage in any harmful conduct, or willfully or negligently engage in any type of conduct with contributes to cause injury to any person.

§21-15-5. Liability of zipline operators.

(a) A zipline operator shall be liable for injury, loss or damage caused by failure to follow the duties and standard of care set forth in section three of this article where the violation of duty is causally related to the injury, loss or damage suffered.

(b) A zipline operator is not liable for any injury, loss or damage caused by the negligence of any person who is not an agent or employee of the operator.

§21-15-6. Rules.

The division shall promulgate rules for the safe installation, repair, maintenance, use, operation and inspection of all ziplines and canopy tours consistent with ACCT Challenge Course Standards. The rules shall be in addition to any existing applicable safety orders and shall be concerned with the installation, repair, maintenance, use, operation and inspection of ziplines and canopy tours consistent with ACCT Challenge Course Standards. The rules shall be promulgated and designed for the purpose of developing ziplines and canopy tours as a recreational activity and additional tourist attraction in West Virginia. All rules shall be promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code.

§21-15-7. Inspection and permit fees.

(a) The division shall charge inspection and permit fees. The annual permit fee is $100 for each zipline or canopy tour.

(1) The annual inspection fee, if an inspection is to be done by the division, is $100 for each zipline or canopy tour.

(2) The annual inspection fee, if an inspection is to be done by the division, is due at the time of application for the annual permit.

(3) The division shall waive the inspection fee for a zipline or canopy tour whose operator provides proof of nonprofit business status or for any zipline or canopy tour whose operator provides proof that an inspection has been completed within the last year by a certified special inspector as provided in §21-15-9 of this code.

(b) The division may charge additional inspection fees equal to the annual inspection fee for additional inspections required as the result of the condemnation of a device for safety standards violations and for inspections required as a result of accidents involving serious or fatal injury. If any operator requires an inspection as the result of a violation of the permitting requirements of §21-15-9 of this code, the division shall charge the operator $75 per hour in addition to the established inspection fee, including travel time.

(c) All fees paid pursuant to this article shall be paid to the Commissioner of Labor and deposited in an appropriated special revenue account in the State Treasury known as the Amusement Rides and Amusement Attractions Safety 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.

(d) No inspection fee may be charged public agencies.

§21-15-8. Inspectors.

(a) The Division may hire or contract with inspectors to inspect zipline or canopy tours. The Division is responsible for oversight and review of the activities of special inspectors and may hire or contract with inspectors to review the activities of special inspectors.

(b) The Division shall certify all special inspectors. The Division may suspend or revoke any certification of a special inspector upon a showing of good cause. The Division shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code providing an application process and minimum qualifications for certification of special inspectors. The Division may charge an annual certification fee not to exceed $50.00.

§21-15-9. Permits; application; annual inspection.

(a) No operator may knowingly permit the operation of a zipline or canopy tour without a permit issued by the Division.

(b) Each year and at least fifteen days before the first time the zipline or canopy tour is made available in this state for public use, an operator shall apply for a permit to the Division on a form furnished by the Division and containing any information the Division may require.

(c) The Division shall, upon application and within ten days of the first time the zipline or canopy tour is made available in this state for public use, inspect the zipline or canopy tour.

(d) The Division shall inspect all zipline or canopy tours at least once every year.

(e) The Division may conduct inspections at any reasonable time without prior notice: Provided, That in lieu of performing its own inspection, the Division shall accept inspection reports from special inspectors certified by the Division.

§21-15-10. Issuance of permit; certificate of inspection; availability to public.

If, after inspection, a zipline or canopy tour, is found to comply with the rules of the division, the division shall issue a permit to operate. The permit shall be in the form of a certificate of inspection and shall be kept in the records of any operator for a three-year period and shall be readily accessible to the public for inspection at any reasonable time at the zipline location. A copy of the certificate, showing the last date of inspection, shall be affixed to the zipline upon issuance, or at any other location designated by the commissioner of the division: Provided, That the division shall take final action upon all completed permit applications within thirty days of receipt if the application is uncontested, or within ninety days if the application is contested.

