WEST VIRGINIA CODE CHAPTER 29 ARTICLE 3D

WV Legislature

§29-3D-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 fire protection work and damper work through licensure by the State Fire Marshal.

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§29-3D-2. Definitions.

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

“Combination fire/smoke damper” means a device that meets both fire damper and smoke damper requirements.

“Damper” means a fire damper, smoke damper, or combination fire/smoke damper.

“Damper work” means to install, test, maintain, or repair a damper.

“Engineered suppression systems installer” means a person certified by a manufacturer to install, alter, extend, maintain, lay out, or repair an agent suppression system.

“Engineered Suppression Systems Technician” means a person certified by a manufacturer to maintain or repair an agent suppression system.

“Fire damper” means a device installed in an air distribution system, designed to close automatically upon detection of heat, to interrupt migratory airflow, and to restrict the passage of flame. Fire dampers are classified for use in either static systems or for dynamic systems, where the dampers are rated for closure under airflow.

“Fire protection layout technician” is an individual who has achieved National Institute for Certification in Engineering Technologies (NICET) Level III, or has achieved from the National Fire Protection Association a certification in Certified Water Based Systems Professional (CWBSP), or has passed an exam approved by the state Fire Marshal from the National Inspection Testing Certification (NITC) organization, or higher certification as recognized by the state Fire Marshal, and who has the knowledge, experience, and skills necessary to lay out fire protection systems based on engineering design documents.

“Fire protection system” means any fire protection suppression device or system designed, installed, and maintained in accordance with the applicable National Fire Protection Association (NFPA) codes and standards, but does not include public or private mobile fire vehicles.

“Fire protection work” means the installation, alteration, extension, maintenance, or testing of all piping, materials, and equipment inside a building, including the use of shop drawings prepared by a fire protection layout technician, in connection with the discharge of water, other special fluids, chemicals, or gases, and backflow preventers for fire protection for the express purpose of extinguishing or controlling fire.

“Journeyman sprinkler fitter” means a person qualified by at least 2,000 hours of work experience installing, adjusting, repairing, and dismantling fire protection systems and who is competent to instruct and supervise fire protection work: *Provided*, That current license renewal exemptions to examinations apply.

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"License" means a valid and current license issued by the State Fire Marshal in accordance with the provisions of this article.

"Portable fire extinguisher technician" means a person certified in accordance with NFPA 10 to install, maintain, repair, and certify portable fire extinguishers as defined by NFPA 10.

"Preengineered suppression systems installer" means a person certified by a manufacturer to install, alter, extend, maintain, lay out, or repair an agent suppression system.

"Preengineered suppression systems technician" means a person certified to maintain or repair an agent suppression system.

"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.

"Smoke damper" means a device within an operating (dynamic) air distribution system to control the movement of smoke.

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§29-3D-3. License required; exemptions.

(a) On and after January 1, 2009, a person performing or offering to perform fire protection work in this state shall have a license issued by the State Fire Marshal, 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 fire protection work is being performed.

(c) This article does not apply to:

(1) A person who personally performs fire protection work or damper work on a single family dwelling owned or leased by that person or that person's immediate family;

(2) A person who performs fire protection work or damper work 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, while employed by a public utility or its affiliate, performs fire protection work in connection with the furnishing of public utility service.

(4) A person who performs fire protection 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;

(5) A person who performs fire protection work while engaged in the installation, extension, dismantling, adjustment, repair, or alteration of a heating ventilation and air conditioning (HVAC) system, air-veyor system, air exhaust system, or air handling system; or

(6) A person who performs fire protection work at a coal mine that is being actively mined or where coal is being processed.

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§29-3D-4. Rule-making authority.

The State Fire Marshal shall 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, 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: *Provided*, That the rules shall require a person to be licensed as a HVAC technician pursuant to §21-16-1 *et seq*. of this code and the rules promulgated pursuant thereto, before performing damper work pursuant to this article;

(2) Provisions for the granting of licenses without examination, to applicants who present satisfactory evidence of having the expertise required to perform fire protection 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) Provisions for the granting of licenses without examination, to applicants who present satisfactory evidence of having the expertise required to perform damper work at the level of the classifications defined in this article and who apply for licensure on or before July 1, 2016: *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;

(4) Reciprocity provisions;

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

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

(7) Enforcement procedures; and

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

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§29-3D-4a. Veteran qualification for license as a journeyman sprinkler fitter or a sprinkler fitter in training.

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 fire protection officer or other equivalent rating in his or her particular branch of the armed forces, which provided the veteran direct experience installing, adjusting, repairing, and dismantling fire protection systems, and whose service in the armed forces was under honorable conditions, may submit to the State Fire Marshal a photostatic copy of a certificate issued to him or her certifying successful completion of such course of instruction and documentation evidencing the number of hours of experience the veteran possesses, a photostatic copy of his or her discharge from the armed forces, an application for a certification as a journeyman sprinkler fitter or sprinkler fitter in training, and the prescribed license fee.