§21-15-11. Notice of serious physical injury or fatality; investigations; records available to public.

An operator of a zipline or canopy tour shall notify the division not later than twenty-four hours after any fatality or accident occurring as a result of the operation of the zipline or canopy tour that results in a serious physical injury to any person requiring medical treatment or results in a loss of consciousness to any person. Notice to the division may be oral, written or by electronic means, but this notice requirement in no way limits the an operators responsibility to notify emergency or law enforcement personnel of the incident as soon as is reasonably practicable. The division shall investigate each fatality or accident and any safety-related complaint involving a zipline or canopy tour in this state about which the division receives notice. Every operator of a zipline or canopy tour shall keep a record of each accident or fatality and the record shall be kept with the certificate of inspection required by this article and shall be readily accessible to the public for inspection at any reasonable time at the place where the zipline or canopy tour is located.

§21-15-12. Service of process.

Any person, firm or corporation operating a zipline may be served with civil process in the same manner as if the owner or operator was a domestic or foreign corporation.

§21-15-13. Temporary cessation of the operation of a zipline or canopy tour determined to be unsafe.

The division may order, in writing, a temporary cessation of operation of a zipline if it has been determined after inspection to be hazardous or unsafe. Operation may not resume until the conditions are corrected to the satisfaction of the division.

§21-15-14. Regulation of ziplines by cities and counties.

Nothing contained in this article prevents cities and counties from regulating a zipline or canopy tour with regard to any aspect not relating to installation, repair, maintenance, use, operation and inspection of a zipline or canopy tour.

§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.

§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.

(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.

§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.

§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.

§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

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

§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.

§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 if the prior criminal conviction bears a rational nexus 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.

§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.

§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.

§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.

§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.

§21-17-1. Applicability and short title.

The provisions of this article apply to all professions requiring an occupational license or other authorization to practice or perform a specific occupation in this state regulated by this chapter. This article may be known and cited as the “RECAP Act.”

§21-17-2. Definitions.

The words defined in this section have the meanings given them for purposes of this article unless the context clearly requires otherwise.

“Board” means a government agency, board, department, or other government entity that regulates a lawful occupation and issues an occupational license or other authorization to practice to an individual.

“Lawful occupation” means a course of conduct, pursuit, or profession that includes the sale of goods or services that are not themselves illegal to sell irrespective of whether the individual selling them is subject to an occupational license.

“Occupational license” is a nontransferable authorization in law for an individual to perform or practice a lawful occupation based on meeting personal qualifications established by the Legislature. In an occupation for which a license is required, it is illegal for an individual who does not possess a valid occupational license to perform or practice the occupation.

“Other authorization to practice” is a nontransferable acknowledgment, other than a license, by a state government or board that is provided to an individual asserting that the individual has met the educational and examination requirements to engage in a lawful occupation.

“Other state” or “another state” means any United States territory or state in the United States other than West Virginia.

“Scope of practice” means the procedures, actions, processes, and work that a person may perform under an occupational license or other authorization to practice issued in this state.

§21-17-3. Occupational license or other authorization to practice.

(a) Notwithstanding any other law, the board shall issue an occupational license or other authorization to practice to a person upon application, if all the following apply:

(1) The person holds a valid occupational license or other authorization to practice in another state in a lawful occupation with a similar scope of practice and with education, experience, and examination requirements for licensure or authorization to practice similar to those of this state, as determined by the board in this state;

(2) The person has held the occupational license or other authorization to practice in the state where he or she holds a valid license or other authorization to practice for at least one year;

(3) The person has met all educational and examination requirements for occupational licensure or other authorization to practice in the state where he or she holds a valid license;

(4) The person is in good standing with the board in every other state where he or she holds a valid license;

(5) The person has established residency as a West Virginia resident as defined by §11-21-7(a) of this code;

(6) The person does not have a disqualifying criminal record as determined by the board in this state;

(7) The person has never had his or her license or other authorization to practice revoked by the board in another state because of negligence or intentional misconduct related to the person’s work in the occupation;

(8) The person did not surrender an occupational license or other authorization to practice because of negligence or intentional misconduct related to the person’s work in the occupation in another state;

(9) The person does not have a complaint, allegation, or investigation pending before a board in another state. If the person has a complaint, allegation, or investigation pending, the board in this state shall not issue or deny an occupational license or other authorization to practice to the person until the complaint, allegation, or investigation is resolved; and

(10) The person pays all applicable fees and meets all applicable bonding requirements in this state.

(b) If West Virginia requires an occupational license to lawfully work in a profession, and another state does not issue an occupational license for the same profession and instead issues another authorization to practice, West Virginia shall issue an occupational license to the person if the person otherwise satisfies subsection (a) of this section.

(c) Any person issued a license under this article must comply with all relevant continuing education requirements to renew a license established by the board and any other rule promulgated by the board as provided by §21-17-8 of this code.

§21-17-4. Work experience.

Notwithstanding any other law, the board shall issue an occupational license or other authorization to practice to a person upon application based on work experience in another state, if all the following apply:

(1) The person worked in a state that does not use an occupational license or other authorization to practice that regulates a lawful occupation, but West Virginia uses an occupational license or other authorization to practice that regulates a lawful occupation with a similar scope of practice, as determined by the board;

(2) The person worked for at least two years in the lawful occupation and has acquired experience demonstrating knowledge and proficiency in the occupation similar to that which may be achieved through compliance with the education and examination requirements to practice in this state, as determined by the board;

(3) The person has taken and passed any required national examinations to lawfully practice the occupation or use a title in connection with an occupation in another state; and

(4) The person satisfies §21-17-3(a)(5), §21-17-3(a)(6), and §21-17-3(a)(10) of this code.

§21-17-5. State law examination.

A board may require a person to pass a jurisprudential examination specific to relevant West Virginia laws that regulate the occupation if an occupational license or other authorization to practice in this state requires a person to pass such examination for original licensure.

§21-17-6. Decision.

The board will provide the person with a written decision issuing or denying a license within 60 days after receiving a complete application.

§21-17-7. Appeal.

(a) The person may appeal the board's decision to a court of general jurisdiction in the county where the person resides.

(b) The person may appeal the board's:

(1) Denial of an occupational license or other authorization to practice;

(2) Determination of the occupation;

(3) Determination of the similarity of the scope of practice of the occupational license or other authorization to practice; or

(4) Other determinations under this article.

§21-17-8. State laws and jurisdiction.

A person who obtains an occupational license or other authorization to practice pursuant to this article is subject to:

(1) The laws regulating the occupation in this state; and

(2) The jurisdiction of the board in this state.

§21-17-9. Limitations.

(a) An occupational license or other authorization to practice issued pursuant to this article is valid only in West Virginia. It does not make the person eligible to work in another state under an interstate compact or reciprocity agreement unless otherwise provided in law.

(b) Nothing in this article prevents West Virginia from entering into a licensing compact or reciprocity agreement with another state, foreign province, or foreign country.

(c) Nothing in this article prevents West Virginia from recognizing occupational credentials issued by a foreign province, foreign country, international organization, or other entity.

§21-17-10. Cost for application.

The board may charge a fee to the person to recoup its costs. The fee may not exceed the cost of an application for original licensure charged by the board. Any application for renewing a license after obtaining a license under this article shall comply with the board's established renewal procedures and fee schedule.

§21-17-11. Preemption.

This article preempts laws by township, municipal, county, and other governments in the state which regulate occupational licenses and other authorization to practice.

§21-17-12. Rulemaking.

Boards affected by these provisions may promulgate rules pursuant to §29A-3-1 *et seq*. of this code to carry out the provisions of this article.