If the certificate and discharge, as evidenced by the photostatic copies thereof, documentation of hours of training and experience, 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 sprinkler fitter in training or a journeyman sprinkler fitter 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.

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§29-3D-5. Enforcement.

(a) The State Fire Marshal and his or her deputy fire marshal, assistant fire marshal or assistant fire marshal-in-training, is authorized to enforce the provisions of this article, and may, at reasonable hours, enter any building or premises where fire protection work or damper work is performed and issue citations for noncompliance.

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

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§29-3D-6. Denial, suspension and revocation of license.

(a) The State Fire Marshal may deny a license to any applicant who fails to comply with the rules established by the State Fire Marshal, or who lacks the necessary qualifications. When considering whether an applicant possesses the qualifications for a license, the State Fire Marshal shall consider whether an applicant's prior criminal convictions directly and specifically relate to the license being sought.

(1) The State Fire Marshal may not disqualify an applicant from initial licensure because of a prior criminal conviction that remains unreversed unless that conviction is for a crime that directly and specifically relates to the duties and responsibilities of the activity requiring licensure such that granting the applicant licensure would pose a direct and substantial risk to the public because the applicant has not been rehabilitated. In determining whether a criminal conviction directly and specifically relates to a profession or occupation, the State Fire Marshal shall consider, at a minimum:

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

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

(C) 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

(D) Any evidence of rehabilitation or treatment undertaken by the individual, including the following, if applicable:

(i) The age of the individual when he or she committed the offense;

(ii) The completion of the criminal sentence;

(iii) A certificate of rehabilitation or good conduct;

(iv) Completion of, or active participation in, rehabilitative mental health, drug, or alcohol treatment;

(v) Testimonials and recommendations, which may include a progress report from the individual's probation or parole officer;

(vi) Education and training;

(vii) Employment history relevant to the license being sought;

(viii) Whether the individual will be bonded in the occupation; and

(ix) Other evidence of rehabilitation the individual submits to the State Fire Marshal.

(2) Notwithstanding any other provision of this code to the contrary, the State Fire Marshal

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may not disqualify an applicant from initial licensure because of a prior criminal conviction if:

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

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

(C) 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 State Fire Marshal.

(3) An individual with a criminal record who has not previously held a license under this section may petition the State Fire Marshal 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 State Fire Marshal to identify the jurisdiction where the conviction occurred, the date of the conviction, and the specific nature of the conviction.

(b) The State Fire Marshal 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; or

(3) The licensee incompetently or unsafely performs fire protection work or damper work.

(c) Notwithstanding any other provision of this chapter to the contrary, an individual may not be required to disclose, nor may the State Fire Marshal consider, an arrest not followed by a conviction in an application for initial licensure or a determination under §29-3D-6(a)(3) of this code. If a criminal background check is reviewed, the disposition of any arrest or charge must be included.

(d) The State Fire Marshal shall update its licensure forms, other relevant public-facing documents, and website to explain the requirements of this section, including, but not limited to, the availability of the process set forth in §29-3D-6(a)(3) of this code.

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§29-3D-7. Penalties.

(a) On and after January 1, 2009, a person performing or offering to perform fire protection work without a license issued by the State Fire Marshal, is subject to a citation.

(b) Any person continuing to engage in fire protection work after the issuance of a citation 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) Each day after a citation is given that a person continues to perform, or an employer continues to authorize a person to perform, fire protection work, which is not exempt by the provisions of §29-3D-3 of this code, is a separate offense and punishable accordingly.

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

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

(3) The State Fire Marshal 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 State Fire Marshal may appeal the action pursuant to the provisions of chapter 29A of this code.

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§29-3D-8. Inapplicability of local ordinances.

(a) On and after January 1, 2009, a political subdivision of this state may not require, as a condition precedent to the performance of fire protection work in the political subdivision, a person who holds a valid and current license to perform fire protection work issued under the provisions of this article, to have any other license or other evidence of competence as a fire protection worker.

(b) On and after January 1, 2016, a political subdivision of this state may not require, as a condition precedent to the performance of damper work in the political subdivision, a person who holds a valid and current license to perform damper work issued under this article to have any other license or other evidence of competence beyond those required by the State Fire Marshal and the Commissioner of Labor to perform damper work.

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§29-3D-9. Disposition of fees.

All fees paid pursuant to the provisions of this article, shall be paid to the state Fire Marshal and deposited in a special revenue account with the state Treasurer for the use of the state Fire Marshal as provided in subsection (c), section twelve-b, article three of this chapter.

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